Safety, Friendship, and Dreams

Monica C. Bell[1]

Prelude

An Elegy: by Khalila & Fayard

1.

I never really lost nobody to killing—
only one Person
and I called him my Brother.

we used to smoke and stuff together
we was supposed to link up that same day
we were supposed to go downtown
we was supposed to just hang out

Four o'clock in the morning,

He got killed on the playground.

you always see somebody just gone
Facebook—Twitter—Instagram—24/7—
social media will kill you before you even
actually dead.

no, not Him
not Him
He
just posted a picture on Instagram.

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He got killed.
He got killed—
we went to the Candlelight.

we can't talk on the phone
we can't text each other
we used to text each other

One day,
I had just called the phone. I was thinking
"He'll probably answer the phone"

I would've been fine if His Mother
would've answered the phone

"The person you're trying to reach is not located."
Not Located—

Yeah, because He's dead, genius.

2.

I always tell my sister: Watch who you befriend.
People just be settin up each other.
You can set up anything!

Walk inside a house?
You probably aint
never gonna
walk out
again.

A Girl,
She thought
She was going over
Her boyfriend house—

they raped Her.
Three of them, they raped Her:

Watch Who You Befriend.

3.

People like Him—I
never expected Him to die.
' most people didn't notice a thing: He was a
Church Boy.

I know He used to do shit
I know He used to do dirt

but I never expected Him
to actually get killed for it

everybody was false-claiming Him

the same people
who were beefing with Him a few weeks ago
were saying
"R-I-P"

nobody came to the Candlelight
that said they were coming
nobody came to the funeral
that said they were coming

How do you all call Him "Bro"?
Y'all didn't come to the Candlelight.

4.

I'm so scared to die. I'm so scared to die.

I don't know what Death is—
—is it like you sleep?
you know you dead
—but you sleep
—but you can't wake up?

so—it's Black.

you can move your eyes
—but you just can't move?

Or is it like, really a Heaven?

I never look
that far
I just don't look
that far
I would like to look
that far

I look for tomorrow.

Anything could happen,
especially in this city:

Baltimore is one—
of a kind.

Introduction

In this Essay, I argue that the unfinished work of the Civil Rights Movement is observable through state failure to respect and protect three intertwined social entitlements—*safety*, *friendship*, and *dreams*—in many high-poverty African-American communities. One might envision these entitlements as part of a bundle of rights and privileges that constitute full membership in the American community.[2] American government, at the national, state, and local levels, has routinely fallen short of its obligations to equitably safeguard these aspects of American life and has bungled most attempts to change course. The Essay also discusses the challenges of viscerally understanding the depths of these failures and the need for new conceptions of legal and social change to recognize and respond to them. To build these arguments, I weave together narratives based on interview research, sociological theory, and analysis of case law.

I am not a poet. The words that open this Essay are drawn from interviews with Khalila Thomas[3] and Fayard St. Jean,[4] who in July 2015 were both eighteen-year-olds living in West Baltimore. With the exception of punctuation, free-verse arrangement, and editing for succinctness, I have left

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[2] For examples of more capacious perspectives on the privileges and immunities of American membership (or citizenship), see Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 Stan. L. Rev. 735 (2018); William E. Forbath, *Constitutional Welfare Rights: A Brief History, Critique and Reconstruction*, 69 Fordham L. Rev. 1821 (2001); Matthew J. Hegreness, *An Organic Law Theory of the Fourteenth Amendment: The Northwest Ordinance as the Source of Rights, Privileges, and Immunities*, 120 Yale L.J. 1820 (2011); Goodwin Liu, *Education, Equality, and National Citizenship*, 116 Yale L.J. 330 (2006); Frank I. Michelman, *Foreword: On Protecting the Poor Through the Fourteenth Amendment*, 83 Harv. L. Rev. 7 (1969). One can understand some rights and privileges as "bundled" in the sense that they enable the realization of other rights, and one might also think of rights and privileges as existing within somewhat malleable bundles that aim toward a broader goal of social membership or citizenship, analogous to the well-known notion of bundled sticks in property law. Throughout the piece, I view safety, friendship, and dreams as emblematic of the second understanding of rights and privileges as existing in semi-flexible bundles that are concomitant with American personhood (not necessarily limited to formal citizens). For greater discussion of the bundled rights concept, see Dale E. Ho, *Dodging a Bullet:* McDonald v. City of Chicago *and the Limits of Progressive Originalism*, 19 Wm. & Mary Bill of Rts. J. 369, 405 (2010) (envisioning the Privileges or Immunities Clause as protecting a bundle of unenumerated rights associated with American citizenship); David S. Law, *Globalization and the Future of Constitutional Rights*, 102 Nw. U. L. Rev. 1277, 1330–33 (2008) (explaining the appeal of bundled human rights in globalized markets for workers); Anna di Robilant, *Property: A Bundle of Sticks or a Tree?*, 66 Vand. L. Rev. 869, 886–88 (2013) (explaining the basic concept of bundled, separable property rights); Ryan C. Williams, *Originalism and the Other Desegregation Decision*, 99 Va. L. Rev. 493, 588–89 & n.463 (2013) (describing citizenship as a bundle of rights and privileges that require further articulation).

[3] Pseudonym. Interview conducted by Monica Bell and Trinard Sharpe on July 28, 2015. Participants are part of the Hearing Their Voices study, which has interviewed sixty-four young Baltimore residents, fifty of whom are African-American. We asked young people about many aspects of their lives, including how they experienced and perceived the police, the criminal justice system, and other arms of government. *See* Monica C. Bell, *Police Reform & the Dismantling of Legal Estrangement*, 126 Yale L.J. 2054, 2090 (2017) (describing the study in greater detail).

[4] Pseudonym. Interview conducted by Monica Bell and Meshay Clark on July 27, 2015.

their words unadulterated.[5] This unconventional technique for displaying qualitative data reflects my belief that, in order to complete the unfinished work of the Civil Rights Movement, lawyers and activists must stretch their limbs toward the unorthodox, the unthinkable.

I use empirical poetry[6] as a metaphor for the type of bold reexamination of the state and communities' relationships to it that will be necessary to end marginalization through the racially inequitable organization of geographic space. We must move from efforts to merely soften the "ghetto"[7] toward what philosopher Tommie Shelby calls "ghetto abolition"—or "an aggressive attempt at fundamental reform of the basic structure of our society."[8] To abolish the "ghetto," we might need to violate some tenets of traditional legal analysis, and we must explore new audiences for legal scholarship. Thus, this Essay is not necessarily directed toward lawmakers, adjudicators, or regulators. Instead, it is written in conversation with movements for racial and economic justice, aiming to highlight nontraditional law-infused frameworks for change.

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[5] Due to informed consent agreements that these young people and I signed, in accordance with guidelines for the protection of human research participants, it would violate research ethics and federal regulations to credit these young people for their words by name. *See* 45 C.F.R. §§ 46.111, 46.116, 46.117 (2018).

[6] For discussion of poetic distillation and poetic transcription as tools of social science data analysis and presentation, see Patricia Gabriel, Josephine Lee & Robert Taylor, *Evidence-Based Poetry: Using Poetic Representation of Phenomenological Research to Create an Educational Tool for Enhancing Empathy in Medical Trainees in the Management of Depression*, 31 J. POETRY THERAPY 75, 77 (2018) (describing "found poems"); Corrine Glesne, *That Rare Feeling: Re-presenting Research Through Poetic Transcription*, 3 QUALITATIVE INQUIRY 202, 203–04 (1997) (describing "poetic transcription" as a form of "experimental writing" that operates by "blurring accepted boundaries between art and science, exploring the shapes of intersubjectivity, and examining issues of power and authority"); Maria K.E. Lahman et al., *(Re)Forming Research Poetry*, 17 QUALITATIVE INQUIRY 887, 888 (2011); Tracy R. Nichols, Donna J. Biederman & Meredith R. Gringle, *Using Research Poetics "Responsibly": Applications for Health Promotion Research*, 35 INT'L Q. COMMUNITY HEALTH EDUC. 5, 6 (2014) ("Research poetics—part of a larger field of arts-based research methods—is increasingly used as a methodological approach in qualitative research across various fields and disciplines, such as sociology, education, evaluation, and social work.") (citations omitted); Joakim Öhlen, *Evocation of Meaning Through Poetic Condensation of Narratives in Empirical Phenomenological Inquiry into Human Suffering*, 13 QUALITATIVE HEALTH RES. 557, 559 (2003).

[7] By "ghetto softening," I refer to measures that have reduced racial isolation in a statistical sense and have had a fluctuating effect on the number of measurably very high-poverty neighborhoods, but tend to leave in place the mechanisms and consequences of racial isolation and poverty. Some of these policies include the teardown of large public housing complexes and housing mobility voucher programs designed to relocate poor families to higher-income neighborhoods. *See, e.g.*, PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 6–12 (2013); Paul A. Jargowsky, *The Architecture of Segregation: Civil Unrest, the Concentration of Poverty, and Public Policy* 2–4 (Aug. 9, 2015), https://production-tcf.imgix.net/app/uploads/2015/08/07182514/Jargowsky_ArchitectureofSegregation-11.pdf, *archived at* https://perma.cc/24T7-X23N; John R. Logan, *The Persistence of Segregation in the 21st Century Metropolis*, 12 CITY & COMMUNITY 160, 160–61 (2013); Douglas S. Massey, Jonathan Rothwell & Thurston Domina, *The Changing Bases of Segregation in the United States*, 626 ANNALS AM. ACAD. POL. & SOC. SCI. 74, 76–81 (2009).

[8] TOMMIE SHELBY, DARK GHETTOS: INJUSTICE, DISSENT, AND REFORM 275 (2016).

The vision of justice embraced here is one in which the state recognizes collective and individual humanity and thus, through various means, aims to promote social inclusion and social solidarity.[9] Safety, friendship, and dreams are oft-ignored and misunderstood aspects of inclusion and solidarity, and thus, justice does not exist in their absence. Also, critically, this Essay does not draw upon doctrine to constrain legal possibilities. It treats judicial interpretations as emblems of legal values—occasionally hopeful symbols but more often disheartening exposures of gaps between institutional articulations of law and commonly held American values.

The only strategy that will surely fail to complete the work of the Civil Rights Movement is to reproduce the Civil Rights Movement. By this, I mean that approaches that center traditional legal analysis must give way to approaches that situate law within a much broader conversation about the distribution of power and voice throughout society.[10]

In parts 1 and 2 of the poem, we meet Khalila, a high school senior, her calendar filled with AP courses, who aspires to become a criminal defense attorney and start her own firm. She has had to change high schools a few times for fighting; she has been expelled from two schools.[11] Khalila is so strong academically, however, that even with the change and various other misdeeds, she finds herself in accelerated coursework. One of Khalila's closest friends was shot and killed several months before our interview. She often feels the urge to call him, an urge she has indulged only once, to heartbreaking results. Khalila would like to talk to friends about her grief ("I *was* sad, but I'm over—I mean, I still think about it," she ambivalently explained), but she doesn't, because even though she has friends, she thinks it's important to maintain some distance from them. Friendship is precarious and potentially dangerous. According to Khalila, her friend was killed in part

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[9] *See* Bernard E. Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 347–52 (1998) (elucidating Durkheim's theory of the state, centering on achieving social solidarity through legal regulation); Michèle Lamont, *Addressing Recognition Gaps: Destigmatization and the Reduction of Inequality*, 83 AM. SOC. REV. 419, 423–24 (on social recognition). *Cf.* Joshua Kleinfeld, *Reconstructivism: The Place of Criminal Law in Ethical Life*, 129 HARV. L. REV. 1486, 1544–45 (2016) (promoting "normative reconstruction" as a goal of the criminal law and perhaps other aspects of law, though not all law). *See generally* EMILE DURKHEIM, THE DIVISION OF LABOR IN SOCIETY 102 (W.D. Halls, trans. 2014) (1893) (on organic social solidarity).

[10] This conversation is necessary to move toward the truest fulfillment of the Madisonian republican vision, that power "be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it." THE FEDERALIST No. 39 (James Madison).

[11] For greater context on fighting at school, see NIKKI JONES, BETWEEN GOOD AND GHETTO: AFRICAN AMERICAN GIRLS AND INNER-CITY VIOLENCE 74–96 (2010). For greater context on the disproportionate use of exclusionary school discipline against black girls in Baltimore schools, see Cara McClellan, *Our Girls, Our Future: Investing in Opportunity & Reducing Reliance on the Criminal Justice System in Baltimore* 14–18 (2018), https://www.naacpldf.org/wp-content/uploads/Baltimore_Girls_Report_FINAL_6_26_18.pdf, *archived at* https://perma.cc/GH73-349C.

because he had untrustworthy friends. Thus, she advises her ten-year-old sister to avoid friendship.

Parts 3 and 4 introduce the reader to Fayard, a recent high school graduate. Fayard is the first person in his family to receive a high school diploma, and he is proud of his accomplishment. Yet, he is also struggling to cope with losing several friends to untimely death—car accidents, illnesses, and gun violence. One of his closest friends died in a shooting a few weeks before our interview. Yet, even after his friend's death, other so-called friends made only empty gestures toward supportiveness. Fayard also routinely imagines his own death. His Vineyard Vines-inspired wardrobe and superficial buoyancy conceal a deep concern that, despite reaching a new milestone for the family, he won't be reaching other milestones. Fayard was visibly and audibly uncomfortable talking about his long-term future plans because "anything could happen, especially in this city." Thus, he tries to keep himself from looking too far into the future, from having dreams that are too big.

The title of this Symposium is, "Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis." It is interested in "the failure of civil rights law to address urban displacement, suburban impoverishment, and re-segregation in American cities"—keeping in mind that the Fair Housing Act, which was meant to eradicate "the ghetto" and produce "truly integrated and balanced living patterns,"[12] became law more than a half-century ago. As any demographer would tell you, and as Professor Anthony Alfieri explains in the lead essay in this Symposium, racial isolation and concentrated poverty have evolved over the past half-century.[13] Aggregate measures of racial separation have declined and the dynamics of urban gentrification and suburban diversification have fundamentally changed the ecological landscape of cities.[14]

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[12] 114 CONG. REC. 3422 (1968) (statement of Sen. Mondale); *see also* Brian Patrick Larkin, Note, *The Forty-Year "First Step": The Fair Housing Act as an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1627 (2007); David D. Troutt, *Inclusion Imagined: Fair Housing as Metropolitan Equity*, 65 BUFFALO L. REV. 5, 23–30 (2017).

[13] Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis*, 54 HARV. CR-CL L. REV. (forthcoming 2019).

[14] *See, e.g.*, John R. Logan, *The Persistence of Segregation in the 21st Century Metropolis*, 12 CITY & COMTY. 160, 160–61 (2013); Douglas S. Massey, *Why Death Haunts Black Lives*, 114 PROCEEDINGS NAT'L ACAD. SCI. 800, 800 (2017); Massey, Rothwell & Domina, *supra* note 7, at 74; *see also* Rachel E. Dwyer, *Expanding Homes and Increasing Inequalities: U.S. Housing Development and the Residential Segregation of the Affluent*, 54 SOC. PROBS. 23, 42 (2007) (describing the concentration of the affluent in metropolitan areas where there was increased new housing development).

