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Children's Equality: The Centrality of Race, Gender, and Class

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CHILDREN'S EQUALITY: THE CENTRALITY OF RACE, GENDER, AND CLASS

Nancy E. Dowd*

ABSTRACT

Hierarchies among children dramatically impact their development. Beginning before birth, and continuing during their progression to adulthood from birth to age 18, structural and cultural barriers separate and subordinate some children, while they privilege others. The hierarchies replicate patterns of inequality along familiar lines, particularly those of race, gender, and class, and the intersections of those identities. These barriers, and co-occurring support of privilege for other children, emanate from policies, practices, and structures of the state, including education, health, policing, and juvenile justice.

Reimagining Equality: A New Deal for Children of Color takes on the task of confronting and addressing these hierarchies, as well as articulating a comprehensive strategy for change to achieve equality, equity, and dignity for all children. In this Essay, I outline the core components of the book as a backdrop and focal point for dialogue and discussion on children and poverty in this issue of the Fordham Urban Law Journal. I also present questions that remain in order to achieve children's equality.

Part I of the book synthesizes the interdisciplinary research on the life course of African American boys from birth to adulthood as a means to concretely examine the creation of hierarchies among children. Black boys are presented as exemplars, not as a prioritized group. Their life patterns have been extensively examined, often to reinforce a stereotype of deviance, but this research nevertheless

* Professor and David Levin Chair in Family Law, University of Florida Levin College of Law. I deeply appreciate the honor of having my book as a central focus for this special issue. I wish to thank the Fordham Urban Law Journal for this opportunity, Professor Clare Huntington for her support of this project, and each of the participants for contributing to this critical dialogue.

clearly exposes the making of hierarchy based on race, gender, and class.

Part II of the book uses the pattern of Black boys to explore the impact of subordination on development, and the making of inequality. Developmental analysis in law and other disciplines commonly centers around a neutral child, ignoring the impact and pattern of hierarchies among children. This Part argues developmental analysis — the use of developmental research in law — must instead consciously focus on the actual developmental path of children of color in order to be a vehicle for equality. Introducing the theoretical contributions of Margaret Beale Spencer and Cynthia García Coll, this Part constructs a model of developmental equality. Developmental equality centers the goal of equality on the lived experiences of children of color upon whom heavy additional burdens have been imposed. Burdens and barriers to maximizing the development of all children must be removed to achieve children's equality.

With this reimagined definition of equality in mind, Part III of the book explores strategic alternatives. These include potential statutory and constitutional litigation strategies, but most expansively, a legislative strategy — A New Deal for Children. Borrowing from the tradition of prior expansive legislative programs enacted in response to the need for dramatic change and problem solving, such as the 1930s New Deal, the post-World War II G.I. Bill, and the Great Society programs of the 1960s, a New Deal for Children argues for a comprehensive approach of intersecting programs to create the necessary supports for children. At its core, the New Deal for Children would ensure equality, equity, and dignity, and change children's hierarchies to children's opportunities. Both visionary and pragmatic, the New Deal for Children is grounded in systems and policies in place elsewhere in the world, as well as localized models of comprehensive, intersecting programs in place in the United States.

Finally, the Essay concludes with a series of questions that remain to be explored, discussed, and debated to achieve the goal of equality among children. Equality has eluded America's children for generations because their ability to develop has been stymied, blocked, and undermined. The process to challenge that reality and implement real change raises complex, but not insurmountable, issues.

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INTRODUCTION

Hierarchies among children begin at birth.¹ These are not based on differences of capacity, but rather inequalities constructed and sustained by policies and structures that mark children for varying degrees of support just as if their cribs in the maternity ward were marked for support or subordination. Inequalities emerge during pregnancy, as a result of differential health, economic, and housing factors because public policy largely ignores family and child supports.² Children's development is assumed to be a private, family

1. Linda Villarosa, *Why America's Black Mothers and Babies Are in a Life-or-Death Crisis*, N.Y. TIMES (Apr. 11, 2018), <https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html> [<https://perma.cc/RZY9-NQ33>]. Reproductive justice encompasses the broad project to address health and other inequities that construct pre-birth conditions that replicate hierarchy. On the concept and scope of reproductive justice, see generally FEMINIST JUDGMENTS: REPRODUCTIVE JUSTICE REWRITTEN (Kimberly Mutcherson ed., forthcoming 2020); Kimberly Mutcherson, *Transformative Reproduction*, 16 J. GENDER, RACE & JUST. 187 (2013).

2. More specific supports might include, for example, sufficient prenatal and post-natal care, as well as addressing the social determinants of health. Another critical support would be providing more significant economic support both before and after birth for the substantial numbers of mothers living in poverty. These supports would aim to lift mothers out of poverty and the stresses of poverty, and could aid in eliminating the known correlations between poverty and a host of negative outcomes for parents and children. Policies for working parents, such as universal paid leave policies of at least six months and universal high-quality childcare and prekindergarten to support all working parents, are also essential. The United States lacks family support policies like those in other countries that insure not just a minimum, but a high quality of support in those areas. Moreover, not only is support lacking, but the role of the state is largely intrusive rather than supportive. For an overview of the lack of policies noted above and this pattern of intrusiveness by class, race, and gender, for both mothers and fathers, see generally KHIARA BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* (2008) (noting intrusive state action in the guise of oversight of poor women, treating them as if they have no privacy); KATHRYN EDIN & TIMOTHY NELSON, *DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY* (2013) (providing a sociological study of low-income fathers and how they construct fatherhood amidst economic and social barriers); Tonya Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Non-Custodial Fathers and Their Families*, 15 J. GENDER, RACE & JUST. 617 (2012) (critiquing child support policy that helps neither fathers nor children); Tonya Brito, *What We Talk About When We Talk About*

matter; privatization shields public responsibility for the support of each for all.³ Differences among children emerge quickly, as early as 18 months, and are magnified by the time children reach the schoolhouse door for kindergarten.⁴ Inequalities among American children are particularly dramatic due to the high rate of child poverty in the United States, and the correlation between poverty and adverse developmental outcomes.⁵ In addition to class lines, inequalities also fall along familiar racial and ethnic lines, as well as intersecting with gender.⁶ School is not an equalizer; rather, it exacerbates inequalities in school readiness as they translate into differentials in school

Matriarchy, 2013 MICH. ST. L. REV. 1263, 1282–93 (2013) (discussing mothers' challenges and lack of support within existing supports for low-income families).

