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Restorative Relationships and “Radical Help”: Reimagining Welfare-to-Work Beyond the Market-Family Divide

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**RESTORATIVE RELATIONSHIPS AND “RADICAL HELP”:
REIMAGINING WELFARE-TO-WORK BEYOND THE
MARKET-FAMILY DIVIDE**

Lynn D. Lu*

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INTRODUCTION

The unprecedented global lockdown in response to the COVID-19 pandemic exposed the extreme vulnerability of “essential” yet underpaid workers, the vast inequality between the wealthy and less fortunate, and the bottomless pit facing those without a social safety net.¹ While the crisis has exposed the near-universality of human susceptibility to disease and unemployment in a world in which few can safely work,² it has also highlighted the disproportionate precarity experienced by low-wage and contingent workers, people of color, and non-citizens.³ Well before the pandemic, rampant socioeconomic and racial inequality, high underemployment and concentration of wealth, along with advances in technology, threatened to render many human workers obsolete, powerless, and in need of social support and care.⁴ At the same time, in the United States, the Trump administration sought to eliminate an already shrunken social safety net by extending punitive workfare ideology—originally reserved for poor, single mothers receiving cash assistance—to all low-income individuals in receipt of any form of government-funded support, whether health care, nutrition, or

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1. See Areeba Haider, *Congress Must Strengthen SNAP to Support Essential Workers During the Coronavirus Crisis*, CTR. FOR AM. PROGRESS (June 11, 2020, 9:05 AM), <https://www.americanprogress.org/issues/poverty/news/2020/06/11/486187/congress-must-strengthen-snap-support-essential-workers-coronavirus-crisis> [https://perma.cc/94C9-XGLS].
2. Ruthann Robson, *Positive Constitutionalism in a Pandemic: Demanding Responsibility from the Trump Administration*, 12 CONLAWNOW 15, 15–16 (2020) (delineating the exceptional “[f]ailures of the Trump Administration[‘s]” response to the pandemic in the United States separate and apart from pre-existing decimation of the federal social safety net).
3. See Haider, *supra* note 1.
4. See, e.g., Hilary G. Escajeda, *Zero Economic Value Humans?*, 10 WAKE FOREST J.L. & POL’Y 129, 129 (2019) (noting Pope Francis’s concern that “technological progress that replaces the need for human-performed work would be ‘detrimental to humanity.’”).

housing assistance.⁵ Such an ideology effectively conditions public support for needy individuals—some of whom are already employed at low wages—on their willingness and ability to engage in more work regardless of pay, employment conditions, or caregiving obligations.⁶ Left largely to their own devices, whether in times of crisis or calm, advocates have sought to strengthen interpersonal relationships and community bonds to provide the minimal assistance the government withholds from those who need it the most, while also mobilizing to demand basic social support for all members of society.⁷

This Article examines two experimental models—restorative justice and “radical help”—that seek to weave people back into the fabric of the social safety net and reform welfare administration.⁸ These social welfare innovations emphasize human relationships as an underutilized resource to highlight the power of meaningful social connections, which can help those experiencing everything from disability, discrimination, or bad luck to not only avoid disaster, but actually thrive and flourish in strong communities.⁹ Each model emphasizes human relationships to help poor people benefit voluntarily from social support and community engagement, instead of punishing them for noncompliance with paternalistic and

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5. Exec. Order No. 13,828, 83 Fed. Reg. 15,941, 15,944 (Apr. 10, 2018) (outlining policy statement to “[i]mprove employment outcomes and economic independence (including by strengthening existing work requirements for work-capable people and introducing new work requirements when legally permissible.)”); *see also* Tara Golshan, *Trump Wants to Slash Welfare with Stricter Work Requirements*, VOX (Apr. 10, 2018, 7:55 PM), <https://www.vox.com/2018/4/10/17221292/trump-welfare-executive-order-work-requirements> [<https://perma.cc/UN97-ZLCZ>].
 6. *See* Golshan, *supra* note 5.
 7. *See, e.g., Our Demands*, POOR PEOPLE’S CAMPAIGN: A NAT’L CALL FOR MORAL REVIVAL, <https://www.poorpeoplescampaign.org/about/our-demands> [<https://perma.cc/2GLS-9A2L>] (last visited Dec. 16, 2020) (“We demand fully-funded social welfare programs that provide cash and in-kind assistance directly to the poor, including poor families.”); *see* The Care Collective, *COVID-19 Pandemic: A Crisis of Care*, VERSO (Mar. 26, 2020), <https://www.versobooks.com/blogs/4617-covid-19-pandemic-a-crisis-of-care> [<https://perma.cc/JG47-X2UJ>] (calling for “building more caring kinships, communities, economies, states and worlds[.]” “expan[sion] [of] our notion of kinship[.]” diversifying forms of care, obligating the state to prioritize “social provision[.]” and “facilitating *greater* democratic engagement among communities.”).
 8. *See infra* Parts II, III.
 9. *See* Marie A. Failinger, *A Truly Good Work: Turning to Restorative Justice for Answers to the Welfare-to-Work Dilemma*, 15 GEO. J. ON POVERTY L. & POL’Y 209, 242–43 (2008).