Yet, here are Khalila and Fayard.
And here is West Baltimore.[15]
And here are the twenty-one metropolitan areas that remained "hypersegregated" as of the 2010 Census.[16]
And there was Freddie Gray.[17]

What is to be done?

The legal scholar's impulse is to say: Enough description. We know the problem. How are we going to fix it?[18] But "we" do not have a rich understanding of "the problem." Most legal and policy approaches that proceed under the banners of racial justice and economic justice reveal a breathtaking cluelessness—or, perhaps, willful flattening—of the nuanced realities that ghettoized African Americans face on a daily basis. They leave unexplored how largely white economic and social advantage are deeply implicated in the dual travesties of ghettoization and dispossession.[19]

Consider the residential mobility versus community development debate, which divides people who should be allies because it is almost obvious that both and more are critically important for meeting today's crisis.[20] Consider the debate over police reform, which vacillates between moderate-but-positive ambitions of body cameras and training, on one end, and fatalistic-but-positive ambitions of police abolition on the other.[21]

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[15] *See, e.g.*, PATRICIA FERNÁNDEZ-KELLY, THE HERO'S FIGHT: AFRICAN AMERICANS IN WEST BALTIMORE AND THE SHADOW OF THE STATE 49 ("Outsiders see West Baltimore as an enigmatic zone constituting one of three ghettos encroaching upon the city.").

[16] Douglas S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025, 1031 (2015); John R. Logan, *The Persistence of Segregation in the 21st Century Metropolis*, 12 CITY & COMMUNITY 160, 160–61 (2013).

[17] Freddie Gray was a 25-year-old African-American man from West Baltimore who died on April 19, 2015, one week after being severely injured in police custody following an arrest near his home. *See, e.g.*, WESLEY LOWERY, THEY CAN'T KILL US ALL: FERGUSON, BALTIMORE, AND A NEW ERA IN AMERICA'S RACIAL JUSTICE MOVEMENT 129–167 (2016).

[18] This is different from the sociologist's impulse, which is to say: Enough description. More theory. Some sociologists fight that impulse as well. *See generally* Max Besbris & Shamus Khan, *Less Theory. More Description.*, 35 SOC. THEORY 147 (2013).

[19] *See, e.g.*, Matthew Desmond & Bruce Western, *Poverty in America: New Directions and Debates*, 44 ANN. REV. SOC. 305, 310–12 (2018); Daria Roithmayr, *Racial Cartels*, 16 MICH. J. RACE & L. 45, 46–49 (2010). For a recent indictment of the legal profession's failure to account for and respond to the human suffering produced by the criminal justice system, see Alec Karakatsanis, *Policing, Mass Imprisonment, and the Failure of American Lawyers*, 128 HARV. L. REV. F. 253, 254–56 (2015).

[20] *See* Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy*, 16 GEO. J. POVERTY LAW & POL'Y 1, 1–2 (2009).

[21] *Compare* Mary D. Fan, *Democratizing Proof: Pooling Public and Police Body-Camera Videos*, 96 N.C. L. REV. 1639, 1639 (2018) (calling policy body-worn cameras a "cultural revolution"), *with* Derecka Purnell, *What Does Police Abolition Mean?*, BOS. REV. (Aug. 23, 2017), http://bostonreview.net/law-justice/derecka-purnell-what-does-police-abolition-mean, *archived at* https://perma.cc/GRW9-WV5H (arguing that even "[t]ransformation will not save [policing]"). I should clarify that when I call these approaches "moderate" and "fatalistic," I use these words as descriptors and not moral judgments. Depending on the context, moderation or fatalism might be appropriate. Moreover, some would characterize abolition as utopian

Ghetto abolition should entail reconsidering how we consume the testimonies of people living at America's margins. How do we hear these testimonies? Isn't there something distasteful about gazing upon what generations of dispossession has done to them, to us? Does depicting the suffering of Khalila and Fayard merely satisfy the liberal elite demand for poverty porn?[22] Trauma porn?[23] Do seeing and feeling Khalila's and Fayard's testimonies illuminate the structural reasons for their suffering—as I hope it does—or do their individual stories obscure social structure and simply induce white pity and shame? Is anything wrong with white shame?

And—if we return to fundamental questions about what people should demand as American citizens, or simply as human beings, will our analysis be futile if we label those entitlements "rights"? Would it raise fewer eyebrows to call these entitlements "needs" or "privileges" or "capabilities" because those terms are defined in somewhat distinctive ways from rights?[24]

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rather than fatalistic, as in its gradualist form it does not seem to fully embrace the Afro-Pessimist view that progress against antiblackness is untenable. *Compare* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1161 (2015) ("[A]bolition may be understood . . . as a gradual project of decarceration, in which radically different legal and institutional regulatory forms supplant criminal law enforcement"), *with* Victor Erik Ray et al., *Critical Race Theory, Afro-Pessimism, and Racial Progress Narratives*, 3 SOC. RACE & ETH. 147, 148–51 (2017).

[22] *See, e.g.*, Emily Roenigk, *5 Reasons 'Poverty Porn' Empowers the Wrong Person*, HUFFPOST (Apr. 16, 2014), https://www.huffingtonpost.com/emily-roenigk/poverty-charity-media_b_5155627.html, *archived at* https://perma.cc/6LGM-T85E; Ali Heller, *The Race to the Bottom and the Superlative Sufferer*, SAI HANKURI (May 28, 2013), http://anywherethewindblows.com/~niger/?p=822, *archived at* https://perma.cc/A33G-7U99.

[23] *See, e.g.*, Rachel Alicia Griffin, Pushi*ng into* Precious*: Black Women, Media Representation, and the Glare of the White Supremacist Capitalist Patriarchal Gaze*, 31 CRITICAL STUD. MEDIA COMM. 182, 187–89 (2014); Katariina Kyrölä, *Feeling Bad and* Precious (2009)*: Black Suffering, White Guilt, and Intercorporeal Subjectivity*, 10 SUBJECTIVITY 258, 259 (2017); Alisa Zipursky, *When They Want Trauma Porn Instead of Your Truth*, HEALING HONESTLY (Jan. 12, 2018), http://healinghonestly.com/pop-culture/when-they-want-trauma-porn-instead-your-truth, *archived at* https://perma.cc/22FY-38UG ("[Trauma porn] is the exploitive sharing of the darkest, creepiest, most jarring parts of our trauma specifically for the purpose of shocking others. It can be engaging for some non-survivors because of the shock value, but is not only unhelpful to survivors, but often actually harmful to us because it can trigger our PTSD.").

[24] I spent the first several months of thinking about this piece internally debating, researching, and anticipating criticism based on whether I called safety, friendship, and dreams "rights," "needs," "privileges," "principles," or used some other terminology. The classic debate on rights played out in the 1990s as a debate between predominantly white and male Critical Legal Studies (CLS) scholars and scholars of color of the Critical Race Theory (CRT) school. *Compare* Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 24–36 (1984), *and* Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 393 (1984), *and* Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1363, 1394 (1984), *with* Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301, 305 (1987), *and* Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 338–41, 356–58 (1987). However, this is not quite the debate of a bygone era, as scholars critiquing the concept of rights consistently reemerge, hoping to quell the proliferation of rights claims. *See* SONU BEDI, REJECTING RIGHTS 41–92 (2009) (arguing that a rights framework weakens democracy and proposing a legislation-based "theory of justification" instead). I tend to concur with Professor Patricia Williams who, three decades ago, in the pages of this journal, called the CLS/CRT debate over rights-talk "no more than a word game." Patricia J.

Must we rethink the source of social entitlements, moving beyond standard conversations rooted in American constitutional interpretation and working toward the ingredients for American social membership?[25] Does speaking in terms of "rights" stand in the way of the project of reimagining the state, or can rights-talk and radical change find common ground?[26]

How do we know what we think we know about "the inner-city crisis"? How do we hold space for both the (bounded) expertise of academics and technocrats and the (bounded) expertise of the people who could benefit most from the achievement of racial and economic justice, those who will suffer most if it continues to elude us?

And—are we allowed to use "ghetto"? Does it matter that I mean it in the sociological and historical sense, meant to capture a particular set of structural, racialized spatial processes?[27] Does the word obscure the undenia-

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Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 410 (1987). I also find persuasive the recent analysis of Professor Jamal Green, who helpfully points out that just because an entitlement is called a "right" does not necessarily mean it must categorically trump other state considerations. *Compare* Jamal Greene, *Foreword: Rights as Trumps?*, 132 HARV. L. REV. 28, 34 (2018), *with* Ronald Dworkin, *Rights as Trumps*, *in* THEORIES OF RIGHTS 153, 153 (Jeremy Waldron ed., 1984) (restating and defending the idea in his earlier work that "[r]ights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole"). Under Greene's proportionality analytic approach, it would be possible to expand recognition of things called "rights" without creating impossible locked-in debates in law. Martha Nussbaum's formulation of "capabilities," or meaningful opportunities to pursue various freedoms in pursuit of a flourishing life, is helpful. However, it is not clear whether there is a normative reason for a distinction between capabilities and rights. Nussbaum argues that governments are obligated to produce capabilities (though not particular outcomes), which is essentially a claim that governments are obligated to affirmatively protect rights to capabilities. Indeed, Nussbaum at times defines specific capabilities by reference to rights. To be sure, capability is understood as the opportunity to pursue a certain end, such as safety, while a right is the moral or legal protection of that opportunity. Ingrid Robeyns, *The Capability Approach*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2016), https://plato.stanford.edu/entries/capability-approach/#FunCap, *archived at* https://perma.cc/CL69-64QN. The language of capabilities is valuable because it does allow conversations to move beyond conceptions of constitutional rights as mere negative liberties. *See* Martha C. Nussbaum, *Constitutions and Capabilities: "Perception" Against Lofty Formalism*, 121 HARV. L. REV. 4, 12–16, 21 (2007).

[25] Implicit in this idea is that rights do not simply emanate from state power, but instead have an independent basis rooted in other values, such as human flourishing, dignity, and equity. While legal scholarship typically focuses on legal rights, one could just as easily have a conception of rights that emphasizes their moral or normative bases. *But cf.* HANNAH ARENDT, ORIGINS OF TOTALITARIANISM 290–302 (1951) (arguing that a strong state alone was necessary and sufficient to guarantee a human right).

[26] *See* Amna Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 409 (2018) (explaining that the Movement for Black Lives has largely avoided rights claims and emphasized reimagining the state). Compare this perspective with movements that explicitly use rights discourse as a mode of reimagining the collective power of marginalized people—as "restitution"—regardless of the specific content of those rights. *See, e.g.*, Valeria M. Pelet del Toro, Note, *Beyond the Critique of Rights: The Puerto Rico Legal Project and Civil Rights Litigation in America's Colony*, 128 YALE L.J. 792, 832 (2019); Karen Tani, The Rise of Disability Governance and the Transformation of Citizenship, 1970-1990 (2019) (unpublished manuscript) (on file with author).

[27] From a sociological perspective, "ghetto" is meant to capture not only a physical space, but the social meaning attached to it ("territorial stigmatization") and the strategies of poverty concentration and racial isolation used to create the space and its meaning. *See* LOÏC WAC-

ble heterogeneity of poor urban neighborhoods in ways that challenge its usefulness?[28] Is the word too tarnished, like the racial epithet "thug," to be useful at all?[29] Should we retire "inner-city" as well, since it is, for the most part, social-scientifically misleading?[30]

These are difficult questions. As a legal scholar and qualitative social scientist deeply committed to racial and economic justice, they are questions I, and surely others, wrestle with on a daily basis. So, as I contemplate the future of ghetto abolition through law, I think less about the policies and legal machinations we must pursue and more about our epistemology, our methodology, and our values.

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quant, Urban Outcasts: A Comparative Sociology of Advanced Marginality 169–84 (2006); *see also* Mitchell Duneier, Ghetto: The Invention of a Place, the History of an Idea 220–31 (2016). Wacquant has also referred to the places these processes create as the "hyperghetto" which, along with imprisonment, function as the latest stage in the marginalization of black people in America. *See* Wacquant, *supra* at 41–47 (2006). *But see* Elijah Anderson, *The Iconic Ghetto*, 642 Annals Am. Acad. Pol. & Soc. Sci. 8, 16–19 (2012) (identifying the "iconic ghetto" as a place black people inhabit, a place for the "iconic Negro," emphasizing the ghetto as a matter of racial stigma more than social, spatial processes).

[28] *See* Mario Luis Small, *Four Reasons to Abandon the Idea of "The Ghetto,"* 7 City & Cmty. 389, 395 (2008).

[29] *See, e.g.*, CalvinJohn Smiley & David Fakunle, *From "Brute" to "Thug:" The Demonization and Criminalization of Unarmed Black Male Victims in America*, 26 J. Hum. Behav. Soc. Env't. 350, 350–54 (2016); Dawn Marie Dow, *The Deadly Challenges of Raising African American Boys: Navigating the Controlling Image of the "Thug,"* 30 Gender & Soc'y 161, 163 (2016). *But see* Simone Ispa-Landa, *Gender, Race, and Justifications for Group Exclusion: Urban Black Students Bussed to Affluent Suburban Schools*, 86 Soc. Educ. 218, 227 (2013) (finding that African-American youth used this word in a complimentary way amongst themselves to mean someone who has had a difficult life but fights to overcome it). We also saw this dual use of thug in our study. For example, one respondent differentiated between a "thug" and a "gangster," explaining that, "Thug is a brother. What I mean by 'brother,' any race—a man. You stand up for yours. You won't fall for nobody." It was clear, though, that when outsiders used the terminology, it did not have a positive meaning. *See* Bell, *supra* note 2, at 2097–98.

[30] "Inner-city" can be used to describe areas proximate to the central parts of cities, but it has often been used as a proxy for spatial disadvantage, and that proxy no longer works given increased gentrification in the urban core and rising inequality within and between suburbs. *See, e.g.*, Elizabeth Kneebone & Alan Berube, Confronting Suburban Poverty in America 8–36 (2013) (describing substantial growth of poverty in suburbs after 2000); Karyn Lacy, *The New Sociology of Suburbs: A Research Agenda for Analysis of Emerging Trends*, 42 Ann. Rev. Soc. 369, 370 (2016); Jackelyn Hwang, *Gentrification in Changing Cities: Immigration, New Diversity, and Racial Inequality in Neighborhood Renewal*, 660 Annals Am. Acad. Pol. & Soc. Sci. 319, 320 (2015); Daniel T. Lichter, Domenico Parisi, Michael C. Taquino, *Toward a New Macro-Segregation? Decomposing Segregation Within and Between Metropolitan Cities and Suburbs*, 80 Am. Soc. Rev. 843, 846–49 (2015); Chad R. Farrell, *Bifurcation, Fragmentation, or Integration? The Racial and Geographic Structure of Metropolitan Segregation, 1990–2000*, 45 Urb. Stud. 467, 468–69 (2008); Alexandra K. Murphy, *The Symbolic Dilemmas of Suburban Poverty: Challenges & Opportunities Posed by Variations in the Contours of Suburban Poverty*, 25 Soc. F. 541, 542–44 (2010). Labels like "urban" and "inner-city" today are mostly used as proxies for blackness despite the changing composition of urban space. *See, e.g.*, Chase M. Billingham & Shelley McDonough Kimelberg, *Identifying the Urban: Resident Perceptions of Community Character and Local Institutions in Eight Metropolitan Areas*, 17 City & Comty. 858, 873–75 (2018); Dyan Watson, *Norming Suburban: How Teachers Talk About Race Without Using Race Words*, 47 Urb. Educ. 983, 984–86 (2012).