3. On the private family and the ideology of individual responsibility, see generally CLARE HUNTINGTON, *FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS* (2014) [hereinafter HUNTINGTON, *FAILURE TO FLOURISH*]; BARBARA BENNETT WOODHOUSE, *HIDDEN IN PLAIN SIGHT: THE TRAGEDY OF CHILDREN'S RIGHTS FROM BEN FRANKLIN TO LIONEL TATE* (2008). On the differential racial impact of law and policy regarding family, see generally DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1997); DOROTHY E. ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

4. NAT'L SCI. COUNCIL ON THE DEVELOPING CHILD, CTR. ON THE DEVELOPING CHILD, HARV. UNIV., *A SCIENCE-BASED FRAMEWORK FOR EARLY CHILDHOOD POLICY: USING EVIDENCE TO IMPROVE OUTCOMES IN LEARNING, BEHAVIOR, AND HEALTH FOR VULNERABLE CHILDREN 6–7* (2007); see also Nancy E. Dowd, *Straight Out of Compton: Developmental Equality and a Critique of the Compton School Litigation*, 45 CAP. U. L. REV. 199, 232–34, 243 (2017) [hereinafter Dowd, *Straight Out of Compton*].

5. Roughly one in five children nationally live in poverty. *Child Poverty Rate Still Falling, Close to Pre-Recession Rate*, ANNIE E. CASEY FOUND. BLOG (Sept. 21, 2017), <https://www.aecf.org/blog/child-poverty-still-falling-and-close-to-pre-recession-rate/> [<https://perma.cc/7KN9-J2T7>]. This rate masks concentrations of poverty geographically. For example, one in three children in Chicago are poor, but among those children, the rate is one in eleven White children, one in two Black children, and one in three Latino children. VOICES FOR ILLINOIS CHILDREN, *CHILD POVERTY IN METROPOLITAN CHICAGO 25–32* (2015), http://www.voices4kids.org/wp-content/uploads/2015/03/VOICES_2015KC_report_02metro_FINAL.pdf [<https://perma.cc/LUK5-X2PT>]. On the relationship of poverty to development, see, for example, information on birth (and pre-birth) to age three in *Early Development & Well-Being*, ZERO TO THREE, <https://www.zerotothree.org/early-development> [<https://perma.cc/N5KL-K7L5>] (last visited Oct. 13, 2019); see also Douglas D. Ready, *Socioeconomic Disadvantage, School Attendance, and Early Cognitive Development: The Differential Effects of School Exposure*, 83 SOC. EDUC. 271, 272–73 (2010). See generally HUNTINGTON, *FAILURE TO FLOURISH*, *supra* note 3, at 44–53.

6. For example, high school dropout rates are strongly differentiated by gender, race, and ethnicity. *High School Dropout Rates*, CHILD TRENDS <https://www.childtrends.org/indicators/high-school-dropout-rates> [<https://perma.cc/2FC8-NTP4>] (last visited Jan. 22, 2020); see also *Child Poverty Rate Still Falling, Close to Pre-Recession Rate*, *supra* note 5 (discussing the differential in poverty rates).

achievement, school discipline, and relegation to special education.⁷ In addition, schools are highly unequal in resources and the quality of education that they provide.⁸ Early gaps harden and widen, and deliver children at the threshold of adulthood in familiar patterns of subordination, with opportunity differentials passed on to a new generation.⁹

The American pattern of hierarchies among children is not unique. Indeed, inequality is a global pattern.¹⁰ But the level of hierarchy in the United States is dramatic and stunning.¹¹ It stands in sharp contrast to our wealth, our professed attachment and valuing of children, and our belief that every child has the opportunity not only to thrive but to transcend the circumstances of their birth. It also

7. For more information on educational inequities in achievement and discipline, and the significant differences between schools in the same district, between districts, and between states, see generally LEGACIES OF BROWN: MULTIRACIAL EQUITY IN AMERICAN EDUCATION (Dorinda J. Carter et al. eds., 2004); PEDRO A. NOGUERA, THE TROUBLE WITH BLACK BOYS AND OTHER REFLECTIONS ON RACE, EQUITY AND THE FUTURE OF PUBLIC EDUCATION (2008); RACE, EQUITY AND EDUCATION: SIXTY YEARS FROM BROWN (Pedro A. Noguera et al. eds., 2016).

8. See *supra* note 7 and the accompanying text; see also Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330, 395–99 (2006).

9. On intergenerational inequality, see generally PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY (2013); CARLA SHEDD, UNEQUAL CITY: RACE, SCHOOLS, AND PERCEPTIONS OF INJUSTICE (2015). On enduring inequalities and subordination, see generally GARY ORFIELD & ERICA FRANKENBERG, THE CIVIL RIGHTS PROJECT, BROWN AT 60: GREAT PROGRESS, A LONG RETREAT AND AN UNCERTAIN FUTURE (2014); VICTOR RIOS, PUNISHED: POLICING THE LIVES OF BLACK AND LATINO BOYS (2011).

10. See generally PETER ADAMSON, UNICEF INNOCENTI RESEARCH CENTRE, INNOCENTI REPORT CARD 9: THE CHILDREN LEFT BEHIND: A LEAGUE TABLE OF INEQUALITY IN CHILD WELL-BEING IN THE WORLD'S RICH COUNTRIES (2010), https://www.unicef-irc.org/publications/pdf/rc9_eng.pdf [<https://perma.cc/K3TA-KD4H>]; JOHN HUDSON & STEFAN KÜHNER, UNICEF OFFICE OF RES.-INNOCENTI, INNOCENTI REPORT CARD 13: FAIRNESS FOR CHILDREN: A LEAGUE TABLE OF INEQUALITY IN CHILD WELL-BEING IN RICH COUNTRIES (2016), https://www.unicef-irc.org/publications/pdf/RC13_eng.pdf [<https://perma.cc/DXH2-JN92>]; ORG. FOR ECON. COOPERATION & DEV., CHILDHOOD DECIDES: HOW CAN WE DO BETTER FOR OUR CHILDREN? (2009), <https://www.oecd.org/els/family/43581806.pdf> [<https://perma.cc/3AK6-XA9E>]; ORG. FOR ECON. COOPERATION & DEV., GROWING UNEQUAL?: INCOME DISTRIBUTION AND POVERTY IN OECD COUNTRIES (2008), <https://www.oecd.org/els/soc/41527936.pdf> [<https://perma.cc/X4BG-YC5R>].