exploitative government program work mandates.¹⁰ These relationships can center poor people's lived experiences and combine collaborative, localized, and responsive community support with technology to facilitate social networking, and ideally, increase economic security and empowerment.¹¹

At the same time, without appropriate safeguards or oversight, overreliance on private relationships for social welfare provision risks replicating existing forms of disempowerment.¹² In practice, both models risk reinscribing a private, marginalized sphere that is neither restorative nor radical, in which those who perform the work of nurturing relationships remain subject to the will of those with the power to offer or withhold assistance.¹³ Cautious optimism must be combined with meaningful protections to preserve the most promising aspects of new models while preventing the worst harms of what could be, in effect, a return to private, discretionary provision—or deprivation—of social support.¹⁴ Informed by feminist and antiracist theories critical of both market relations mediated by the state and private family relations entirely insulated from oversight,¹⁵ this Article concludes that we must continue to explore and adapt new models of welfare provision that truly protect and promote all human potential.¹⁶

Part I introduces the ideological underpinnings of workfare as manifested decades ago in welfare reform and its more recent expansion into other forms of public assistance.¹⁷ The rise of work requirements as a condition of receipt for basic subsistence benefits reflects entrenched ideas about personal responsibility, as well as gendered caregiving expectations that value market labor over

10. See *infra* Parts II, III.

11. See Hilary Cottam, *The Relational Society: A Response to Michael Rustin*, 56 *SOUNDINGS* 104, 105 (2014) [hereinafter Cottam, *The Relational Society*].

12. See *id.* at 105.

13. See *infra* notes 284–89 and accompanying text.

14. See Suzanne M. Spencer-Wood, *The World Their Household: Changing Meanings of the Domestic Sphere in the Nineteenth Century*, in *THE ARCHAEOLOGY OF HOUSEHOLD ACTIVITIES* 162, 165 (Penelope Mary Allison ed., 1999) (“Starting in the 1970s some feminist anthropologists began to critique androcentric biases involved in the explicit construction of gender as a universal structural dichotomy, in which public active men dominated women who were devalued as domestic, passive, and subordinate . . .”).

15. See *infra* notes 290–305 and accompanying text.

16. See *infra* notes 342–51 and accompanying text.

17. See *infra* Part I; see Exec. Order No. 13,828, 83 Fed. Reg. 15,941, 15,944 (Apr. 10, 2018); see also Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 *L. & CONTEMP. PROBS.* 285, 285 (2010) (discussing expansion of the earned income tax credit as a component of 1996 welfare reform espousing work ideology).

carework and keep women relegated to the home or the low-wage service sector, regardless of preference.¹⁸ This form of punitive workfare enforces women's dependence on either market forces or patriarchal nuclear family structures for daily survival, limiting their economic mobility and security—and that of future generations.¹⁹ In this way, work ideology operates as a system of moral desert designed to punish those who do not or cannot conform their behavior to heterosexist, patriarchal norms.²⁰

Part II describes one alternative to punitive work ideology—i.e., restorative justice—advanced by poverty law scholar Marie Failinger, which seeks to reduce workfare's harshest effects by empowering individual participants with the support of their communities to make valuable social contributions that, in turn, further strengthen those communities.²¹ Failinger applies restorative justice principles to the welfare context and holds individual participants accountable to their communities for their own economic decisions and actions, while expanding their capabilities and work-life options.²² As an alternative to assignment of fault and imposition of economic sanctions, such a model asks what supportive services the community should provide to its members.²³ By taking into account unquantifiable, intangible strengths or barriers in the same individual, and allowing for a more realistic, holistic view of personal progress, restorative justice can adapt to individual circumstances and needs to achieve human interdependence—rather than a cramped goal of financial independence.²⁴