I interviewed Khalila and Fayard with members of a research team I led in Baltimore. We set out to ask fifty young African Americans about their experiences growing up under the police regime that yielded the death of Freddie Gray and the subsequent unrest. We learned valuable information about living under conditions of simultaneous social control and social exclusion. We also learned that consistent yet catastrophic violence, be it directly from the state or from elsewhere, had created whirlpools of vulnerability around their communities and thus emerged as their central concern. This violence—state violence, interpersonal violence, symbolic violence,[31] economic violence[32]—is too profound for any honest reformer or revolutionary to simplify or ignore. Civil rights-era and post-civil rights-era legal advocacy weakened some forms of violence, such as *de jure* segregation, but it permitted and may have even facilitated other forms of violence, such as mass incarceration and its attendant institutions and processes.[33]

Violence undermines some of the most basic, but rarely invoked, privileges of American citizenship and of humanity: safety, friendship, and dreams. Below, I offer a preliminary and incomplete account of each, rooted in sociological and legal research, constitutional legal analysis, and the ex-

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[31] Pierre Bourdieu defined "symbolic violence" as the process of "ensur[ing] the domination of one class over another." P. Bourdieu, *Symbolic Power*, 4 CRITIQUE OF ANTHROPOLOGY 77, 80 (1979). For the purposes of this Article, I adopt Bourdieu's broad conception of symbolic violence, noting its parallelism to other key sociological conceptions such as "social closure" and "opportunity hoarding." *See, e.g.*, Frank Parkin, *Strategies of Social Closure in Class Formation*, *in* THE SOCIAL ANALYSIS OF CLASS STRUCTURE 1 (Frank Parkin ed., 1974); Kim A. Weeden, *Why Do Some Occupations Pay More than Others? Social Closure and Earnings Inequality in the United States*, 108 AM. J. SOC. 55, 57–60 (2002).

[32] Some might classify "economic violence" using the more sociological terms of exploitation, or perhaps dispossession. Perhaps some would use "the plunder," as writer Ta-Nehisi Coates memorably described it as he argued for black American reparations. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC, June 2014, https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/, *archived at* https://perma.cc/GT56-3Y8Q. Others might prefer the drier and less explicitly race-infused language of Bernie Sanders or Elizabeth Warren, concerned about "oligarchy" or seeking a "new deal." *See* Bernie Sanders, *The Corporate Media Ignores the Rise of Oligarchy. The Rest of Us Shouldn't*, THE GUARDIAN (Mar. 16, 2018), https://www.theguardian.com/commentisfree/2018/mar/16/corporate-media-oligarchy-bernie-sanders, *archived at* https://perma.cc/6R4V-2G3H; Elizabeth Warren, *Companies Shouldn't Be Accountable Only to Shareholders*, WALL ST. J. (Aug. 14, 2018), https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687, *archived at* https://perma.cc/2WDY-5WL3. As a black child of the 1980s, I am drawn toward resurrecting "economic violence," Reverend Jesse Jackson's label from his 1988 presidential campaign. It is meant to capture runaway wealth and economic inequality, along with its particularized impacts on specific groups of people across race and space. Thus, it is explicitly conscious of race, but inclusive. Even Jackson's position on the "War on Drugs" was attentive to the larger economic engine driving the "crack crisis." *See* Phil Gailey, *Jackson Condemns 'Economic Violence' as He Opens Headquarters in Iowa*, N.Y. TIMES, Mar. 20, 1987, at A14; *see also* Jesse Jackson, 1988 Democratic National Convention Address at the Omni Coliseum in Atlanta, GA (July 19, 1988), https://www.americanrhetoric.com/speeches/jessejackson1988dnc.htm, *archived at* https://perma.cc/823F-ETR3.

[33] *See* ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 5–26 (2016); *see also* JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 11–13, 17–46 (2017).

periences of Khalila and Fayard as emblematic of the enduring crisis of American racial and economic marginality.

The goal of this analysis is not to reach a conclusion about the precise nature of these social entitlements, be they "rights," "privileges," "needs," or something else. That task must be left for future work. I also recognize that throughout the piece, I connect and at times equate concepts that a more parsimonious analyst would distinguish—for example, an argument that *social capital* is necessary is obviously distinguishable from a claim that *friendship* is necessary. Similarly, though they are more closely connected than social capital and friendship, an argument that *aspirations* are necessary is distinguishable from a claim than *dreams* are necessary, for reasons touched on below. Likewise, although safety and security are often used interchangeably, scholars sometimes draw conceptual distinctions between the two.[34] These distinctions would be critical for an audience concerned with working out the precise details of the entitlement claims articulated here, but that is not the task of this Essay. This Essay instead attempts to operate at the level of first principles, inviting a conversation about ways to imagine the goal of civil rights advocacy in a more capacious manner, adapted to the sense of injustice and loss that young people living under conditions of race-class marginality raise in their own words. This analysis is meant to provoke a frank discussion of how a social movement infused with legal actors and transformative legal claims-making—a 21st century "jurisgenerative community"[35]—might effectively advocate for these essential but consistently overlooked components of racial and economic justice.

I. Safety

What Khalila and Fayard experienced in the death of their friend was not unique. Indeed, if Khalila is right that she lost "only one person" to killing, she has experienced fewer violent deaths than many other young people in Baltimore.[36] Twenty-seven of the 50 participants in our study discussed a friend or family member who had been a victim of serious violence, often lethal.[37] In several respondents' views, the risk of early death springs

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[34] *See, e.g.*, Jeremy Waldron, Torture, Terror, and Trade-Offs: Philosophy for the White House 111–64 (2010); Douglas C. Michael, *Self-Regulation for Safety and Security: Final Minutes or Finest Hour?*, 36 Seton Hall L. Rev. 1075, 1078 n.6 (2006).

[35] Robert M. Cover, *Foreword:* Nomos *and Narrative*, 97 Harv. L. Rev. 4, 47 (1983); *see also* Arendt, *supra* note 25, at 25 (introducing "the jurisgenerative processes of groups dedicated to radical transformations of constitutional meaning as it affects the application of state power").

[36] In one recent qualitative study of young black men in Baltimore, respondents knew an average of three homicide victims each. Jocelyn R. Smith, *Unequal Burdens of Loss: Examining the Frequency and Timing of Homicide Deaths Experienced by Young Black Men Across the Life Course*, 105 Am. J. Pub. Health S483, S486 (2015).

[37] This number likely underestimates youth who had a friend or family member who was a victim of serious violence, given that we did not systematically ask respondents about victimization. In the context of pervasive injury, it would be asking too much to expect an un-

primarily from uncontrollable circumstances and accidents of geography, and only minimally from criminal behavior or poor choices. Gun violence is concentrated within tight and very small networks of people who commit crimes,[38] but often young people who reside within race-class marginalized communities, simply by knowing people in their neighborhoods and at school, are part of such networks.[39] Therefore, even if gun violence is usually not random, these young people often experience it as random. This rational framing of violence as inescapable lends an ambient sense of unsafety and insecurity to daily life, with an array of detrimental consequences for individuals and communities.

How does American law protect the safety and security of individuals and communities? From a judicial interpretation-centered constitutional perspective, it essentially does not. There are limits (flexible limits, but limits) on how far the police may intrude into people's lives, which some scholars interpret as a matter of security rather than privacy.[40] Criminal law and tort law impose punishments or penalties when a private individual jeopardizes another individual's safety. However, there is no affirmative state duty to protect individual safety *before* it is violated.

Famously, in *DeShaney v. Winnebago*, the Supreme Court ruled that the state has no affirmative duty to protect people from private danger, even if the state was aware of the potential for danger.[41] The majority opinion, authored by Chief Justice Rehnquist, used a more expansive legal analysis than necessary. The Court dismissed the principle of affirmative constitutional rights, except in the rarest of circumstances, not limiting its analysis to an affirmative right to safety.[42] Chief Justice Rehnquist used a formalist, text-

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prompted, full recounting of all of the violence and injury youth were experiencing. *Cf.* LAURENCE RALPH, RENEGADE DREAMS: LIVING THROUGH INJURY IN GANGLAND CHICAGO 3–6 (2014) (describing the pervasiveness of injury in a disadvantaged black community in Chicago).

[38] Andrew V. Papachristos, Christopher Wildeman & Elizabeth Roberto, *Tragic, but not Random: The Social Contagion of Nonfatal Gunshot Injuries*, 125 SOC. SCI. & MED. 139, 139 (2015).

[39] *See, e.g.*, Dana L. Haynie, Eric Silver & Brent Teasdale, *Neighborhood Characteristics, Peer Networks, and Adolescent Violence*, 22 J. QUANTITATIVE CRIMINOLOGY 147, 159–63 (2006).

[40] *See* Jed Rubenfeld, *The End of Privacy*, 61 STAN. L. REV. 101, 122–37 (2008); *see also* Andrew Guthrie Ferguson, *Personal Curtilage: Fourth Amendment Security in Public*, 55 WM. & MARY L. REV. 1283, 1336 (2014). *Cf.* Anna Lvovsky, *Fourth Amendment Moralism*, 166 U. PA. L. REV. 1189, 1261 (2018) (expressing concern that a security-based Fourth Amendment analysis, like a privacy-based analysis, would leave unaddressed the substantive moral judgments that often underlie courts' reasoning about the Fourth Amendment).

[41] DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 195 (1989).

[42] Those rare circumstances include the protection of prisoners who are wholly under state control, even though prison conditions cases are unsettled as to the extent of those duties, and Chief Justice Rehnquist did not take an expansive view of such duties even before invoking them in *DeShaney*. *Compare* Estelle v. Gamble, 429 U.S. 97, 103–04 (1976) (establishing an affirmative duty to provide healthcare to people in prison), *with* Daniels v. Williams, 474 U.S. 327, 333–34 (1986) (holding that the Due Process Clause did not grant an affirmative duty to protect prisoners from correctional officers' negligent acts in an opinion also authored by Justice Rehnquist).

driven analysis (odd in the substantive due process context) to conclude that "[t]he [Due Process] Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security."[43] In *Castle Rock v. Gonzales*, the Court reiterated its argument in *DeShaney*, this time as applied to the police department. When the police failed to enforce a woman's restraining order against her abusive husband, the husband kidnapped and then brutally murdered their three children.[44] The Court suggested that the woman should just file a wrongful death suit in tort.[45]

DeShaney and *Castle Rock* left space for state liability for failing to keep an individual safe if the state created the danger, but thus far, cases based on claims of state-created danger have fallen short of protecting people like Khalila, Fayard, and their communities. For example, public housing residents in New York City, Philadelphia, and Upstate New York have argued that dangerous housing conditions such as lead paint and bed bugs ran rampant despite officials' knowledge that they endangered the lives and health of tenants; they claimed that these safety hazards were state-created dangers that the state had an affirmative duty to alleviate. In each case, the district court ruled for the defendant public housing authorities on motions to dismiss, on various grounds.[46]

Theoretically, state constitutions could step in where the U.S. Constitution does not. But even when state constitutions explicitly acknowledge a

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[43] *DeShaney*, 489 U.S. at 195. As many have pointed out, there is nothing inherent in the concept of a "right" that means it can only function as a restraint against the state. *See, e.g.*, Robin West, *Rights, Capabilities, and the Good Society*, 69 FORDHAM L. REV. 1901, 1907 (2001).

[44] Castle Rock v. Gonzales, 545 U.S. 748, 750–56, 768 (2005); *see also* Zanita E. Fenton, *Disarming State Action; Discharging State Responsibility*, 52 HARV. C.R.-C.L. L. REV. 47, 49 (2017) (arguing that the Court's reasoning "allow[s] government to escape its traditional functions"); Amber Fink, *Every Reasonable Means: Due Process and the (Non)enforcement of a Restraining Order in* Gonzales v. Town of Castle Rock, 24 LAW & INEQ. 375, 375–76 (2006) (providing further factual background on *Castle Rock*). At least one prominent conservative organization has criticized the Court's majority opinion in *Castle Rock*, authored by Justice Scalia, as technically and morally unsound. *See* Roger Pilon, Town of Castle Rock v. Gonzales*: Executive Indifference, Judicial Complicity*, 2004 CATO SUP. CT. REV. 101, 101–04 (2004-2005).

[45] *Castle Rock*, 545 U.S. at 768.

[46] *See* Hurt v. Phila. Hous. Auth., 806 F. Supp. 515, 529 (E.D. Pa. 1992) (dismissing lead paint case because there is no state constitutional right to "decent, safe, and sanitary housing" and for various jurisdictional reasons); Paige v. N.Y.C. Hous. Auth., 2018 U.S. Dist. LEXIS 137238, at *19 (S.D.N.Y. Mar. 9, 2018) (dismissing lead paint case for lack of subject matter jurisdiction); Barber v. Rome Hous. Auth., 2018 U.S. Dist. LEXIS 54211 (N.D.N.Y. Mar. 30, 2018) (dismissing bed bug case for failure to state a claim that officials violated complainants' substantive due process rights because they did not claim officials were deliberately indifferent to the danger and declining to exercise supplemental jurisdiction over state law claims); *see also* Matthew Desmond & Monica Bell, *Housing, Poverty & the Law*, 11 ANN. REV. L & SOC. SCI. 15, 22–23 (2015) (describing poor environmental conditions, including lead toxins, in public and private housing); Laura Oren, DeShaney *and "State-Created Danger": Does the Exception Make the "No-Duty" Rule?*, 35 ADMIN. & REG. L. NEWS 3, 6 (2010). I do not imply that housing residents never prevail on *other* state-law claims involving violation of housing codes. I am simply discussing claims that the housing conditions constitute a *state-created danger* in the lineage of *DeShaney* and *Castle Rock*.

right to safety,[47] state courts have generally interpreted those provisions as mere aspirations, not enforceable entitlements.[48] Human rights law does somewhat better than American constitutional law, but human rights law has not deeply penetrated understandings of American civil rights and citizenship.[49]

The Civil Rights Movement's pathway toward social entitlements—going to court—is unlikely to build a pathway to recognition of a positive right to safety (or friendship, or dreams). Fortunately, courts do not have a monopoly on the establishment or interpretation of rights.[50] Consider, for example, the emergent right to healthcare enshrined in the Affordable Care Act, built in part on the idea that healthcare is a positive right even though there

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[47] *See, e.g.*, OH. CONST. art. I, § 1 ("All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."); VA. CONST. art. I, § 1 ("That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."); CAL. CONST. art. I, § 1 ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.").

[48] *See, e.g.*, Daugherty v. Wallace, 621 N.E.2d 1374, 1379 (Ohio App. Ct. 1993) (holding that the explicit safety provision in the Ohio Constitution does not place an affirmative duty upon the state to provide subsistence benefits); *see also* Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 HARV. L. REV. 1131, 1135–36 (1999) (referring to similar holdings in Connecticut, New York, and Washington); Bert B. Lockwood, Jr. et al., *Litigating State Constitutional Rights to Happiness and Safety: A Strategy for Ensuring the Provision of Basic Needs to the Poor*, 2 WM. & MARY BILL RTS. J. 1, 11 (1993) (analyzing the *Daugherty* case).