11. The United States is ranked in the bottom third of OECD countries, at 13th among a total of 41 countries. HUDSON & KÜHNER, *supra* note 10. The U.S. relative income gap is 58.85%. *Id.* Relative income gap measures the distance between the average child and the lowest income child. *Id.* The U.S. poverty rate is 20% with poverty measured as the number of children whose income level is below 50% of the median income level. *Id.* By contrast, the top five countries have relative income gaps of 37.00–39.62% and poverty rates of 4.5–6.8%. *Id.*

places us at the bottom of countries to which we conventionally compare ourselves.¹²

These hierarchies are unacceptable as a matter of core principles of equality, equity, and dignity, and counterproductive to our generational self-interest and economic viability as a nation. In *Reimagining Equality: A New Deal for Children of Color*,¹³ I expose and critique children's hierarchies, identify the sources of the policies and structures that create and sustain those hierarchies, and argue that state responsibility for these hierarchies violates children's equality interests. In this Essay, I set out the main arguments of the book and suggest some of the further questions that must be engaged, as a backdrop to this special issue on children and poverty.

I. REIMAGINING EQUALITY: A NEW DEAL FOR CHILDREN OF COLOR

A. Part I: The Life Course of Black Boys¹⁴

I began the research and writing of *Reimagining Equality* from the endpoint of children's development — their teenage years — analyzing what I came to view as the dysfunctional juvenile justice system's impact on youth.¹⁵ Rather than a system that serves children by rehabilitating them, ensuring their offenses as children will not lead to an adult criminal path nor block their future success or opportunity, it became clear that the juvenile justice system not only fails to serve young people's well-being but also does not make society any safer.¹⁶ Among the most troubling aspects of the juvenile justice system is the disproportionate presence of boys of color, especially Black boys, in terms of their numbers in the system and concentration in the deepest end of the system. Understanding why

12. *See id.*

13. NANCY E. DOWD, REIMAGINING EQUALITY: A NEW DEAL FOR CHILDREN OF COLOR (2018) [hereinafter DOWD, REIMAGINING EQUALITY].

14. *Id.* at 9–52.

15. This resulted in two edited collections critically analyzing juvenile justice. *See* A NEW JUVENILE JUSTICE SYSTEM: TOTAL REFORM FOR A BROKEN SYSTEM (Nancy E. Dowd ed., 2015) (focusing on the theoretical justification, structure, and specific aspects of what the juvenile justice system should look like, with regard to child well-being and public safety); JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM (Nancy E. Dowd ed., 2011) (providing a critique by various scholars of the existing juvenile justice system and why it has failed children).

16. *See generally* James Bell, *Child Well-Being: Toward a Fair and Equitable Public Safety Strategy for the New Century*, in A NEW JUVENILE JUSTICE SYSTEM: TOTAL REFORM FOR A BROKEN SYSTEM 23 (Nancy E. Dowd ed., 2015).

this is so required looking earlier in their lives: to, for example, the disciplinary systems that treat misbehavior as criminal conduct, and educational evaluations that place more Black boys in low-performing parts of the educational system within schools that are not designed to help them succeed. Still, understanding their teenage years lead me further back, to early elementary school adverse actions, even to disproportionate suspension or expulsion in kindergarten and preschool.¹⁷ Ultimately, it took me back to the beginning, even before birth, when the intersections of employment, housing, the social determinants of health, income disparity and inadequacy, and education all too often intersected to their disadvantage. Each system, I discovered, clearly interacted with the others. They broadly affected not only children but also families, neighborhoods, and communities. This comprehensive look at the life course of Black boys became Part I of the book.¹⁸

The structural and cultural context of the life course of Black boys is a setup for failure. Three pieces of data reflect this stark reality. First, one in three Black boys is born into poverty.¹⁹ Second, two of every five Black boys will not finish high school.²⁰ Finally, one in three Black boys will be involved in the criminal justice system in their lifetime.²¹ Each of these facts represents a systematic failure;

17. For data on the alarming patterns in preschool expulsion and suspension, see generally DOLORES A. STEGELIN, INST. FOR CHILD SUCCESS, PRESCHOOL SUSPENSION AND EXPULSION: DEFINING THE ISSUES (2018), <https://www.instituteforchildsuccess.org/wp-content/uploads/2018/12/ICS-2018-PreschoolSuspensionBrief-WEB.pdf> [<https://perma.cc/49AF-SMGX>].

18. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 9–52.

19. Nancy E. Dowd, *Unfinished Equality: The Case of Black Boys*, 2 INDIANA J.L. & SOC. EQUALITY 36, 45 (2013) [hereinafter Dowd, *Unfinished Equality*]. In 2013, the poverty rate for African American children was 38.3%, compared to a 20% overall poverty rate for children. Eileen Patten & Jens Manual Krogstad, *Black Child Poverty Rate Holds Steady, Even as Other Groups See Decline*, PEW RES. CTR. (July 14, 2015), <http://www.pewresearch.org/fact-tank/2015/07/14/black-childpoverty-rate-holds-steady-even-as-other-groups-see-declines> [<https://perma.cc/U3WB-9LSU>].

20. SCHOTT FOUND. FOR PUB. EDUC., BLACK LIVES MATTER: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES (2015) (illustrating that the graduation rate for Black male students in 2012–13 nationally was 59%); see also SCHOTT FOUND. FOR PUB. EDUC., THE URGENCY OF NOW: THE SCHOTT 50 STATE REPORT ON PUBLIC EDUCATION AND BLACK MALES 13 (2012) (“In 2009–10 the national graduation rate for Black male students was 52%.”); Dowd, *Unfinished Equality*, *supra* note 19, at 45.

21. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 42; Dowd, *Unfinished Equality*, *supra* note 19, at 45; see also *Lifetime Chance of Being Sent to Prison at Current US Incarceration Rates*, PRISON POL’Y INITIATIVE <https://www.prisonpolicy.org/graphs/lifetimechance.html> [<https://perma.cc/4XYV-HPNL>]; *Criminal Justice Facts*, SENTENCING PROJECT,

each is linked to clear and significant consequences for development and opportunity. Part I of the book explores in detail these patterns of the lives of Black boys.²² These patterns expose the systemic source of their inequality and the systems that create the hierarchy. It is not an argument for the priority of Black boys; it is an argument for transparency and exposure of how children's hierarchies are made.

There are certain systems especially complicit in creating hierarchies among children. For instance, the poverty system sustains poverty rather than providing the material and financial supports to transcend poverty.²³ The lack of a system of affirmative early childhood supports fails to ensure that every child will maximize their early development.²⁴ The public education system is laced throughout with inequalities that fail to educate each child to their capacity.²⁵ The health system perpetuates health disparities and largely ignores social determinants of health.²⁶ Finally, the policing and juvenile justice systems continue to fail to serve youth well-being and public safety.²⁷

As Part I of *Reimagining Equality* outlines, these are dysfunctional systems viewed in isolation and interact negatively with each other, disproportionately so for children of color.²⁸ So, for example, the child born into poverty is likely to face a series of developmental challenges that make her less school ready even if she is one of the lucky ones to gain a seat in Head Start²⁹ by the time she is three, and little attention is given to the social determinants of health that interact with her educational development. If this is a boy, he is disproportionately likely to be suspended or expelled from

<https://www.sentencingproject.org/criminal-justice-facts/> [https://perma.cc/J9ZL-TEXT] (last visited Sept. 23, 2019).

22. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 9–52.

23. *Id.* at 43–46.

24. *Id.* at 45.

25. *Id.* at 19–30.

26. *Id.* at 14–15.

27. *Id.* at 31–32.

28. *Id.* at 48–50.

29. Head Start is a program for low-income children providing early childhood education, nutrition, health, and other services to parents. For a detailed description and text of the legislation, see U.S. Dep't of Health and Human Servs., *Head Start Policy & Regulation*, EARLY CHILDHOOD LEARNING & KNOWLEDGE CTR., <https://eclkc.ohs.acf.hhs.gov/policy/head-start-act> [https://perma.cc/HTD7-RDZ7]; see also U.S. DEP'T OF HEALTH AND HUMAN SERVS., OFFICE OF HEAD START, 2017–2018 HEAD START PROGRAM INFORMATION REPORT (2018). On the extent of children served and the quality of the program, see *infra* note 72 and accompanying text.

prekindergarten.³⁰ If that happens, this impacts parents and their ability to work, which affects family income, housing, and nutrition. In addition, either of these children may suffer from health issues, like asthma, caused by toxic substances in their housing.³¹ Health issues may cause them to miss school, exacerbating any shortfalls in school readiness. A health crisis, like unsafe drinking water, may cause long-term adverse learning consequences, and, if it persists, will impact the family in multiple adverse ways. Health problems beyond the normal predictable childhood issues may cause parents to miss too much work, with the potential for losing their employment. If a child's parent is a single parent, or very young, the parent will receive no special supports, and little economic support is guaranteed by the child support system or by the public welfare system.

Boys of color in particular are more likely, beginning in third or fourth grade, to be disciplined in school, with the consequence of more disruption of their education and potential diversion into the school-to-prison pipeline.³² If they do come into contact with police, whether in school or on the streets, they are more likely to be placed in the juvenile justice system rather than placed in a diversion program.³³ They are also more likely than white adolescents to end up in the deep end of the system, triggering likely involvement in the adult criminal justice system rather than rehabilitation and support for educational preparation for a well-paying job and a role as a participating citizen.³⁴ Their high dropout rate from high school

30. Rasheed Malik, *New Data Reveal 250 Preschoolers Are Suspended or Expelled Every Day*, CTR. FOR AM. PROGRESS (Nov. 6, 2017, 9:01 AM), <https://www.americanprogress.org/issues/early-childhood/news/2017/11/06/442280/new-data-reveal-250-preschoolers-suspended-expelled-every-day/> [<https://perma.cc/G5S2-FQJW>] (explaining how Black children are more than twice as likely to be suspended or expelled, and that boys account for 82% of expulsions and suspensions, even though they only make up half of the preschool population).

31. See Jodi Siegel et al., *Benefits of Pediatric Medical-Legal Partnerships*, 71 FLA. L. REV. 145, 145 (2019) (specializing on early childhood).

32. See PEDRO A. NOGUERA, *THE TROUBLE WITH BLACK BOYS: AND OTHER REFLECTIONS ON RACE, EQUITY, AND THE FUTURE OF PUBLIC EDUCATION* xvii, 42 (2008) (explaining that the differential treatment of Black boys begins at age nine or ten). Data suggest that this differential treatment begins even earlier. See TOM RUDD, KIRWAN INST., *RACIAL DISPROPORTIONALITY IN SCHOOL DISCIPLINE: IMPLICIT BIAS IS HEAVILY IMPLICATED 2* (2014), <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/02/racial-disproportionality-schools-02.pdf> [<https://perma.cc/8LFQ-44CP>] (“Black students as young as age five are routinely suspended and expelled from schools for minor infractions like talking back to teachers or writing on their desks.”).

33. DOWD, *REIMAGINING EQUALITY*, *supra* note 13, at 47–48.

34. *Id.*

means that they are unlikely to be economically successful, and their likelihood of some juvenile or adult criminal justice involvement further undermines their success. This is not a set of systems that ensures their healthy physical well-being, their cognitive and emotional development, and their support for success as adults. It is not a set of systems designed to support children's families, their primary ecology, in a way that assures the success of all children. Instead, it is a set of systems that independently and in isolation fail them, and, with respect to policing, too often endanger them.

B. Part II: Developmental Equality

Part II of the book evaluates the impact of this systemic skewing and the creation of hierarchies on children's development.³⁵ Critical to that analysis is reconceptualizing "development" from a universal, generic process that happens to a "neutral" child to the realities of development for a disfavored, bottom-of-the-hierarchy child. The typical framing of development is linear, a forward progression of a child from infancy to adolescence, with physical, cognitive, emotional, and social milestones.³⁶ This typical framing separates children from their context and the interaction of nature and nurture.

An alternative framing of children's development is environmental, pioneered by the work of Uri Bronfenbrenner.³⁷ The value of an environmental or ecological approach is that it requires us to pay attention to the interaction between the most immediate environment of family and systemic levels (for example, education, health, work, and social supports), as well as to the macrosystem of ideas. System interactions include the intersections of various levels of the ecosystem horizontally, as well as vertically. So, for example, the most immediate systems that interact horizontally might do so harmoniously (parents and teachers working collaboratively), or they may be in conflict (workplace demands reflected in the length of working hours or inadequate pay failing to respect children's needs and parents' obligations, or failing to ensure even minimal support due to low pay). Vertical interaction of systems includes the relationship between the most immediate microsystems of the child, particularly family, peers, and neighborhood, with the macrosystem of

35. *Id.* at 53–96.

36. *Id.* at 53–65.

37. *See generally* URI BRONFENBRENNER, *THE ECOLOGY OF HUMAN DEVELOPMENT: EXPERIMENTS BY NATURE AND DESIGN* (1979) (setting out the environment of children from microsystems through layers and interlocking systems up to the overarching mesosystem of ideas and ideology, including law).

ideas. The macrosystem may honor the importance of family and equality among all children and families. If there is a disconnect between those ideas and the lived realities of children's lives, exhibiting the presence of discrimination and lack of respect for their race and/or culture, then their environment is out of balance and both harmful and challenging. Just as environmentally every living organism is affected by local conditions (for example, temperature, light, and water), those conditions are part of larger systems that interrelate and are managed (or not) according to the overarching system of ideas that we have about the environment and our relationship to it.