[49] Article 3 of the Universal Declaration of Human Rights includes a right to security: "Everyone has the right to life, liberty and security of person." G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948). In the year after *DeShaney*, Professor Dinah Shelton criticized the Court's conception of governmental duties as being out of step with those of many nations. *See* Dinah Shelton, *Private Violence, Public Wrongs, and the Responsibility of States*, 13 FORDHAM INT'L L.J. 1, 30–33 (1990).

[50] *E.g.*, WILLIAM N. ESKRIDGE JR. & JOHN FEREJOHN, A REPUBLIC OF STATUTES: THE NEW AMERICAN CONSTITUTION 33 (2010); LARRY KRAMER, THE PEOPLE THEMSELVES: POPULAR CONSTITUTIONALISM AND JUDICIAL REVIEW 227–48 (2004); Cover, *supra* note 35, at 25–40; Jeremy K. Kessler, *The Administrative Origins of Modern Civil Liberties Law*, 114 COLUM. L. REV. 1083, 1183–84 (2014); Sophia Z. Lee, *Race, Sex, and Rulemaking: Administrative Constitutionalism and the Workplace, 1960 to the Present*, 96 VA. L. REV. 799, 801 (2010); Gillian E. Metzger, *Administrative Constitutionalism*, 91 TEX. L. REV. 1897, 1901 (2013); Robert C. Post & Reva B. Siegel, *Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and Medical Leave Act*, 112 YALE L.J. 1943, 1945 (2003). *See generally* JACK M. BALKIN, LIVING ORIGINALISM 74–81 (2011) (identifying Americans' faith in the ability of the Constitution to adapt as one reason for its continued legitimacy); Gillian E. Metzger, *Ordinary Administrative Law as Constitutional Common Law*, 110 COLUM. L. REV. 479, 479 (2010); Robert Post & Reva Siegel, *Popular Constitutionalism, Departmentalism, and Judicial Supremacy*, 92 CALIF. L. REV. 1027, 1041–42 (2004); David E. Pozen, *Judicial Elections as Popular Constitutionalism*, 110 COLUM. L. REV. 2047, 2047 (2010); Rebecca E. Zietlow, *Free at Last! Anti-Subordination and the Thirteenth Amendment*, 90 B.U. L. REV. 255, 256 (2010).

is no basis for such a right in federal or state constitutional law.[51] Safety, which has more textual support than healthcare does, can be recognized through similar devices. To be sure, some would say that the federal government has already recognized safety as an important social entitlement through numerous pieces of legislation adopted to respond to crime—the Anti-Drug Abuse Act of 1988 (Reagan drug law),[52] for example, or the Violent Crime Control and Law Enforcement Act of 1994 (Clinton crime bill).[53] But those statutes obviously did not draw from deep wells of knowledge about why violence occurs given their inattention to the roots of crime in structural disadvantage. Thus, in some ways, these statutes made poor black communities less safe by criminalizing and disenfranchising them.[54]

We need a movement that advocates for safety as a universal value that the government is obligated to proactively respect. Respecting the entitlement to safety requires laser-sharp focus on eradicating criminogenic social conditions—poverty, residential segregation by race and wealth, virulent discrimination based on race and criminal justice involvement.[55] It also requires a commitment to reining in state violence alongside interpersonal violence. Violence, in all its forms, threatens safety. White middle-class communities, "law-and-order" politicians, and some police leaders have appropriated "safety" and made it inaccessible as a claim for communities of

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[51] *E.g.*, Abbe R. Gluck & Nicole Huberfeld, *What Is Federalism in Healthcare For?*, 70 STAN. L. REV. 1689, 1723 (2018); Elizabeth Weeks Leonard, *State Constitutionalism and the Right to Health Care*, 12 U. PA. J. CONST. L. 1325, 1391–92 (2010); Katherine L. Record, *Litigating the ACA: Securing the Right to Health Within a Framework of Negative Rights*, 38 AM. J. L. & MED. 537, 540–42 (2012). *Cf.* Christina S. Ho, *Are We Suffering from an Undiagnosed Health Right?*, 42 AM. J. L. & MED. 743, 794–95 (2016) (resisting the subtle emergence of a rights-based framework for healthcare advocacy in courts).

[52] Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6072, 102 Stat. 4181, 4320–23 (amending 28 U.S.C. § 524(c)).

[53] Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, 103rd Cong. (1994).

[54] The obvious rebuttal to this point is that violent crime, especially homicide, has massively declined in low-income African-American communities since the 1990s. This is indisputable, though no one is quite sure why. *See* PATRICK SHARKEY, UNEASY PEACE: THE GREAT CRIME DECLINE, THE RENEWAL OF CITY LIFE, AND THE NEXT WAR ON VIOLENCE 55–60 (2018) (offering analysis on the varying prominent theories for why violent crime began to fall in the early 2000s). Yet, preservation of life and prevention of crime are not safety. As I describe above, the constant dread of risk from both interpersonal and state violence is a serious burden on safety that has negative consequences for individuals and communities, and in the proactive policing paradigm that the Clinton crime bill partly created, the presence of police has remained physically threatening and can perhaps be seen as structurally violent given its concentration and targeting in particular racialized communities. *See, e.g.*, Floyd v. City of New York, 959 F. Supp. 2d 540, 585 (S.D.N.Y. 2013) (identifying targeted practices based on the city of New York defending "that blacks and Hispanics represent 87% of the persons stopped in 2011 and 2012" but there was "no reason to believe that the nearly 90% of people who are stopped and then subject to no further enforcement action are criminals").

[55] *See* KATHRYN EDIN & H. LUKE SCHAEFER, $2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA at xvi-xvii, 156–59 (2015) (defining and explaining the urgency of addressing deep poverty and extreme poverty).

color, especially those who live in marginalized communities.[56] This should end. In order for a universal safety entitlement to have the desired effects, the legal and policy response to this movement must take a different path than it did in the late twentieth century, when the "solutions" to un-safety became heavy policing and incarceration.[57] They must finally take the bold, holistic approach that many leaders then were calling for by meeting demands for safety with strategies that will end criminogenic conditions in black communities, such as expansion of the social safety net.[58] They must do this because safety is a positive precondition for individual and collective freedom, perhaps especially for those to whom it has been long denied.[59]

Since the rise of the #BlackLivesMatter movement in 2013, activists, reformers, and occasionally governments have produced high-profile reports setting forth an agenda to transform the relationship between marginalized communities of color and some number of arms of the state.[60] Initially, the conversation around Black Lives Matter was framed around the unaccountable extinguishing of black lives, motivated by the deaths of Trayvon Martin, Eric Garner, Michael Brown, Tamir Rice, and others.[61] While Martin, himself unarmed, died at the hands of a private citizen operating under the aegis of Neighborhood Watch,[62] the other unarmed men were killed by official

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[56] It is remarkable that policing has arisen as the seemingly natural response to safety concerns given that, until a couple of decades ago, scholars did not believe policing played much of a role in crime prevention. *See, e.g.*, Tracey L. Meares, *The Law and Social Science of Stop and Frisk*, 10 ANN. REV. L. & SOC. SCI. 335, 336 (2014).

[57] *See, e.g.*, BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 58–66 (2006) (describing and explaining the rise of mass incarceration); *see also* Meares, *supra* note 56, at 339–40.

[58] *See* FORMAN, *supra* note 33, at 12–13.

[59] *Cf.* Danielle Allen, *Integration, Freedom, and the Affirmation of Life*, *in* TO SHAPE A NEW WORLD: ESSAYS ON THE POLITICAL PHILOSOPHY OF MARTIN LUTHER KING, JR. 146–48 (Tommie Shelby & Brandon M. Terry eds., 2018) (explicating King's argument that integration serves a similar purpose, as a "necessary basis" of the individual and collective freedom of African Americans).

[60] Some of the proposals have focused on reducing police use of force and other police-centered proposals, while others have focused on deeper racial and socioeconomic dynamics and thus have proposed reparations and recognizing a constitutional right to education. *Compare* Campaign Zero, *Solutions*, https://www.joincampaignzero.org/solutions/#solutionsoverview, *archived at* https://perma.cc/U2EZ-S4SH (proposing police reforms), *with* THE MOVEMENT FOR BLACK LIVES, A VISION FOR BLACK LIVES: POLICY DEMANDS FOR BLACK POWER, FREEDOM & JUSTICE 8–9, 11 (2016), https://policy.m4bl.org/wp-content/uploads/2016/07/20160726-m4bl-Vision-Booklet-V3.pdf, *archived at* https://perma.cc/B9F9-9NWA [hereinafter A VISION FOR BLACK LIVES] (proposing, *inter alia*, reparations and a constitutional right to education).

[61] *See* Alicia Garza, *Foreword*, *in* WHO DO YOU SERVE, WHO DO YOU PROTECT?, at vii, ix (Maya Schenwar et al. eds., 2016); *see also* CHRISTOPHER J. LEBRON, THE MAKING OF BLACK LIVES MATTER: A BRIEF HISTORY OF AN IDEA 2–6 (2017); KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION 153–90 (2016).

[62] Although Neighborhood Watch is not a state agency, but an often state-supported private organization, the shooter George Zimmerman seemed to believe his role as Neighborhood Watch captain lent him authority to behave like a police officer and engage in vigilante investigation and violence. *See, e.g.*, Aya Gruber, *Race to Incarcerate: Punitive Impulse and the Bid to Repeal Stand Your Ground*, 68 U. MIAMI L. REV. 961, 982–87 (2017) (arguing that Zimmerman, despite technically violating Neighborhood Watch protocol by carrying a weapon and

police officers. This cyclical death sparked a sharp, national interest in police reform. The Obama White House created the President's Task Force on 21st Century policing, which issued a report embracing several reformist approaches to public safety, such as community policing.[63] However, for various understandable reasons, that report focused substantially on internal reforms to police departments rather than holistic restructuring of law and policy to respond to the concerns of people of color who live in ghettoized, heavily policed neighborhoods. That is, the mission of that Task Force was primarily to respond to problems with policing, not problems of public safety.

In contrast, the reports produced by the Ferguson Commission in 2015 and the Vision for Black Lives platform, crafted by a large coalition of organizations in 2016, are focused less on police reform *per se* than on the conditions that surround the hyper-policing of black communities, such as poverty, a lack of opportunity, a lack of affordable housing, and—most centrally—racial inequity.[64] Both documents re-envision safety as a value, moving away from criminal-justice centered conceptions and showing how those conceptions can be antithetical to community safety.[65] *Forward through Ferguson*, the report produced by the Ferguson Commission in 2015, is an exemplar of a methodology for incorporating safety principles into an agenda for racial justice. Throughout, the report notes the links between safety and other aspects of community life such as housing[66] and schooling.[67] The analysis that understands safety as an entitlement rather than a mere goal is sub-

directly engaging Martin, exemplifies the "neighborhood watch mentality" which includes a sense that there is constant and pervasive risk of crime); Adeoye Johnson, *Neighborhood Watch: Invading the Community, Evading Constitutional Limits*, 18 U. PA. J.L. & SOC. CHANGE 459, 471–79 (describing Neighborhood Watch groups as quasi-police organizations that operate with few legal constraints); Angela Onwuachi-Willig, *Policing the Boundaries of Whiteness: The Tragedy of Being "Out of Place" from Emmett Till to Trayvon Martin*, 102 IOWA L. REV. 1113, 1171–83 (2017) (telling the story of and context surrounding the Neighborhood Watch organization which Zimmerman captained); Paul H. Robinson, *The Moral Vigilante and Her Cousins in the Shadows*, 2015 U. ILL. L. REV. 401, 466 (2015) (arguing that increases in Neighborhood Watch are reflective of a "shadow vigilante attitude"). Importantly, Neighborhood Watch has been intimately connected with official policing since its inception: It was created by the National Association of Sheriffs, has received substantial federal funding, and operates in cooperation with local police departments that train non-police community members to, *inter alia*, increase the security of their homes and surveil each other's property for potential wrongdoing. See JOSHUA REEVES, CITIZEN SPIES: THE LONG RISE OF AMERICA'S SURVEILLANCE SOCIETY 88-90 (2017).

[63] PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING, FINAL REPORT OF THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING 9–11 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf, *archived at* https://perma.cc/CS7B-NQEM.

[64] FORWARD THROUGH FERGUSON: A PATH TOWARD RACIAL EQUITY, FERGUSON COMMISSION (Oct. 14, 2015), http://3680or2khmk3bzkp33juiea1.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/101415_FergusonCommissionReport.pdf, *archived at* https://perma.cc/9FKW-CLGN [hereinafter FORWARD THROUGH FERGUSON]; A VISION FOR BLACK LIVES, *supra* note 60; *see also* Akbar, *supra* note 26.

[65] A VISION FOR BLACK LIVES, *supra* note 60, at 10.

[66] FORWARD THROUGH FERGUSON, *supra* note 60, at 54, 198.

[67] *Id.* at 42–43.

merged but strongly implied. Linking the policy goal of "ghetto abolition" explicitly to safety allows reclaiming of one of the most salient rhetorical refrains used to oppose shrinking the carceral apparatus: What, then, will keep us safe?

II. Friendship

When Khalila and Fayard describe their concerns about friendship, they represent an increasingly-recognized sociological reality: poverty and racism are bad for relationships. Resource deprivation burdens friendship, which produces distrust. Some works depict idyllic relationships of mutual caring and communal support in poor communities of color, usually among "fictive kin," as described in Professor Carol Stack's classic *All Our Kin*.[68] Stack's and others' research[69] is important because it unsettled a then-prevalent narrative that black communities were "disorganized"[70] and inflected with "a tangle of pathology."[71] Yet most ethnographic and qualitative research since tells a somewhat different tale, one of simultaneous fusion and fracture. This is not hard to understand when considering the stress associated with poverty, racism, and corresponding forms of disadvantage.[72] The violence of the

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[68] Carol B. Stack, All Our Kin: Strategies for Survival in a Black Community 59–60 (1974).

[69] *E.g.*, Kathryn Edin & Laura Lein, Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work 149–53 (1997) (describing how some mothers who received cash welfare benefits made ends meet by receiving cash and in-kind material support from family members and friends); Silvia Dominguez & Celeste Watkins, *Creating Networks for Survival and Mobility: Social Capital Among African-American and Latin-American Low-Income Mothers*, 50 Soc. Probs. 111, 112 (2003).

[70] *See* Clifford Shaw & Henry McKay, Juvenile Delinquency & Urban Areas 183–89 (1942) (articulating social disorganization theory in its original form, arguing that social disorganization increased juvenile lawbreaking); *see also* Robert J. Sampson, Great American City: Chicago and the Enduring Neighborhood Effect 149–54 (2012) (describing the long trajectory of social disorganization theory and offering an alternative of collective efficacy).

[71] *See* Daniel Patrick Moynihan, The Negro Family: The Case for National Action 29 (1965).

[72] *See* Kathryn Freeman Anderson, *Diagnosing Discrimination: Stress from Perceived Racism and the Mental and Physical Health Effects*, 83 Soc. Inquiry 55, 55–56 (2013); Asad L. Asad & Matthew Clair, *Racialized Legal Status as a Social Determinant of Health*, 199 Soc. Sci. & Med. 19, 22 (2018); Elizabeth Brondolo et al., *Racism and Social Capital: The Implications for Social and Physical Well-Being*, 68 J. Soc. Issues. 358, 369 (2012); Robert T. Carter & Amy L. Reynolds, *Race-Related Stress, Racial Identity Status Attitudes, and Emotional Reactions of Black Americans*, 17 Cultural Diversity & Ethnic. Minority Psychol. 156, 159–160 (2011); J. Camille Hall, Joyce E. Everett & Johnnie Hamilton-Mason, *Black Women Talk About Workplace Stress and How They Cope*, 43 J. Black Stud. 207, 220–22 (2012); Shawn C.T. Jones & Enrique W. Neblett, *Future Directions in Research on Racism-Related Stress and Racial-Ethnic Protective Factors for Black Youth*, 46 J. Clinical. Child & Adolescent Psychol. 754, 755–56 (2017).

state and the economy can coarsen some of the most intimate interactions. Resilience is found in the tenderness preserved under such circumstances.[73]

Social attachment is critical to personhood and survival,[74] but poverty and economic inequality imperil attachment. Professor Sandra Susan Smith, for example, argues that many relationships between employed and unemployed friends and family members are "characterized by a pervasive distrust that deterred cooperation."[75] Professor Matthew Desmond identifies "disposable ties," or short-term, intense resource-sharing friendships, in both white and black impoverished communities in Milwaukee.[76] Professor Judith Levine draws particular attention to the social network complexity that women in poor communities of color experience, explaining that familial or family-like relationships are for some the most valuable relationships, but for others "structural conditions . . . contributed to the burdens that women's social networks placed on them."[77] To be sure, as someone declares

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[73] *See generally* PETER A. HALL & MICHÈLE LAMONT, *Introduction*, *in* SOCIAL RESILIENCE IN THE NEO-LIBERAL ERA 1 (2013) (explaining the concept of social resilience and its connection to social inequality)

[74] While my approach is sociological, it is worth noting that an approach rooted in child psychology might also place social connection as a central value. This value forms the basic thrust of the attachment theory of developmental psychology, originated by John Bowlby, and highly influential in family law. Although attachment theory has typically focused on biological parental attachment rather than general social attachment, a more modern approach recognizes social interaction as a primary driver of attachment. *See, e.g.*, ANNE L. ALSTOTT, NO EXIT: WHAT PARENTS OWE THEIR CHILDREN AND WHAT SOCIETY OWES PARENTS 36–41, 214 (2004) (advocating for continuity of care); Sacha M. Coupet, *"Ain't I a Parent?": The Exclusion of Kinship Caregivers from the Debate over Expansions of Parenthood*, 34 N.Y.U. REV. L. & SOC. CHANGE 595, 643–45 (2010); Anne C. Dailey, *Imagination and Choice*, 35 LAW & SOC. INQUIRY 175, 192–93 (2010); Clare Huntington, *Early Childhood Development and the Law*, 90 S. CAL. L. REV. 755, 757, 769 (2017); Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260, 2318 n.283 (2017); Rebecca L. Scharf, *Psychological Parentage,* Troxel*, and the Best Interests of the Child*, 13 GEO. J. GENDER & L. 615, 631–35 (2012); Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CALIF. L. REV. 615, 631–32 (1992). *See generally* JOHN BOWLBY, ATTACHMENT (1969) (offering the first articulation of attachment theory).

[75] SANDRA SUSAN SMITH, LONE PURSUIT: DISTRUST AND DEFENSIVE INDIVIDUALISM AMONG THE BLACK POOR 3, 27–54 (2007).

[76] Matthew Desmond, *Disposable Ties and the Urban Poor*, 117 AM. J. SOC. 1295, 1311 (2012) ("By disposable ties, I mean relations between new acquaintances characterized by accelerated and simulated intimacy, a high amount of physical copresence (time spent together), reciprocal or semireciprocal resource exchange, and (usually) a relatively short life span.").

[77] JUDITH A. LEVINE, AIN'T NO TRUST: HOW BOSSES, BOYFRIENDS, AND BUREAUCRATS FAIL LOW-INCOME MOTHERS AND WHY IT MATTERS 182 (2013); *see also* BRUCE WESTERN, HOMEWARD: LIFE IN THE YEAR AFTER PRISON 101–20 (2018) (explaining that responsibility for the support of returning citizens often falls to their mothers and sisters); Linda M. Burton et al., *The Role of Trust in Low-Income Mothers' Intimate Unions*, 71 J. MARRIAGE & FAM. 1107, 1121 (2009) (explaining that, instead of "distrust," low-income women across racial lines exhibit modified, more situational forms of interpersonal trust); Anjanette M. Chan Tack & Mario L. Small, *Making Friends in Violent Neighborhoods: Strategies Among Elementary School Children*, 4 SOC. SCI. 224, 241–42 (2017). For additional examples of scholarship that calls into question the tightness of kin and kin-like relationships in the context of dispossession and racial marginalization, see ORLANDO PATTERSON, RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES 162 (1998); Sandra Susan Smith, *Race and Trust*, 36

their general inability to trust anyone and definitively declares, "I have no friends" in one breath, in the next, they may describe an intense, long-term, loving relationship with a friend. We are all this complicated.[78] But the research nonetheless suggests that interpersonal trust is weakened in the context of segregation and disadvantage. I call these harms to interpersonal trust and fragile social networks burdens upon "friendship," but one might think of them instead as inequalities of social capital, relational poverty, or affective injustice.[79]

Issues of capital, poverty, and injustice enter this conversation because the social fragmentation described here is not just unfortunate; it is an additional manifestation of disadvantage exacted upon marginalized communities of color and poor people. A host of scholarship in sociology, economics, and political science has emphasized the role of social capital,[80] or social networks, in procuring employment,[81] navigating the education system,[82] finding housing,[83] improving health,[84] facilitating good parenting,[85] easing

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ANN. REV. SOC. 453, 467 (2010) ("Contrary to Stack's claims, however, trust and trustworthiness are not always bedfellows of persistent poverty and racism. Indeed . . . poverty and racism often erode trust.").

[78] *See, e.g.*, Desmond, *supra* note 76, at 1302 (explaining that people's descriptions of their social ties are "a kind of data in their own right but not . . . accurate evaluations of people's social relationships").

[79] For a richer description of affective deprivation—or inequities in the social systems meant to provide "love, care, and solidarity," and how it interacts with other modes of injustice such as homelessness and incarceration, see JOHN BAKER ET AL., EQUALITY: FROM THEORY TO ACTION 59–65 (2004).

[80] *See* ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 326 (2000) ("The more integrated we are with our community, the less likely we are to experience colds, heart attacks, strokes, cancer, depression, and premature death of all sorts. Such protective effects have been confirmed for close family ties, for friendship networks, for participation in social events, and even for simple affiliation with religious and other civic associations."); Pierre Bourdieu, *The Forms of Capital*, *in* HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241 (J. Richardson ed., Greenwood 1986) (distinguishing social capital from economic capital and cultural capital); Glenn Loury, *A Dynamic Theory of Racial Income Differences*, *in* WOMEN, MINORITIES, AND EMPLOYMENT DISCRIMINATION 153, 176 (1977) (introducing the basic concept of social capital, though using it differently from how it is typically used today); Alejandro Portes, *Social Capital: Its Origins and Applications in Modern Sociology*, 24 ANN. REV. SOC. 1, 3–7 (1998).

[81] *See, e.g.*, SMITH, *supra* note 75, at 168–69; Mark S. Granovetter, *The Strength of Weak Ties*, 78 AM. J. SOC. 1360, 1372 (1973).

[82] Annette Lareau, *Schools, Housing, and the Reproduction of Inequality*, *in* CHOOSING HOMES, CHOOSING SCHOOLS 169 (Annette Lareau & Kimberly Goyette eds., 2014); Latoya Baldwin Clark, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 HARV. C.R.-C.L. L. REV. 381, 421–23 (2018); Anna Rhodes & Siri Warkentien, *Unwrapping the Suburban "Package Deal": Race, Class, and School Access*, 54 AM. EDUC. RES. J. 168S, 181S (2017).

[83] *E.g.*, Melody L. Boyd, *The Role of Social Networks in Making Housing Choices: The Experience of the* Gautreaux *Two Residential Mobility Program*, 10 CITYSCAPE 41, 45 (2008).

[84] *E.g.*, NICHOLAS A. CHRISTAKIS & JAMES H. FOWLER, CONNECTED: THE SURPRISING POWER OF OUR SOCIAL NETWORKS AND HOW THEY SHAPE OUR LIVES 131–34 (2009); Daniel J. Hruschka et al., *Shared Norms and Their Explanation for the Social Clustering of Obesity*, 101 AM. J. PUB. HEALTH S295, S299 (2011) (confirming basic finding of social network effects on obesity, but with a weaker effect); James N. Rosenquist, James H. Fowler & Nicholas A. Christakis, *Social Network Determinants of Depression*, 16 MOLECULAR PSYCHIATRY 273, 279–280 (2011) (on social network effects on depression).

the immigration process,[86] avoiding gun violence,[87] productively resolving interpersonal disputes at school,[88] and more.[89] The much-discussed Moving to Opportunity housing demonstration that HUD administered in the 1990s was initially intended to expose low-income people to wealthier social networks that would assist them in finding employment (among other things), even though the intervention did not directly intervene to foster these cross-class social ties.[90] Other studies on residential mobility have shown that younger children who move to a higher-income neighborhood are more likely to make friends and thus fare better in school than adolescent movers who—perhaps hurt in the same ways Khalila and Fayard have been—avoid making new friends and are less integrated into their schools.[91] Some scholars have argued that friendship is essential to social justice, part of an equality of love, care, and solidarity that social policy must foster and support.[92] The emotion of love, on this theory, is an essential concern for the public sphere, not merely a private feeling free from the contemplation or reach of the state.[93] Distrustful friendship is a consequence of persistent segregation and dispossession that has been completely absent from conversations about reform in the Black Lives Matter era.

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[85] MARIO LUIS SMALL, UNANTICIPATED GAINS: ORIGINS OF NETWORK INEQUALITY IN EVERYDAY LIFE 29–47 (2009).

[86] *See generally* FILIZ GARIP, ON THE MOVE: CHANGING MECHANISMS OF MEXICO-U.S. MIGRATION (2016); Deisy Del Real, *Toxic Ties: The Reproduction of Legal Violence within Mixed-Status Intimate Partners, Relatives, and Friends*, INT'L MIGRATION REV. (2018).

[87] *See* Dana L. Haynie, Eric Silver & Brent Teasdale, *Neighborhood Characteristics, Peer Networks, and Adolescent Violence*, 22 J. QUANT. CRIMINOLOGY 147, 163–64 (2006); Andrew V. Papachristos & Sara Bastomski, *Connected in Crime: The Enduring Effect of Neighborhood Networks on the Spatial Patterning of Violence*, 124 AM. J. SOC. 517, 522–23 (2018).

[88] CALVIN MORRILL & MICHAEL MUSHENO, NAVIGATING CONFLICT: HOW YOUTH HANDLE TROUBLE IN A HIGH-POVERTY SCHOOL 46–56, 114–116 (2018).

[89] Rose McDermott, James H. Fowler & Nicholas A. Christakis, *Breaking Up Is Hard to Do, Unless Everyone Else Is Doing It Too: Social Network Effects on Divorce in a Longitudinal Sample*, 92 SOC. FORCES 491, 513 (2013) (on social network effects on divorce); Jasmin Sandelson, Relational Resources: Poverty and Peer Support Among Adolescent Girls (unpublished manuscript) (2018).

[90] *See* XAVIER DE SOUZA BRIGGS, SUSAN J. POPKIN & JOHN GOERING. MOVING TO OPPORTUNITY: THE STORY OF AN AMERICAN EXPERIMENT TO FIGHT GHETTO POVERTY 193–221 (2010); LISA SANBONMATSU ET AL., MOVING TO OPPORTUNITY FAIR HOUSING DEMONSTRATION PROGRAM: FINAL REPORT 23 (2011), https://www.huduser.gov/publications/pdf/mtofhd_fullreport_v2.pdf, *archived at* https://perma.cc/43DK-C2Y7; Jens Ludwig et al., *Long-Term Neighborhood Effects on Low-Income Families: Evidence from Moving to Opportunity*, 103 AM. ECON. REV. 226, 227 (2013); *see also* Raj Chetty, Nathaniel Hendren & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AM. ECON. REV. 855, 899 (2016) (finding that although Moving to Opportunity had no effect on adults' employment rates, it did have positive effects on their children's longer-term employment rates and earnings).

[91] Anna Rhodes, *The Age of Belonging: Friendship Formation After Residential Mobility*, 97 SOC. FORCES 583, 599 (2018).

[92] Kathleen Lynch & Judy Walsh, *Love, Care and Solidarity: What Is and Is Not Commodifiable*, *in* AFFECTIVE EQUALITY: LOVE, CARE, AND INJUSTICE 35–53 (K. Lynch, J. Baker & M. Lyons eds., 2009).

[93] *See* MARTHA C. NUSSBAUM, POLITICAL EMOTIONS: WHY LOVE MATTERS FOR JUSTICE 9, 381–88 (2013).

What might it look like to support social relationship as a political and legal project? Professor Laura Rosenbury has argued for legal recognition of friendship, though not necessarily friendship promotion, through law.[94] Rosenbury grounds her claim in a contention that friendship is family-like. In line with Rosenbury's approach, Professor Melissa Murray advocates legal recognition of alternative familial arrangements to the traditional parent-centered model of child caregiving, making something like parental status available to more people in a person's network, potentially including friends.[95] Professor Ethan Leib, who has written most extensively on the subject of friendship in law, takes a different approach. Instead of arguing that friends are like family and thus should have family-like legal protections available, Leib argues that law should protect and *promote* friendship in part because it is a decidedly non-familial relationship.[96] He grounds this claim in numerous ways, focusing primarily on the benefits for the state, such as reduced costs of caregiving and economic growth.[97] In Leib's formulation, law could promote friendship in part by recognizing friendship as fiduciary relationship with corresponding duties.[98]

In constitutional doctrine, the closest we get to support for friendship is the right to intimate association, thought to be part of the bundle of First Amendment freedoms.[99] The right to intimate association is usually thought to apply only to familial relationships, even though Professor Kenneth Karst, one of the first legal scholars to expound upon the freedom of intimate association, surmised that the right includes friendship.[100] Cases that have considered whether friendship is a form of constitutionally protected intimate association have mostly decided that it is not, concluding that intimate asso-

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[94] Laura A. Rosenbury, *Friends with Benefits?*, 106 MICH. L. REV. 189, 228 (2007); *see also* Peter P. Gelzinis, Note, *Do Friends Need the Law? Examining Why Friendship Matters and What Governments Can Do for This Important, Though Overlooked, Relationship*, 45 SUFFOLK U. L. REV. 523, 548 (2012); Naomi Cahn, *The New Kinship*, 100 GEO. L.J. 367, 371 (2012).

[95] Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 447–52 (2008).