Despite the usefulness of both linear and environmental approaches, they both miss the impact of identities on development. Instead, they focus on a "neutral" child. The work of Margaret Beale Spencer³⁸ and Cynthia García Coll³⁹ is critical to understanding how subordinating context impacts development. The bottom line for children of color is that their developmental pathway contains hurdles that make their expected linear development difficult or even impossible. One example of this is the identity creation phase of adolescence.⁴⁰ During this period of development, youth are creating a stronger sense of themselves that may also involve a rejection of their parents' values, goals, or identities as they break away to establish their own personal identity. Resistance or challenging of social norms is normal in this phase.⁴¹ Establishing a strong sense of

38. See Margaret Beale Spencer et al., *A Theoretical and Empirical Examination of Identity as Coping: Linking Coping Resources to the Self Processes of African American Youth*, 7 *APPLIED DEVELOPMENTAL SCI.* 181, 182 (2003); Margaret Beale Spencer et al., *Understanding Hypermasculinity in Context: A Theory-Driven Analysis of Urban Adolescent Males' Coping Responses*, 1 *RES. HUM. DEV.* 229, 231 (2004); see also Margaret Beale Spencer et al., *African American Adolescents: Adaptational Processes and Socioeconomic Diversity in Behavioral Outcomes*, 11 *J. ADOLESCENCE* 117, 134 (1988); Margaret Beale Spencer & Carol Markstrom-Adams, *Identity Processes Among Racial and Ethnic Minority Children in America*, 61 *CHILD DEV.* 290, 299 (1990).

39. See generally Cynthia García Coll & Katherine Magnuson, *Cultural Differences as Sources of Developmental Vulnerabilities and Resources*, in *HANDBOOK OF EARLY CHILDHOOD INTERVENTION* 94, 94–114 (Jack P. Shonkoff & Samuel J. Meisels eds., 2d ed. 2000); Cynthia García Coll et al., *An Integrative Model for the Study of Developmental Competencies in Minority Children*, 67 *CHILD DEV.* 1891, 1895–97 (1996); Cynthia García Coll, *Developmental Outcome of Minority Infants: A Process-Oriented Look into Our Beginnings*, 61 *CHILD DEV.* 270, 271–73 (1990); Cynthia García Coll & Laura A. Szalacha, *The Multiple Contexts of Middle Childhood*, *FUTURE CHILD.* (2004), at 81, 82.

40. DOWD, *REIMAGINING EQUALITY*, *supra* note 13, at 28.

41. *Id.*

self and identity is conventionally celebrated as critical to adulthood.⁴² For young Black men, however, this passage is a double-edged sword. Their strong self-identity may include family racial socialization that seeks to protect them from myths and stereotypes that construct them as dangerous and threatening. Their very actions of expressing a strong sense of self may put them at risk. Their interactions with the racialized context within which they function requires a developmental sophistication and balance that is not required or even recognized for the “neutral” white teenager who is typically assumed in developmental frameworks.⁴³

The barriers and challenges placed in the way for children of color are linked to policies and structures that are the state’s responsibility.⁴⁴ Thus, this revised developmental reality points to the obligation of the state to remove those barriers and challenges. In this Part, I articulate a claim for developmental equality: every child should be equally supported to achieve their maximum developmental capacity.⁴⁵ Identifying the differential developmental pathways for children of color tells us that inequality is rampant and connected to state policies. If policies or structures for which the state is responsible hamper or deter the development of children, particularly along lines of disadvantage and subordination, such as race, ethnicity, or other identities, the state should be obligated to remove those barriers or exacerbated challenges. In addition to removing barriers and dismantling hierarchies, developmental equality would require the conscious support of children and youth, because by definition they cannot access developmental supports on their own, and each child is entitled to maximize their developmental capacity.

C. Part III: Strategies for Change

With the example of Black boys to identify the dynamics and consequences of existing structures and systems, and the developmental equality model for theorizing the harm and identifying developmental equality as the remedy and the right of every child, Part III of the book explores three strategies to achieve

42. *Id.* at 32–39.

43. *Id.*

44. Two clear examples of this are the education system and the juvenile justice system, both systems of state creation. One might also argue that providing early childhood supports and a universal, high-quality health environment is the state’s responsibility because they have an affirmative duty to act.

45. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 66–78.

developmental equality.⁴⁶ These include two litigation strategies: (1) using existing statutory frameworks, specifically disability rights,⁴⁷ and (2) using constitutional arguments grounded in a theory of children's rights.⁴⁸ I ultimately conclude that a third strategy— an affirmative legislative agenda⁴⁹ — would be preferable to reach the broad structural and cultural changes necessary to achieve developmental equality. This is what I call “A New Deal for Children.”

The first litigation strategy was used against the Compton School System in 2015.⁵⁰ In the Compton litigation, the plaintiffs argued that the school system, by virtue of its location and knowledge of the challenges faced by a disproportionate number of kids in its system, was obligated to respond to their educational needs by implementing school-wide programs of support.⁵¹ The litigation was grounded in developmental science linking early life experiences to poor educational outcomes if left unaddressed. In particular, the litigation made use of the Adverse Childhood Experiences framework (ACEs), which links aggregate trauma to educational difficulties.⁵² ACEs are

46. *Id.* at 97–166.

47. *Id.* at 97–114.

48. *Id.* at 115–35.

49. *Id.* at 136–66.

50. *See P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126 (C.D. Cal. 2015); *see also* Complaint at 21, *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126 (C.D. Cal. 2015) (No. 2:15-cv-03726).

51. *See P.P.*, 135 F. Supp. 3d at 1131–32.

52. The core of the Compton claim was that given the socioeconomic profile of the school district known to school administrators, and with knowledge of the developmental science demonstrating the impact of those factors on the ability of children to achieve, coupled with the likely ACEs profile of the school population, the school was on notice of factors that effectively raised developmental challenges for a disproportionate number of their students, and severe challenges for a percentage of their students. *Id.* Thus, under the disability statutes, the school was required to make affirmative accommodations school wide in order to make it possible for students to learn. *Id.* *See generally* Dowd, *Straight Out of Compton*, *supra* note 4 (providing a detailed account of the litigation). As such, the litigation relied upon a combination of developmental scholarship and the ACEs framework. The ACEs framework identifies, on the basis of analysis of factors that cause long term health issues, and now, learning issues, factors present in childhood that affect adults. These include factors such as divorce or separation, mental illness of a parent, drug or alcohol addiction of a family member, and domestic violence. Most children have one or two ACEs; at the level of four or more, potentially lifelong adverse consequences are possible. *See generally* ACEs TOO HIGH, <http://acestoohigh.com> [<https://perma.cc/Q4S4-78Y8>] (last visited Sept. 22, 2019); *Adverse Childhood Experiences (ACEs)*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 2, 2019), <http://www.cdc.gov/violenceprevention/acestudy/index.html> [<https://perma.cc/EN7S-G6G3>]; *Three Core Concepts in Early Development*, CTR. ON DEVELOPING CHILD

common among children, but more than three or four ACEs translates into negative outcomes in the absence of support for resilience in the face of trauma.⁵³ While I applaud the ACEs framework (and identify critiques and expansion of the framework⁵⁴), the use of developmental science and the assumptions of this litigation strategy nevertheless trouble me. Identifying children of color as disabled plays into old stereotypes of inadequacy and inequality. Moreover, the ACEs framework, while individually helpful and potentially a proactive tool, should, in my view, be used to identify structural components that cause ACEs, rather than exclusively focus on after-the-fact problem-solving.⁵⁵