[96] ETHAN LEIB, FRIEND V. FRIEND: THE TRANSFORMATION OF FRIENDSHIP—AND WHAT LAW HAS TO DO WITH IT 63–77 (2011); *see also* Ethan J. Leib, *Friends as Fiduciaries*, 86 WASH. U. L. REV. 665, 686–707 (2009).

[97] Ethan J. Leib, *Friendship & the Law*, 54 UCLA L. REV. 631, 657–62 (2007) (arguing that friendship facilitates market participation in numerous ways and that the state might not need to subsidize professional caregiving for people who are sick or disabled if friends engaged in that work instead).

[98] *See* LEIB, *supra* note 96, at 63–77.

[99] Jessica Feinberg, *The Clash Between Safety and Freedom of Association in the Regulation of Prom Dates*, 17 KAN. J.L. & PUB. POL'Y 168, 173–176 (2007). The Supreme Court first officially recognized the First Amendment freedom of intimate association in *Roberts v. United States Jaycees*, 468 U.S. 609, 618–20 (1984).

[100] Kenneth L. Karst, *The Freedom of Intimate Association*, 89 YALE L.J. 624, 626 (1980) ("Any view of intimate association focused on associational values must . . . include friendship.").

ciation is based in "creation and sustenance of a family."[101] Others punt, leaving the question open for future engagement.[102] By and large, courts treat intimate association as a family-only protection.

There are also inherent dignity interests in friendship, essential to the effective exercise of liberty. Even as this Essay does not limit itself to court-centered legal argumentation, it is worth noting that a focus on the dignity interest in friendship could draw from Justice Kennedy's *Obergefell v. Hodges* claim that there is a dignity interest in marriage[103] while taking better stock of the truth confronting many Americans about the changing nature of family[104] and the scarce availability of state-sanctioned forms of intimacy, especially among certain race-class marginalized populations and sexual minorities.[105] With respect to the queer community, for example, because of the long exclusion of queer people from traditional marriage and the abandonment of many queer people by their families of origin, friends—"chosen family"—may well be the only family available.[106] Justice Kennedy explains that the liberties protected under the Fourteenth Amendment's Due Process

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[101] Rode v. Dellarciprete, 845 F.2d 1195, 1205 (3d Cir. 1988) (quotations omitted); *see also* Lord v. Erie Cty., 476 Fed. Appx. 962, 965 (3d Cir. 2012); Rataic v. Dutch Point Credit Union, Inc., 2018 Conn. Super. LEXIS 4469, at *6 (Superior Court, judicial district of Hartford, Nov. 9, 2018) (relying on its interpretation of federal treatment of friendship as persuasive authority for whether Connecticut state courts would view friendship as an intimate association); Maselli v. Tuckahoe Union Free Sch. Dist., No. 17-CV-1913 (KMK), 2018 U.S. Dist. LEXIS 166370 (S.D.N.Y. Sept. 27, 2018), at *16. Notably, many of the opinions that strongly refuted the classification of friendship as intimate association are unreported and non-precedential.

[102] Vieira v. Presley, 988 F.2d 850, 853 (8th Cir 1993) ("There is no clearly established law whether or not associations with friends and acquaintances are sufficiently intimate to be entitled to the constitutional protection of freedom of association."); O'Leary v. Luongo, 692 F. Supp. 893, 900 (N.D. Ill. 1988); Flaskamp v. Dearborn Pub. Sch., 232 F. Supp. 2d 730, 740 (E.D. Mich. 2002) ("Although the United States Supreme Court has left the possibility open, it has yet to extend the right to intimate associations beyond familial relationships"); *see also* Andrew Jensen Kerr, *Coercing Friendship and the Problem with Human Rights*, 50 U.S.F. L. Rev. 1, 4 (2015).

[103] *See generally* Obergefell v. Hodges, 135 S. Ct. 2584, 2594–2608 (2015).

[104] *See* Katherine Gallagher Robbins et al., People Need Paid Leave Policies That Cover Chosen Family, Ctr. for Am. Prog., (Oct. 30, 2017), https://cdn.americanprogress.org/content/uploads/2017/10/26135206/UnmetCaregivingNeed-brief.pdf, *archived at* https://perma.cc/LG6J-7RS9 (arguing for paid leave policies for chosen family).

[105] *See, e.g.*, Elizabeth Emens, *Compulsory Sexuality*, 66 Stan. L. Rev. 303, 307-29, 350–-353 (2014) (illuminating asexuality as a sexual orientation and articulating how the attainment of state recognition and benefits that flow through marriage sit uncomfortably with nonromantic asexuality); Courtney G. Joslin, *The Gay Rights Canon and the Right to Nonmarriage*, 97 B.U.L. Rev. 425, 471 (2017) ("The reality is that race and class now significantly affect the likelihood that one will marry and stay married"); Melissa Murray, Obergefell v. Hodges *and Nonmarriage Inequality*, 104 Calif. L. Rev. 1207, 1240–-52 (2016) (predicting the demise of protections for nonmarital relationships after *Obergefell*).

[106] *See, e.g.*, Catherine F. Croghan, Rajean P. Moone & Andrea M. Olson, *Friends, Family, and Caregiving Among Midlife and Older Lesbian, Gay, Bisexual, and Transgender Adults*, 61 J. Homosexuality 79, 94–95 (2013); Nancy J. Knauer, *LGBT Older Adults, Chosen Family, and Caregiving*, 32 J. L. & Religion 150, 151–52 (2016); Vickie M. Mays et al., *African American Families in Diversity: Gay Men and Lesbians as Participants in Family Networks*, 29 J. Comp. Fam. Stud. 73, 83 (1998); Ramona Faith Oswald, *Resilience Within the Family Networks of Lesbians and Gay Men: Intentionality and Redefinition*, 64 J. Marriage

Clause "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."[107] Quoting *Goodridge v. Department of Public Health*,[108] the Massachusetts case requiring state recognition of same-sex marriage, Kennedy argues that marriage shapes "an individual's destiny" and creates a pathway through which "two persons together can find other freedoms, such as expression, intimacy, and spirituality."[109] But marital ties, for many Americans, are not the most central relationships through which such freedoms flow.[110] In ways sometimes reminiscent of marriage, platonic friendship holds longstanding practical and normative value in American society because it contributes mightily to personal growth and autonomy.[111] Friendship bears time-honored importance for human flourishing in ways that sound in dignity, equality, and liberty by analogy to the characteristics of marriage that Justice Kennedy reveres in *Obergefell*.[112]

Yet again, courts are not the only arbiters of rights, and present doctrines need not be their only sources. Perhaps a state obligation to promote friendship could flow from the state's initiation of and complicity in wealth dispossession and racial segregation, which created conditions that burn through close relationships. Friendship promotion, in this vision, would be an instrument of corrective justice. Because of the far-reaching effects of dispossession, chosen family (Stack's "fictive kin") can be especially salient in the context of ghettoized poverty. But resource deprivation strains these relationships, undermining trust and thus routinely causing them to crumble.

& FAM. 374, 375–76 (2002); Fiona Tasker et al., *New Frontiers of Family: LGBTQ People Pushing Back the Boundaries of Family*, 39 J. FAM. ISSUES 4127, 4130–31 (2018).

[107] *Obergefell*, 135 S. Ct. at 2597.

[108] Goodridge v. Dep't of Pub. Health, 798 N.E. 2d 941 (Mass. 2003).

[109] *Obergefell*, 135 S. Ct. at 2599.

[110] *See, e.g.*, Clare Huntington, Obergefell*'s Conservatism: Reifying Familial Fronts*, 84 FORDHAM L. REV. 23, 28-–29 (2015) (pointing out that "[f]ar from the marble halls of the Supreme Court, marriage is not a central feature of family life in many communities" and arguing that the Kennedy pro-marriage argument "reinforces the notion that [non-marital] families are deviant").

[111] *See, e.g.*, Sonu Bedi, *An Illiberal Union*, 26 WM. & MARY BILL OF RTS. J. 1081, 1116-–21 (2018) (critiquing arguments that marriage is intrinsically more valuable than other forms of intimacy and noting that "there are other relationships—being a best friend, a member of a religious community, or a caretaker for someone you love—that may be just as stable or significant, or central to human contentment and fulfillment as marriage"); Rosenbury, *supra* note 94, at 202 ("The values underlying state respect of intimate association . . . including society, caring and commitment, intimacy, and self-identification - are present not only in marriages, parent-child relationships, or other groupings of relatives but can also be present in friendships.").

[112] Some have argued that *Obergefell* leaves open the question of whether various non-marital personal relationships might also be recognized as valuable (or dignity-affirming) under the law. *See* Susan Frelich Appleton, Obergefell*'s Liberties: All in the Family*, 77 OHIO ST. L.J. 919, 978–79 (2016) (arguing that post-*Obergefell* doctrinal trajectories portend greater affirmative legal recognition of non-marital relationships, including friendship); Mark P. Strasser, Obergefell*'s Legacy*, 24 DUKE J. GENDER L. & POL'Y 61, 68–72 (2016) (positing that *Obergefell* may leave room for constitutional law to recognize the value of "the enduring, personal, non-marital bond itself" in constitutional law).

Perhaps concomitant with an entitlement to friendship is entitlement to financial and material resources, which make friendship more sustainable. As the work of Levine and others makes clear, resource scarcity burdens both friendship and legally recognized familial relationships,[113] so legal recognition alone would not support friendship as a social entitlement.

Shifting the burden for the social safety net away from social networks by drastically reducing material deprivation and financial precarity would untangle some of the damage done in the 1980s and 1990s high era of welfare retrenchment. One of many competing theories behind ramped up child support enforcement in the 1980s[114] and the virtual end of welfare assistance in the 1990s[115] was that people had friends, lovers, and family members who would support them, if only the state forced their hands by making it impossible (well, more impossible than it already was) to survive on welfare alone.[116] But, as explained above, reliance on friendship networks and aggressive enforcement of child support policy often tarnishes relationships. A movement for social entitlements fits in well with movements to divest funds from the crime control system in part to build a more robust and nonpunitive social support system.

The movement to fund nonprofits to recruit, educate, certify, and employ "credible messengers" as part of violence-reduction efforts in marginalized communities of color is an example of how the state can recognize and support friendship in order to fulfill safety and security demands.[117]

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[113] *See* STEFANIE DELUCA, SUSAN CLAMPET-LUNDQUIST & KATHRYN EDIN, COMING OF AGE IN THE OTHER AMERICA 119–45 (2016); LEVINE, *supra* note 77, at 34–38.

[114] *See* 42 U.S.C.S. §§ 608, 654 (2018); Ann Cammett, *Deadbeats, Deadbrokes, and Prisoners*, 18 GEO. J. POVERTY LAW & POL'Y 127, 148–50 (2011) (describing the 1986 "Bradley Amendment," which established as a matter of federal law that, with very few exceptions, states cannot retroactively modify parents' child support orders); Roger J.R. Levesque, *The Role of Unwed Fathers in Welfare Law: Failing Legislative Initiatives and Surrendering Judicial Responsibility*, 12 LAW & INEQ. 93, 99–111 (1993) (offering an in-depth analysis of the theories and justifications behind Congress's 1980s child support enforcement legislation and its connection to ideas about welfare); *see also* Ann Laquer Estin, *Federalism and Child Support*, 5 VA. J. SOC. POL'Y & L. 541, 544–548 (1998) (describing President George H.W. Bush's efforts to ramp up child support enforcement through the 1992 Child Support Recovery Act and arguing that such federal government efforts are out-of-sync with "federalism values").

[115] *See* EDIN & SCHAEFER, *supra* note 55, at 1–34 (declaring that "welfare is dead" and explaining the political process that led to that result in 1996).

[116] *See* Deborah Dinner, *The Divorce Bargain: The Fathers' Rights Movements and Family Inequalities*, 102 VA. L. REV. 79, 101–02 (2016); *see also* EDIN & LEIN, *supra* note 69, at 167–78 (demonstrating that before enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (or the Clinton welfare reform bill), welfare mothers often made ends meet by working off the books while receiving the subsidy in order to scrape together enough money to meet their financial obligations). Because of welfare-reform-mandated focus on welfare fraud detection, it is much more difficult now to use welfare as a means of supplementing another income. *See* Spencer Headworth, *Getting to Know You: Welfare Fraud Investigation and the Appropriation of Social Ties*, 84 AM. SOC. REV. 171, 184 (2019).

[117] *See, e.g.*, Mayra Lopez-Humphreys & Barbra Teater, *Peer Mentoring Justice-Involved Youth: A Training Model to Promote Secondary Desistance and Restorative Justice among Mentors*, 1 INT'L J. RESTORATIVE JUST. 187, 196, 199–200 (2018) (describing the Credible Messenger Institute's training model, which includes social capital-building as one of four pillars); Anthony Petrosino et al., *Cross-Sector, Multi-Agency Interventions to Address Urban*

Credible messengers serve as all-purpose peer mentors to youth who are involved in the justice system or at risk of violence, and they are by design available at all times to provide every type of support.[118] There are at least two major distinctions between credible messengers and traditional mentors. First, having similar life experiences to their protégés, especially justice system involvement, is a central qualification for the work.[119] Second, the relationship between mentor and protégé is meant to be personal, imbued with genuine emotional care.[120] While the model gained popularity through its connection to violence interruption through the Cure Violence organization (previously known as CeaseFire),[121] it is now used more widely, including in government-led and government-funded policy efforts.[122]

The credible messenger concept is not unlike state-supported friendship. It recognizes that poverty may rob some people of the types of relationships that will help them desist from violent situations, and that one approach to reducing violence is to directly intervene on this byproduct of

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Youth Firearms Violence: A Rapid Evidence Assessment, 22 AGGRESSION & VIOLENT BEHAV. 87, 94–95 (2015) (finding in a meta-analysis of studies of gang violence interventions that outreach workers were a common, though not necessarily determinative, factor in effective programs); *see also* Beth Weaver & Fergus McNeill, *Lifelines: Desistance, Social Relations, and Reciprocity*, 42 CRIM. J. & BEHAV. 95, 104 (2014) (describing how an informal "friendship group" helped its members desist from future offending).

[118] *See, e.g.*, MATHEW LYNCH ET AL., ARCHES TRANSFORMATIVE MENTORING PROGRAM: AN IMPLEMENTATION AND IMPACT EVALUATION IN NEW YORK CITY 26–28 (2018), https://www.urban.org/sites/default/files/publication/96601/arches_transformative_mentoring_program_0.pdf, *archived at* https://perma.cc/Q5J9-9FWN; Desmond Upton Patton, Kyle McGregor & Gary Slutkin, *Youth Gun Violence Prevention in a Digital Age*, 141 PEDIATRICS 1, 2 (2018).

[119] *See, e.g.*, Gillian Buck, *"I Wanted to Feel the Way They Did": Mimesis as a Situational Dynamic of Peer Mentoring by Ex-Offenders*, 38 DEVIANT BEHAV. 1027, 1030–31 (2017); Jeffrey A. Butts et al., *Cure Violence: A Public Health Model to Reduce Gun Violence*, 36 ANN. REV. PUB. HEALTH 39, 41 (2015); Tony Cheng, *Violence Prevention and Targeting the Elusive Gang Member*, 51 LAW & SOC'Y REV. 42, 49 (2017).

[120] Gillian Buck, *The Core Conditions of Peer Mentoring*, 18 CRIMINOLOGY & CRIM. JUST. 190, 193–97 (2018).

[121] *See, e.g.*, Butts et al., *supra* note 119, at 41; Jennifer M. Whitehill et al., *Interrupting Violence: How the CeaseFire Program Prevents Imminent Gun Violence through Conflict Mediation*, 91 J. URB. HEALTH 84, 85 (2014). Violence interruption became nationally recognized in part because of the award-winning 2011 documentary *The Interrupters*. *See* THE INTERRUPTERS (Kartemquin Films 2011).

[122] For example, the credible messenger concept has been applied to "youth court," or diversion programs in which fellow young people "sentence" a youthful offender to an alternative to traditional punishment. Judith S. Kaye, *Juvenile Justice Reform: Now Is the Moment*, 56 N.Y.L. SCH. L. REV. 1299, 1303–04 (2012). In Washington, DC, the local government is directly funding Credible Messenger-style mentoring. *See* D.C. Dep't of Youth Rehab. Serv., *Credible Messenger Initiative* (2019), https://dyrs.dc.gov/page/credible-messenger-initiative, *archived at* https://perma.cc/KA89-A3NK; *see also* Natasha Tavora Baker, *Rehabilitation via Arbitrariness: Why Commitment as a Dispositional Option in Washington, D.C.'s Juvenile Justice System Should Be Abolished*, 22 UC DAVIS J. JUV. L. & POL'Y 137, 154–56 (2018) (describing the approach of the D.C. Department of Youth Rehabilitation Services, which helps justice-involved youth develop pro-social connections by, among other interventions, engaging credible messengers in mentoring relationships).

dispossession with the state's imprimatur.[123] Critics of behavior-focused anti-violence approaches might argue that such an approach takes an individualistic approach to violence, blaming people rather than institutions for creating the conditions of violence and seeing violent behavior as a consequence of bad norms (such as weak relationships) instead of structural conditions and morally complex situations.[124] Mentoring programs, including those that rely on credible messengers, have received criticism for lacking a strong theoretical foundation.[125] Recognizing that distressed relationships are a consequence of structural disadvantage bridges the gap between seemingly individualistic violence-reduction approaches such as mentorship and reforms that are more readily cognizable as root-cause approaches, such as poverty reduction, sentencing reform, and residential integration. The connection between friendship and racial and economic injustice thus provides a novel theoretical justification for the state to promote and fund credible messengers.

Finally, legal and policy support for friendship, and perhaps social capital writ large, would be valuable for supporting political power within communities that lack it. Movement-organizing rests upon the construction of genuine relationships with people of many types united by a common interest. Organizing is an affective project just as much as an ideological and intellectual one.[126] As Professor Tiya Miles recently mused, "What if the power of friendship is a quiet movement unto itself, one heart at a time, shrinking the shadows between us?"[127] Is some sort of deep and meaningful social connection necessary for nurturing those "quiet movements," and thus indispensable to the community power that social movements today have committed to building? If so, it seems imperative that a movement for racial and economic justice concern itself with the structural obstacles Khalila, Fayard, and others face in building and sustaining friendship.

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[123] *See* Chaz Arnett, *Virtual Shackles: Electronic Surveillance and the Adultification of Juvenile Courts*, 108 J. CRIM. L. & CRIMINOLOGY 399, 427 (2018) (arguing for alternatives to juvenile detention "that aim to bridge these disconnections" and "repair relationships," among other goals).

[124] For scholarship amplifying the situational characteristics of violence, see, e.g., RANDALL COLLINS, VIOLENCE: A MICRO-SOCIOLOGICAL THEORY 19–22 (2008); WESTERN, *supra* note 77, at 63–82.

[125] *See* Buck, *supra* note 119, at 1028; Anthea Hucklesby & Emma Wincup, *Assistance, Support and Monitoring? The Paradoxes of Mentoring Adults in the Criminal Justice System*, 43 J. SOC. POL'Y 373, 377, 387 (2014).

[126] *See* Marshall Ganz, *Public Narrative, Collective Action, and Power*, *in* ACCOUNTABILITY THROUGH PUBLIC OPINION: FROM INERTIA TO PUBLIC ACTION 273, 274, 279, 285–86 (Sina Odugbemi & Taeku Lee eds., 2011).

[127] Tiya Miles, Opinion, *My Friend "Virginia from Virginia,"* N.Y. TIMES, Dec. 30, 2018, at SR4 (engaging with the philosopher Alexander Nehamas's book, ON FRIENDSHIP (2016)).

III. DREAMS

Because his experiences have taught Fayard to worry about death, his resistance to musing on the future is unsurprising. A large body of social science research points to this as the problem of *leveled aspirations*. Young people who grow up in disadvantaged, isolated contexts may start out with big dreams but, over time, those aspirations may shift to match more closely their social position of origin.[128] The issue is not that young people growing up in disadvantaged contexts do not know, at least in a general sense, about some prestigious careers or future opportunities and aim to reach lofty goals. Instead, over time, young people become increasingly aware of the structural barriers people from their backgrounds face in pursuing those opportunities—sometimes because of educational barriers, sometimes because of financial constraints, and likely sometimes, like Fayard, because the future seems uncertain at a basic, visceral level. Reasonably, then, many young people growing up under these circumstances modify their aspirations to more closely align with "realistic" opportunities.[129]

Institutions and institutional actors—for example, for-profit colleges and guidance counselors—play a central role in this leveling process.[130] In 1960, Burton Clark famously referred to this institutional program of ambition-leveling for poor and minority college students as "cooling out."[131] Criminal justice involvement also operates to chill aspirations, even when

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[128] *See generally* JAY MACLEOD, AIN'T NO MAKIN' IT: LEVELED ASPIRATIONS IN A LOW-INCOME NEIGHBORHOOD (3d ed. 2008); PAUL WILLIS, LEARNING TO LABOUR: HOW WORKING-CLASS KIDS GET WORKING-CLASS JOBS (1977). These two books are classic pieces on the aspirations of working-class youth. Martha Nussbaum and Amartya Sen, among others, label this phenomenon as "adaptive preferences." Martha C. Nussbaum, *Symposium on Amartya Sen's Philosophy: 5 Adaptive Preferences and Women's Options*, 17 ECON. & PHIL. 67, 79-81 (2001).

[129] *See, e.g.*, PIERRE BOURDIEU, DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE 164 (R. Nice trans., 1984); Stephanie C. Berzin, *Educational Aspirations among Low-Income Youths: Examining Multiple Conceptual Models*, 32 CHILD. & SCH. 112, 120 (2010); Robert Bozick et al., *Framing the Future: Revisiting the Place of Educational Expectations in Status Attainment*, 88 SOC. FORCES 2027, 2046 (2010); Grace Kao & Marta Tienda, *Educational Aspirations of Minority Youth*, 106 AM. J. EDUC. 349, 379 (1998). *Cf.* Sandra Susan Smith, *Traumatic Loss in Low-Income Communities of Color*, 31 FOCUS 32, 33–34 (2014) (hypothesizing that traumatic loss lowers aspirations).

[130] JEAN JOHNSON ET AL., CAN I GET A LITTLE ADVICE HERE? HOW AN OVERSTRETCHED HIGH SCHOOL GUIDANCE SYSTEM IS UNDERMINING STUDENTS' COLLEGE ASPIRATIONS 7 (2010), https://files.eric.ed.gov/fulltext/ED508672.pdf, *archived at* https://perma.cc/7QPU-T6VB; Zoë Blumberg Corwin et al., *School Counsel: How Appropriate Guidance Affects Educational Equity*, 39 URB. EDUC. 442, 454–55 (2004); Megan M. Holland, *Trusting Each Other: Student-Counselor Relationships in Diverse High Schools*, 88 SOC. EDUC. 244, 257–58 (2015); Megan M. Holland & Stefanie DeLuca, *"Why Wait Years to Become Something?" Low-Income African American Youth and the Costly Career Search in For-Profit Trade Schools*, 89 SOC. EDUC. 261, 268–69 (2016) (describing for-profit colleges' attractiveness and cooling out functions today).

[131] *See generally* Burton R. Clark, *The "Cooling-Out" Function in Higher Education*, 65 AM. J. SOC. 569 (1960); *see also* Erving Goffman, *On Cooling the Mark Out: Some Aspects of Adaptation to Failure*, 15 PSYCHIATRY: INTERPERSONAL & BIO. PROC. 451, 452 (1952) (describing "cooling the mark out" as a strategy con artists use to construct their victims'

people who have been caught up in the system have developed narratives of striving and success. Harding and colleagues, studying people returning home after prison, find that when structural constraints are so intense that people's aspirational scripts for moving forward are incompatible with them, their narratives often shift.[132] Through multiple, multilayered channels, poverty and racial disadvantage dampen dreams and confine imaginations.

Big, stable, and supported dreams are important drivers toward achievement in the face of disadvantage.[133] For example, Professor Robert Bozick and colleagues have found that youth of all income brackets start with high college aspirations, but those dreams become volatile for youth from backgrounds of middle- and low-socioeconomic status, while they tended to remain stable for youth from families of high socioeconomic status. Importantly, of the youth with consistently low expectations—a small group—nearly all of them were of a low-socioeconomic status background.[134] Stability of dreams is key: consistently high aspirations are a better predictor of positive outcomes like college enrollment than shaky hopes.[135] Numerous obstacles—poverty, lack of information, and (apropos of the friendship discussion in Part II) lack of social capital—stand in the way of college enrollment and completion for poor students, regardless of the strength of their hopes for and commitments to college.[136] But hoping and committing are important prerequisites too, and they are not merely matters of personal wherewithal or individual "grit," but are also shaped by structural conditions such as poverty and school quality.[137]

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adaptation to loss, to "handl[e] persons . . . whose expectations and self?conceptions have been built up and then shattered").

[132] David J. Harding et al., *Narrative Change, Narrative Stability, and Structural Constraint: The Case of Prisoner Reentry Narratives*, 5 AM. J. CULTURAL SOC. 261, 278–80 (2016).

[133] *E.g.*, Sarah J. Beal & Lisa J. Crockett, *Adolescents' Occupational and Educational Aspirations and Expectations: Links to High School Activities and Adult Educational Attainment*, 46 DEV. PSYCH. 258, 262 (2010); Berzin, *supra* note 129, at 112–13 (on poor students' lower aspirations); Kao & Tienda, *supra* note 129, at 349. Note that I envision this entitlement to dream as an entitlement to the bundle of supports that make dreams tangible and productive, such as exposure to a range of ideas and information about possible futures.

[134] Bozick et al., *supra* note 129, at 2040.

[135] *Id.* at 2043.

[136] *See, e.g.*, KASSIE FREEMAN, AFRICAN AMERICANS AND COLLEGE CHOICE: THE INFLUENCE OF FAMILY AND SCHOOL 1–5 (2005); Daniel Klasik, *The College Application Gauntlet: A Systematic Analysis of the Steps to Four-Year College Enrollment*, 53 RES. HIGHER EDUC. 506, 542 (2012); Nicole E. Holland, *Postsecondary Education Preparation of Traditionally Underrepresented College Students: A Social Capital Perspective*, 3 J. DIVERSITY HIGHER EDUC. 111, 121–23 (2010); Andrea Venezia & Michael W. Kirst, *Inequitable Opportunities: How Current Education Systems and Policies Undermine the Chances for Student Persistence and Success in College*, 19 EDUC. POL'Y 283, 292–300 (2005); Raquel L. Farmer-Hinton, *Social Capital and College Planning: Students of Color Using School Networks for Support and Guidance*, 41 EDUC. & URB. SOC'Y 127, 128 (2008).

[137] *See, e.g.*, David Calnitsky, *Structural and Individualistic Theories of Poverty*, 12 SOC. COMPASS 1, 7 (2018); Noah Asher Golden, *"There's Still That Window That's Open": The Problem With "Grit"* 52 URB. EDUC. 343, 346–48 (2017); Annette Lareau, *Cultural Knowledge and Social Inequality*, 80 AM. SOC. REV. 1, 8–12, 21–22 (2015).

To be sure, many people growing up under conditions of poverty and racial marginality have high ideals. However, those dreams are often untethered and ineffective because structural conditions deny certain people necessary information and resources to fulfill their goals.[138] The relevant research, which focuses mostly on educational aspirations,[139] is mixed with regard to the link between high ideals and outcomes. For example, scholars have found that community college students often retain high aspirations of bachelors' degree completion even when graduation rates are exceedingly low and their own paths have been interrupted. They retain these aspirations not necessarily as practical goals, but as moral scripts, recognizing the social significance of college aspirations.[140] In recent years, partly in light of the student debt crisis, scholars and policymakers have suggested moving away from a college-for-all ethos. They argue that institutions should deemphasize four-year college and encourage youth to explore community colleges, vocational schools, and the military instead.[141] Yet, much reform needs to happen

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[138] Some scholars distinguish between "aspirations," "goals," "ideals," and so forth because untethered and unsupported dreams do not have as positive an effect on important social outcomes as grounded and supported dreams do. *See, e.g.*, DEBORAH FAYE CARTER, A DREAM DEFERRED? EXAMINING THE DEGREE ASPIRATIONS OF AFRICAN AMERICAN AND WHITE COLLEGE STUDENTS 11–14 (2001); KAROLYN TYSON, INTEGRATION INTERRUPTED: TRACKING, BLACK STUDENTS, AND ACTING WHITE AFTER *Brown* 110–26 (2011); ALFORD A. YOUNG, JR., THE MINDS OF MARGINALIZED BLACK MEN: MAKING SENSE OF MOBILITY, OPPORTUNITY, AND FUTURE LIFE CHANCES 161–62 (2004); Margaret Frye, *Bright Futures in Malawi's New Dawn: Educational Aspirations as Assertions of Identity*, 117 AM. J. SOC. 1565, 1566 (2012).

[139] The research on race, poverty, and aspirations overwhelmingly focuses on college aspirations because post-secondary educational aspirations are easier to make sense of as being truly "high" or "low" than occupational aspirations, though there is research especially in vocational psychology that makes those sorts of evaluations. *See, e.g.*, Kimberly A.S. Howard et al., *Career Aspirations of Youth: Untangling Race/Ethnicity, SES, and Gender*, 79 J. VOCATIONAL BEHAVIOR 98, 107–108 (2011). Research on gender and aspirations often focuses more on career aspirations and classification of occupations due to scholars' interest in sex segregation across occupations and job tasks. *See, e.g.*, Erin A. Cech, *The Self-Expressive Edge of Occupational Sex Segregation*, 119 AM. J. SOC. 747, 747 (2013); Mariko Lin Chang, *Growing Pains: Cross-National Variation in Sex Segregation in Sixteen Developing Countries*, 69 AM. SOC. REV. 114, 115 (2004); Shelly J. Correll, *Constraints into Preferences: Gender, Status, and Emerging Career Aspirations*, 69 AM. SOC. REV. 93, 93–94 (2004); *see also* Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1800–14, 1815–39 (1990) (explaining conservative choice-centered and liberal coercion-centered perspectives on occupational sex segregation and proposing an alternative). Also, young people routinely change their career occupations, and it is not clear that stable specific career aspirations are as consequential for outcomes of interest, such as wages or wealth, as educational aspirations are.