The second strategy I identify is one grounded in constitutional arguments of children's rights. Developmental equality, as a right of every child, links to the increasing recognition by the Supreme Court of developmental science as essential to the analysis of children's constitutional rights.⁵⁶ The Court's developmental frame, used to evaluate capacity for decision-making and children's rights, should be used comprehensively, including recognition of a right of developmental support. Making a case for positive rights requires confronting the common assumption that the Constitution is a charter

HARV. UNIV., <http://developingchild.harvard.edu/resources/three-core-concepts-in-early-development> [<https://perma.cc/QJZ7-HPKP>] (last visited Sept. 22, 2019). See also Dowd, *Straight Out of Compton*, *supra* note 4, at 238–43.

53. See generally ACEs TOO HIGH, *supra* note 52; *Adverse Childhood Experiences*, *supra* note 52; *Three Core Concepts in Early Development*, *supra* note 52.

54. See *supra* note 52.

55. Dr. Nadine Burke-Harris has been at the forefront of using ACEs as a proactive tool by screening pediatric patients and their families, and is implementing this policy more broadly in her new role as California Surgeon General. See generally Anna Maria Barry-Jester, *California Looks to Lead Nation in Unraveling Childhood Trauma*, CAL. HEALTHLINE (Mar. 5, 2019), <https://californiahealthline.org/news/california-looks-to-lead-nation-aces-screening-childhood-trauma/> [<https://perma.cc/X5UR-LSHS>]; CTR. FOR YOUTH WELLNESS, <https://centerforyouthwellness.org/> [<https://perma.cc/4LGR-2RPZ>] (last visited Sept. 22, 2019); NAT'L PEDIATRIC PRACTICE CMTY. ON ADVERSE CHILDHOOD EXPERIENCES, <https://nppcaces.org/> [<https://perma.cc/3VYQ-BFG5>] (last visited Sept. 22, 2019).

56. See *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (holding juvenile offenders cannot be sentenced to life in prison without parole for homicide offenses); *Graham v. Florida*, 560 U.S. 48, 82 (2010) (holding juvenile offenders cannot be sentenced to life in prison without parole for non-homicide offenses); *Roper v. Simmons*, 543 U.S. 551, 578–79 (2005) (holding capital punishment unconstitutional for juvenile offenders).

of negative rights.⁵⁷ I argue for an alternative view of the right of the general welfare of all persons, and the specific, distinctive arguments of children's rights. Not only are children vulnerable and dependent, their success in achieving their developmental capacity inevitably is our responsibility, and their equality in reaching their capacity also is essential to our democracy.⁵⁸

Articulating children's constitutional rights as a litigation strategy admittedly is challenging because of the reluctance to identify additional rights.⁵⁹ The most viable, and potentially the most comprehensive, strategy to achieve developmental equality is a legislative strategy, a New Deal for Children. The last chapter of the book outlines the rationale for such a strategy, consistent with other examples of comprehensive social programs (to combat the claim that this is all visionary but impossible).

The New Deal for Children consciously aims to draw on the New Deal of the 1930s as an example of comprehensive policymaking (as well as drawing on other comprehensive programs, such as the G.I. Bill⁶⁰ and the Great Society program⁶¹), as a way of responding to the

57. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 126–29; *see also* DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 194–96 (1989) (stating that the purpose of the Due Process Clause was to protect against adverse government action but not to confer affirmative rights).

58. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 126–35, 166.

59. For a full exploration of children's constitutional rights, and how those rights might be articulated despite the challenges, for judicial interpretation or as a basis for legislative action, see Nancy E. Dowd, *Children's Equality Rights: Every Child's Right to Develop to Their Full Capacity*, 41 CARDOZO L. REV. (forthcoming 2020).

60. The G.I. Bill was created to assist veterans of World War II by providing housing support in the form of low-cost mortgages; health care support through the creation of veteran health care and health care facilities; and educational benefits so that veterans could complete college or other post-secondary training. Serviceman's Readjustment Act of 1944, Pub. L. No. 346, 268 Stat. 1767. The benefits were extended to include post-World War II service members as the result of multiple subsequent amendments. *G.I. Bill*, HISTORY (June 7, 2019), https://www.history.com/topics/world-war-ii/gi-bill#section_2 [<https://perma.cc/8TY5-H7YE>]. For critical insight and analysis, see generally Melissa Murray, *When War is Work: The G.I. Bill, Citizenship, and the Civic Generation*, 96 CAL. L. REV. 967 (2008).

61. The Great Society Program was a set of domestic policies initiated by President Lyndon B. Johnson to comprehensively address and reduce poverty, racial inequality, and crime, and to foster the environment. *Great Society*, HISTORY (Aug. 28, 2018), <https://www.history.com/topics/1960s/great-society> [<https://perma.cc/VWN7-N29X>]. One example of the enduring programs of that era is Medicare, the program initiated in 1966 that provides health care to senior citizens. *See* 42 U.S.C. §§ 1395w-101–1395w-154 (1966). There are many other programs of this era that endure. For an evaluation of the Great Society programs at 50 years since enactment, see generally *Evaluating the Success of the Great Society*, WASH.

argument that such a plan is outside the realm of American public policy.⁶² At the same time, the New Deal for Children aims to improve on those previous historical examples, as they left a legacy of racial hierarchy, the very problem — among other hierarchies — that the New Deal for Children seeks to eliminate.

The New Deal for Children assumes state responsibility for the developmental support of all children, therefore a “responsive state.”⁶³ State responsibility would include dismantling policies and structures that hinder children’s development. It would focus on identities that characterize existing children’s hierarchies and would require paying attention to race and gender as well as other categories to monitor, correct, and dismantle structures and policies that create developmental challenges. Just as importantly, it would require affirmative support to foster children’s development to their maximum capacity, building human capital and changing the macrosystem concerning the value and equality of all children. This would be grounded in concepts of children’s rights as affirmative rights based on their dependency, vulnerability, needs, and their preparation for equal social citizenship.