[140] Karl Alexander, Robert Bozick & Doris Entwisle, *Warming up, Cooling out, or Holding Steady? Persistence and Change in Educational Expectations After High School*, 81 SOC. EDUC. 371, 390 (2008); Nicole M. Deterding, *Instrumental and Expressive Education: College Planning in the Face of Poverty*, 88 SOC. EDUC. 284, 296–97 (2015); Kelly Nielsen, *"Fake It 'til You Make It": Why Community College Students' Aspirations "Hold Steady,"* 88 SOC. EDUC. 265, 276–79 (2015); Jennifer M. Silva & Kaisa Snellman, *Salvation or Safety Net? Meanings of "College" among Working- and Middle-Class Young Adults in Narratives of the Future*, 97 SOC. FORCES 559, 560 (2018); *see also* Frye, *supra* note 138, at 1566–67.

[141] *E.g.*, JAMES E. ROSENBAUM, BEYOND COLLEGE FOR ALL: CAREER PATHS FOR THE FORGOTTEN HALF 265–80 (2001).

at many community colleges and vocational/technical schools to make them acceptable alternatives to four-year colleges.[142]

While college need not consume all post-secondary aspirational energy, college aspirations may improve outcomes for the young people whose academic skills seem least well-developed for finding success there. Some research shows that even among students who score less well on vocabulary and aptitude tests, those with aspirations for four-year college—that is, those with bigger dreams—still fared better in early adulthood in terms of college enrollment, college graduation, and being able to meet their financial needs; they even exhibited fewer signs of depression than those who had low aspirations.[143] College dreams, for working-class young people in particular, can be proxies for dreams of self-actualization and adulthood.[144] Dreams can also be the criterion in which major institutions, legal institutions, perceive a human being as hopeful or hopeless. For example, Professor Nicole Gonzalez Van Cleve describes negative bias directed toward "de-futurized" criminal defendants in the Cook County criminal court system.[145] Similarly, juvenile justice and child welfare proceedings may use educational and career goals in sentencing, parental rights determinations, or foster care emancipation, as various institutional actors often determine whether a young person is capable of rehabilitation or independence, based in part on their perceived drive and stated aspirations.[146]

In America, we often speak of "the American Dream." This appellation captures the idea that as long as someone in America puts forth the effort,

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[142] *See* DeLuca, Clampet-Lundquist & Edin, *supra* note 113, at 164–65 (cataloguing Baltimore-area community college graduation rates); *see also* Jennie Brand & Yu Xie, *Who Benefits Most from College? Evidence for Negative Selection in Heterogeneous Economic Returns to Higher Education*, 75 Am. Soc. Rev. 273, 273 (2010) (showing that students from groups least likely to complete college, such as those from disadvantaged backgrounds, derived the greatest benefit in earnings from college). To be sure, bachelors-level college education leaves in place a substantial and growing racial wealth gap and a sharp earnings gap between black men and white men all along the spectrum of family income and neighborhood background. *See* Raj Chetty et al., Race and Economic Opportunity in the United States: An Intergenerational Perspective, NBER Working Paper No. 24441 (Mar. 2018), https://www.nber.org/papers/w24441.pdf, *archived at* https://perma.cc/F37H-N6ZP.

[143] Anne Martin & Margo Gardner, *College Expectations for All? The Early Adult Outcomes of Low-Achieving Adolescents Who Expect to Earn a Bachelor's Degree*, 20 Applied Developmental Sci. 108, 113–16 (2016).

[144] Silva & Snellman, *supra* note 140, at 570–74.

[145] Nicole Gonzalez Van Cleve, Crook County: Racism and Injustice in America's Largest Criminal Court 101–02 (2016).

[146] *See, e.g.*, Lisa Beth Greenfield Pearl, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. Rev. L. & Soc. Change 553, 584 (2013); Erik S. Pitchal, *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 U.C. Davis J. Juv. L. & Pol'y 233, 242 (2008); Jessi Carriger, Note, *Teach Me to Act: California's Use of Title 1D Funds for Delinquent Students*, 30 Whittier L. Rev. 329, 357 (2008); *see also* Donna M. Bishop, Michael Leiber & Joseph Johnson, *Contexts of Decision Making in the Juvenile Justice System: An Organizational Approach to Understanding Minority Overrepresentation*, 8 Youth Violence & Juvenile Just. 213, 222 (2010) (finding that net of other factors, worse school performance and having dropped out of school is positively associated with likelihood of formal prosecution in the juvenile justice system).

that person can own a home, graduate from college, and move up the social and economic ladder.[147] This Dream, comprised of property ownership, education, and opportunity for mobility, is a pre-constitutional value, deeply embedded into American ideology. What does it mean to be an American if you cannot dream of a bright future? It might seem silly to think about dreaming as a matter for law or politics but, of the three entitlements discussed in this Essay, it is probably most central to American identity.[148] Values that are arguably much less central to American identity, such as equality, gun ownership, and healthcare are legally protected and facilitated. Given the salience of dreaming, is there any legal framework that protects or guarantees the broad availability of dreams for a bright future?

First Amendment doctrine, which protects freedoms of speech, expression, religion, the press, and so forth as an extension of a commitment to free thought, provides a conceptual starting point. Although the Court has rejected the idea of an equal, fundamental right to education under the Fourteenth Amendment,[149] it has expressed the idea that certain components of education, such as particular books or curricular contents, cannot be withheld from students. *Board of Education v. Pico* arose after a Long Island school board removed numerous books from its schools' libraries, criticizing their content for being inappropriate, anti-American, "filthy," or otherwise abhorrent.[150] The Court ruled 5-4 that this book removal violated the First Amendment because "the Constitution protects the right to receive information and ideas."[151] In 2017, an Arizona district court judge relied on *Pico* to find that the State of Arizona's sweeping 2010 legislation banning ethnic studies curricula from public and charter schools violated the First Amendment.[152] Judge Tashima reasoned that the same logic at work in *Pico* applied here: Arizona's curriculum restriction was enacted with racial animus and with the purpose of forbidding students to learn about ideas with which the legislators disagreed; there were no legitimate pedagogical reasons to ban

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[147] *See, e.g.*, SARAH CHURCHWELL, BEHOLD, AMERICA: THE ENTANGLED HISTORY OF "AMERICA FIRST" AND "THE AMERICAN DREAM" 1–7 (2018); WILLIAM A.V. CLARK, IMMIGRANTS AND THE AMERICAN DREAM: REMAKING THE MIDDLE CLASS 6–9 (2003); JENNIFER HOCHSCHILD, FACING UP TO THE AMERICAN DREAM: RACE, CLASS, AND THE SOUL OF THE NATION 15–25 (1995); ROBERT D. PUTNAM, OUR KIDS: THE AMERICAN DREAM IN CRISIS 33–34 (2015).

[148] *See* David Fagundes, *Buying Happiness: Property, Acquisition, and Subjective Well-Being*, 58 WM. & MARY L. REV. 1851, 1854–55 & n.5 (2017).

[149] San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 35 (1973). Recent scholarship has argued—based on the Fourteenth Amendment's original public meaning as identified through Congress's requirement that Southern states include a right to equal education as a condition for readmission to the Union—that *Rodriguez* should not be interpreted to foreclose a state citizenship-based procedural right to education. Today, every state's constitution requires the state to provide a public education system. Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 STAN. L. REV. 735, 741–44, 802–07 (2018).

[150] Bd. of Educ. v. Pico, 457 U.S. 853, 857 (1982).

[151] *Id.* at 867 (quoting Stanley v. Georgia, 394 U.S. 557, 564 (1969)).

[152] González v. Douglas, 269 F. Supp. 3d 948, 972–74 (D. Ariz. 2017).

ethnic studies programs.[153] The purpose of the right to receive information and ideas is to prepare young Americans for full citizenship and to meet their civic duties. Even though education is not a federal constitutional right, the ideas and information it shares with students are of special constitutional importance because they are critical for the maintenance of our democratic institutions.[154]

To be clear: I am not suggesting that the pathway toward recognizing an entitlement to dream is through litigation, or through traditional constitutional analysis. The reasons that Fayard cannot dream are several steps removed from the education system, and any litigation based on this entitlement would fail at least because *Pico* and its progeny focused a great deal on policymakers' intent when they tried to restrict information.[155] It would be difficult to show that by creating the conditions that Fayard lives under, the state intended to limit his capacity to dream. I make reference to the right to information and ideas acknowledged in *Pico* to point out that imagining a movement or political claim based on an entitlement to dream is not outlandish when we think about what dreaming is—drawing upon the information at our disposal to develop ideas for our futures. The specific context in which the Court evokes the right to information and ideas is irrelevant; what matters is that even the judicial branch has envisioned the components of dreaming as rights that the government is bound to respect. Importantly, "respect" here means that the government must continue to purchase and distribute books in its libraries and must continue to fund teachers and textbooks who will teach ethnic studies, and more; the right to information and ideas is a right that demands governmental action. Thus, the right articulated in these cases is simultaneously negative and affirmative.[156]

Although education is a key institution tasked with enabling the power to dream and thus warrants special attention in this Part, one might also take a cross-institutional perspective rooted in entitlements to children and youth. Professors Anne Dailey and Laura Rosenbury have offered an additional window through which to see an entitlement for Americans, especially young Americans, to dream and to build friendships.[157] They set forth a blueprint for a "new law of the child," one that reconsiders and builds from the traditional best interests of the child in family law and related fields, and

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[153] *Id.*; *see also* Arce v. Douglas, 793 F.3d 968, 983 (9th Cir. 2015); Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1027 n.5, 1028–32 (9th Cir. 1998); Virgil v. School Bd. of Columbia Cty., 862 F.2d 1517, 1520–22 (11th Cir. 1989).

[154] *See, e.g.*, Plyler v. Doe, 457 U.S. 202, 221 (1982).

[155] *See Pico*, 457 U.S. at 871 ("If petitioners *intended* by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners' decision, then petitioners have exercised their discretion in violation of the Constitution") (emphasis in original).

[156] *Cf.* Lea Shaver, *The Right to Read*, 54 COLUM. J. TRANSNAT'L L. 1, 5 (2015) (arguing that the right to read "has characteristics of both negative rights as well as positive rights—it implicates both liberty interests and social welfare entitlements").

[157] Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1535–36 (2018).

expands children's interests to include five specific interests: "(1) parental and nonparental relationships; (2) exposure to new ideas; (3) expressions of identity; (4) personal integrity and privacy; and (5) participation in civic life."[158] Dailey and Rosenbury's approach is resonant with the notion of entitlements I describe here; their interest in relationships aligns with an entitlement to friendship, and their interest in exposure to new ideas aligns with an entitlement to dreams. Their ambition is similarly to set forth a new, provocative framework for thinking about people's relationships to authority—for them, the domain is children's interests.

One unfortunate aspect of Dailey and Rosenbury's interesting article is that it does not take into account the raced and classed aspects of children's interests. (If anything, their article argues for making canonical cases such as *Brown v. Board* and *Plyler v. Doe*[159] less about the problem of racial segregation and discrimination generally and more about the particular harms of segregation and discrimination to children.)[160] Scholars of race and inequality could repurpose Dailey and Rosenbury's work to think about expanded notions of basic entitlements, or the privileges of American citizenship.[161] Full citizenship is not attained through non-discrimination alone. Instead, it requires relationships, ideas, identity formation, personal integrity, and the ability to engage in civic life. Implicit here is an understanding of citizenship that is not restricted based merely upon legal status. Khalila and Fayard's claim to safety, friendship, and dreams is not conditional upon legal citizenship, but social citizenship.

The twenty-first century movement for racial justice still needs to fight against discrimination, segregation, and dispossession, as the work to eliminate them is far from complete. However, the twenty-first century movement for racial justice should make space for new frameworks in service of these fights, including re-imagination of a future orientation as part of the bundle of goods that is meant to come with American social citizenship. Moreover, an entitlement to dream is an entitlement to the bundle of supports that make dreams tangible and productive.

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[158] *Id.* at 1484. As Dailey and Rosenbury acknowledge, their conception of children's interests is compatible with, though not equivalent to, the partly affirmative vision of children's rights articulated in the United Nations Convention on the Rights of the Child. *Id.* at 1479 n.120; *see also* G.A. Res. 44/25, United Nations Convention on the Rights of the Child (Nov. 20, 1989), https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, *archived at* https://perma.cc/X72P-ZQZQ. The United States is the sole United Nations member state that has not ratified the Convention on the Rights of the Child.

[159] 457 U.S. 202 (1982) (holding that a Texas statute that withheld funds from school districts for educating undocumented children violated the Equal Protection Clause of the Fourteenth Amendment).

[160] *See supra* note 158.

[161] *See supra* note 1.

Conclusion

In this Essay, I have taken an avant-garde approach to civil rights scholarship, lacing together empirical poetry, social scientific theory and research, and legal analysis. The goal of these techniques is to help stimulate creative thinking about what the United States government owes to people living within the country, especially people who are members of historically marginalized communities, and why the government owes these entitlements. This effort asks the reader to "turn legal thought into an instrument of institutional imagination,"[162] not a set of insurmountable obstacles. Identifying safety, friendship, and dreams as "rights" or fundamental entitlements would elevate them as potential justifications for reparative intervention, and it should open space to approach old conversations about racial equity and economic justice from new vantage points. For low-income people of color living in high-poverty contexts, rights have never been trumps.[163] They have been jacks, not aces—but they nonetheless envision marginalized people as powerful political constituencies, not mere supplicants before the state.[164] Expanding our understanding of the underpinnings of social, political, and legal entitlements is key to reimagining the state's broader relationship with those it has disrespected, controlled, and estranged.[165]

We depart this Essay, and this symposium, probably holding on to more questions than answers about the next fifty years of civil rights agitation. This is appropriate: the twenty-first century's civil rights movement (however it labels itself) must not be rigidly programmed or hierarchical. Thus far it has been, and should continue to be, rooted in ceaseless inquiry and revolutionary discomfort.

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[162] Roberto Mangabeira Unger, What Should Legal Analysis Become? 59 (1996).

[163] *See generally* Greene, *supra* note 24.

[164] I am reminded of Professor Richard Delgado's three decades-old commentary on the feeble but persistent virtue of rights: "Rights do, at times, give pause to those who would otherwise oppress us." Delgado, *supra* note 23, at 305. *Cf.* Pelet del Toro, *supra* note 26, at 834–36 (describing rights-talk as a tool of restitution in the context of colonialism); Tani, *supra* note 26, at 23 (identifying the development of a "rights-bearing attitude" as a core mission for the 1970s and 1980s disability rights movement).

[165] Bell, *supra* note 2, at 2083–89 (on legal estrangement); *see also* Issa Kohler-Hausmann, Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing 76–82 (2018) (on managerial social control through lower-level courts); Alexandra Natapoff, Punishment Without Crime 195–201(2018). Maggie Blackhawk has shown that examining public law through the lens of federal Indian law, rather than Jim Crow segregation, illuminates sovereignty-based claims as an alternative to the rights-based approach typically embraced in civil rights law. Maggie Blackhawk, *Federal Indian Law as Paradigm within Public Law*, 132 Harv. L. Rev. (forthcoming 2019).