This comprehensive approach would require not only significant reform of existing systems, such as health, education, and juvenile justice, but also system creation, like comprehensive early childhood supports and affirmative family supports throughout childhood. It requires addressing overarching problems that have multisystemic effects, particularly poverty and racism. The breadth of system change is essential for children’s development, and includes, although it is not limited to, these areas:

- Health: including prenatal health, children’s health, and family health, focusing on health equity and the social determinants of health, not simply treatment; also including nutrition support and supportive family visits.
- Education: beginning with early childhood education, continuing through primary and secondary education, and post-secondary college or other training; including mental health screening and

POST (May 17, 2014), <http://www.washingtonpost.com/wp-srv/special/national/great-society-at-50/?noredirect=on> [<https://perma.cc/MH3S-ESRT>]. For a specific focus on the War on Poverty, see generally Martha J. Bailey & Nicholas J. Duquette, *How Johnson Fought the War on Poverty: The Economics and Politics of Funding at the Office of Economic Opportunity*, 74 J. ECON. HIST. 351 (2014).

62. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 138–41.

63. On the concept of a responsive state, see generally Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251 (2010).

early identification and support for children with learning disabilities and other disabilities;

- Parental/family support: including economic (minimum income) support, education, skills, services, birth and adoption paid leave, leave to care for sick children or to participate in children's educational activities, and other policies to assure work-family balance;
- Resilience support for sources of toxic stress or episodic stress to children, families, and communities, as well as the elimination or diminution of the sources of stress;
- Anti-poverty, economic stabilization measures: including cash transfers, in kind transfers, services and support;
- Housing, either separately or as part of an overall economic policy, insuring neighborhoods without concentrated poverty or concentrated poor housing or housing conditions;
- Public safety: including positive relationships between police and children, and peaceful neighborhoods;
- Universal, high-quality childcare and afterschool programs;
- Adolescent youth services support: including work, skills, enrichment, and well-being; fostering positive identities of race and gender; safety, non-violence; positive sexuality; and reforming juvenile justice as a system of well-being and rehabilitation with incarceration as a last resort; and
- Child and family well-being and crisis support, including prevention to the extent possible of domestic violence and child abuse and neglect by effective interventions after minimizing factors that contribute to these behaviors, and providing effective systems and support for children removed from their families of origin.⁶⁴

An example of system creation that illustrates the comprehensiveness of the New Deal is early childhood. As systems are either reformed or created, the vision of the New Deal is to ensure interconnection with the whole rather than isolation of systems. The New Deal is dedicated to developmental equality for all children. Early childhood is a developmental phase but should not and cannot be isolated from essential support of children's development to adulthood. The substantial lack of early childhood systems provides an opportunity to create equal supports for all children measured by needs. Such a system might include, but is not limited to, the following:

64. DOWD, REIMAGINING EQUALITY, *supra* note 13, at 148–49.

- Pre-birth support
- Healthcare (child and family), including the importance of the first 1000 days
- Work/family policy
- Income support linked to meaningful work
- Fostering parental care in the development of children, including nonresident parents
- Early childhood developmental support for parents
- High-quality childcare
- High-quality early childhood education
- Resilience services for trauma
- Early identification of disabilities, and support for children with disabilities and their families⁶⁵

The New Deal is grounded in the following components and principles.⁶⁶ First, it is developmentally informed, premised on the right of every child to developmental equality, defined as the right to be supported to their developmental capacity. Second, it is focused on structural and systemic change and creation, and the interaction of systems with each other, to provide an ecology of support and equality. Third, poverty looms as an overarching issue that must be addressed to eliminate one of the core challenges that undermines the development of one in five American children. Fourth, also crucial within this vision of change is cultural change, confrontation, and movement with respect to racism. The identified barriers and challenges placed in the way of children of color must be eliminated. The exposure of any other identity-linked hierarchies should trigger similar cultural strategies, to recognize and honor the dignity of all children. Fifth, the New Deal is a vision of federal or national policy, but with implementation geared to benefit from local, ground-up solutions, creativity, and empowerment. Finally, metrics and measurements are crucial to ensure movement forward and sustained change, and to trigger the responsibility to respond to any evidence of a reversion to the creation of inequalities rather than the support of developmental equality.

65. *Id.*

66. *Id.*

II. FURTHER QUESTIONS: HOW DO WE ACHIEVE THE NEW DEAL FOR CHILDREN?

There are a host of questions about particulars and programs of the New Deal that might be asked. No doubt there are critiques and modifications that might be offered. I conclude with some of the questions or challenges that I see with re-imagining equality and implementing a New Deal for Children.

First, it is critical to sustain the focus on racial equality.⁶⁷ Developmental equality and the New Deal for Children is a model built on the problems and issues of children of color, specifically Black boys. There are assuredly other patterns in the hierarchies among children that require our attention as well, and in no way is the model one that prioritizes Black boys, but rather it treats their life patterns as exemplifying the role of race, gender, and class in hierarchies among children. But we should resist, in particular, moving away from race. Racial inequalities among children should remain front and center, not be lost in a “universal” model. We should insist that children should be supported universally to develop to their maximum capacity, but we must be unflinching in our scrutiny of how race, among other bases for hierarchy, compromises and challenges the opportunities of children of color. Universalism is the danger that we treat all children as if race and other identities are irrelevant, when they are relevant in at least two ways. First, race and other identities like it, alone or in combination, are evident in the pattern of hierarchies that subordinate children of color and naturalize that hierarchy. Development is not neutral; it is differentiated by race and other identities creating unique barriers and challenges. Second, race and racism are complex subordinating negatives that we must confront and replace with multicultural, diverse respect and dignity. Among the affirmative developmental supports owed to each child is the valuing of their racial identity without conferring on any racial group hierarchical racial privilege. We should remain focused on the barriers and challenges that go to the recognition of the value and humanity of children of color.⁶⁸

67. The critical need to remain focused on race within policies on families and children is the focus of recent work by Robin Lenhardt that identifies both theoretical and practical approaches to how this can and should be done. See generally R.A. Lenhardt, *Race Audits*, 62 HASTINGS L.J. 1527 (2011); R.A. Lenhardt, *Race, Dignity, and the Right to Marry*, 84 FORDHAM L. REV. 53 (2015); R.A. Lenhardt, *The Color of Kinship*, 102 IOWA L. REV. 2071 (2017).

68. See *supra* notes 38–39.

Second, in addition to preventing the erasure of race, how can radical change be sustained? How can “domestication” — meaning a less comprehensive or watered down version of the New Deal — be avoided?⁶⁹ For example, we are currently witnessing the elevation of early childhood policies and issues into the 2020 presidential campaigns.⁷⁰ While it is laudable that those issues are in the public domain, it is troubling that they are far less comprehensive than what is needed, and that they are not linked to a broader range of policies essential to children’s well-being and equality at this earliest developmental stage, and to the supports necessary at later developmental stages.⁷¹ Incremental change should not be ignored, but keeping the big picture — the whole Deal — in mind is critical. At the same time, domestication may also result from a flawed vision or implementation of a broad program that deviates from its radical origin. What lessons are to be learned from the flawed record of Reconstruction and the racial limitations of the 1930s New Deal and the G.I. Bill? A comprehensive New Deal for Children is essential because the factors influencing meaningful development for children are linked to multiple systems. Systemwide change is necessary if we mean to effect real equality.

Third, as a theoretical constitutional or policy argument, it is important to solidify justifying maximum support (development to every child’s capacity) versus defining equality as a minimum or adequate level. Arguments over resources can lead to compromises over the goals that lead to sustaining hierarchy. This is familiar from existing policy. For example, Head Start, designed to provide high quality early childhood learning to low-income children, and nearly universally positively reviewed, has never been fully funded, failing to

69. See Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1445–46 (2016) (discussing the problem of domestication amidst the benefit of slow movements of progressive change).

70. See Anna North, *We Asked All the 2020 Democrats How They’d Fix Child Care. Here’s What They Said*, VOX (July 5, 2019), <https://www.vox.com/2019/5/22/18302875/2020-election-democrats-child-care-kids-president> [https://perma.cc/2DTC-7LEX]; *Universal Childcare and Early Learning Act*, OFF. U.S. SENATOR ELIZABETH WARREN (Feb. 2019), https://www.warren.senate.gov/imo/media/doc/Universal_Child_Care_Policy_Brief_2019.pdf [https://perma.cc/X35L-77YG].

71. This is reminiscent of the enactment of the parental leave statute, Family and Medical Leave Act, 29 U.S.C. §§ 2601–2654 (1993), heralded as a new era of work-family support, but over the decades since its enactment, very little progress has been made to ensure that parental leave is universal, paid, and developmentally sufficient in terms of time. Anna Faber et al., *Family and Medical Leave Act*, 19 GEO. J. GENDER & L. 305 (2018).

serve even a majority of the children it was designed to reach.⁷² Programs aimed at reducing incarceration of juveniles as adolescents have succeeded in reducing incarceration, but the levels remain high, contradicting the notion of serving children's well-being by more successful high-quality diversion programs.⁷³ Economic support is another example — the limited welfare support provided does not successfully reduce child poverty.⁷⁴

Fourth, can the intrusive state become a responsive state?⁷⁵ This question is critical and difficult to answer. The New Deal is linked to a responsive state, but the New Deal would also significantly increase state power with respect to families. The record of such power being used differentially and negatively along lines of subordination might suggest increasing state power is problematic. It is important to question whether this can be done in an affirmative, respectful, and supportive way that empowers families to use state resources rather than to enhance historically troublesome state power that intrudes, damages, dismantles, and subordinates. If the broad legislative solutions at the federal level as I have sketched here are not possible because the concept of the responsive state is not embraced, then other ways to accomplish the New Deal have to be devised. This suggests solutions geared toward facilitating grassroots, nongovernmental change rather than centralized federal programs.⁷⁶

72. Head Start reaches only 30% of eligible children. Marianne M. Hillemeier et al., *Quality Disparities in Child Care for At-Risk Children: Comparing Head Start and Non-Head Start Settings*, 17 *MATERNAL & CHILD HEALTH J.* 180, 180, 183 (2013).

73. Rates of juvenile incarceration have declined over the past decade. *Juvenile Incarceration*, *CHILD TRENDS* (July 1, 2016), <https://www.childtrends.org/indicators/juvenile-detention> [https://perma.cc/BBL3-CQES]. Nevertheless, the rate of juvenile incarceration remains high: nearly 55,000 juveniles are incarcerated on any given day. Wendy Sawyer, *Youth Confinement: The Whole Pie*, *PRISON POL'Y INITIATIVE* (Feb. 27, 2018), <https://www.prisonpolicy.org/reports/youth2018.html> [https://perma.cc/3V78-2T23]. The United States continues to have the highest rate of incarceration globally. Peter Wagner & Wendy Sawyer, *States of Incarceration: The Global Context 2018*, *PRISON POL'Y INITIATIVE* (June 2018), <https://www.prisonpolicy.org/global/2018.html> [https://perma.cc/SEF3-KSSL].

74. The U.S. child poverty rate has hovered at or above 20% for decades, and the rate is highest among children from birth to age five. *CHILDREN'S DEFENSE FUND, CHILD POVERTY IN AMERICA 2017: NATIONAL ANALYSIS 1-2* (2018), <https://www.childrensdefense.org/wp-content/uploads/2018/09/Child-Poverty-in-America-2017-National-Fact-Sheet.pdf> [https://perma.cc/JM8M-F2HY]. For African American children the rate is one in three children. *Id.* at 1.

75. On the concept of the responsive state, see generally Fineman, *supra* note 63.

76. A possible starting point might be, for example, the Harlem Children's Zone, which has significantly relied on private funding to work around the limitations of

Finally, and as a corollary to the question of the intrusive versus the responsive state, can we imagine supporting families and parents instead of privatizing responsibility, or explaining or blaming families for structural inequalities? Under the guise of respecting families, we have made privacy the support for inequality. Is our commitment to equality strong enough to support all families because they are essential to children?

* * *

In order to answer these questions, our vision must be clear. At this moment of deep challenge to our principles and priorities, alternate visions are essential. My hope is that this issue of the *Fordham Urban Law Journal* brings multiple insights among the many that are needed to advocate for all children. We will all benefit, as a world fit for *all* children is a world fit for all of us.⁷⁷

state and federal funding. *See generally* PAUL TOUGH, *WHATEVER IT TAKES: GEOFFREY CANADA'S QUEST TO CHANGE HARLEM AND AMERICA* (2008).

77. "We want a world fit for children, because a world fit for us is a world fit for everyone." UNICEF, *A WORLD FIT FOR US: THE CHILDREN'S STATEMENT FROM THE UN SPECIAL SESSION ON CHILDREN: FIVE YEARS ON 2* (2007), https://www.unicef.org/publications/files/A_World_Fit_for_Us.pdf [<https://perma.cc/MG4Q-W4ZG>].