Ultimately, while restorative justice can have positive results in the workfare context, it remains constrained by existing social norms—including a market-discipline approach to economic self-sufficiency—which inevitably leads back to punishment for noncompliance with societal obligations.²⁵ In addition, restorative justice depends on ostensibly voluntary surrender of privacy rights with insufficient oversight to prevent potential abuses of coercive

18. Gwendolyn Mink, *Violating Women: Rights Abuses in the Welfare Police State* (2001), reprinted in *LOST GROUND: WELFARE REFORM, POVERTY, AND BEYOND* 95, 109 (Randy Albelda & Ann Withorn eds., 2002) (noting that some feminists accept work ideology rather than “risk return to compulsory domesticity.”).

19. *See id.* at 79–80.

20. *See id.*

21. *See infra* Part II; Failinger, *supra* note 9, at 212.

22. *See* discussion *infra* Section II.A.

23. *See, e.g., infra* notes 137–39 and accompanying text.

24. *See infra* notes 140–57 and accompanying text.

25. *See* Failinger, *supra* note 9, at 242.

power.²⁶ Without additional legal safeguards for those who continue to struggle even with the support of their communities, the model stops short of transforming the existing system that conditions assistance on moral desert.²⁷

Part III analyzes a second model, a form of relational welfare developed and designated “radical help” by British designer and social innovator Hilary Cottam, which identifies human relationships as society’s greatest resource for helping people realize their own goals and potential.²⁸ In this model, participants identify the local community members who are best positioned to support their individual capabilities, while also acknowledging the structural context and causes of their specific challenges.²⁹ Radical help aims to shift the focus of social welfare administration from bureaucracy and cost-containment to a relational form of welfare driven and sustained by genuine social bonds that support individuals rather than abandoning them.³⁰ Like restorative justice, radical help recognizes nonlinear paths for individual progress, which allow for missteps,³¹ bypasses bureaucracy in favor of adapting quickly to new and ever-changing circumstances,³² and affirms intangible and dignitary values distinct from the measurable, quantitative costs and benefits traditionally weighed in the balance.³³ Yet, while radical help aims to short-circuit government bureaucracy through genuine support for human relationships,³⁴ it too risks unduly privileging the private sphere without the meaningful oversight of private relationships needed to prevent exploitation of vulnerable individuals and safeguard against abuses of power and privilege.³⁵

26. See *id.* at 240–42 (describing informal means of controlling coercive power in restorative justice circles).

27. See *infra* notes 202–06 and accompanying text.

28. See *infra* Part III; see also *infra* notes 207–16 and accompanying text; see also HILARY COTTAM, RADICAL HELP: HOW WE CAN REMAKE THE RELATIONSHIPS BETWEEN US AND REVOLUTIONISE THE WELFARE STATE 205–07 (2018) [hereinafter COTTAM, RADICAL HELP]; see also Hilary Cottam, *Relational Welfare*, 48 SOUNDINGS 134, 144 (2011) [hereinafter Cottam, *Relational Welfare*].

29. See COTTAM, RADICAL HELP, *supra* note 28, at 204.

30. *Id.* at 184.

31. See *id.* at 70.

32. See *id.* at 264–66.

33. See *id.* at 38.

34. See Cottam, *The Relational Society*, *supra* note 11, at 105 (describing public services built on relationships as an alternative to state bureaucracies that overshadow personal relationships).

35. See *infra* notes 279–83 and accompanying text.

Finally, Part IV situates restorative and relational models of welfare against the rich backdrop of feminist and critical race theories that challenge neoliberal assumptions of humans as fully autonomous, unitary subjects and resist a bimodal system of hierarchy or subordination.³⁶ Such theories illuminate ways to transcend the market-family dichotomy and transform the stigma of workfare ideology based on moral desert and the false choices it presents into a more heterogeneous and dynamic web of social relations, with all of their nonlinear, intangible, and adaptive features.³⁷ Viewed in this light, restorative and relational models of welfare provision lay important groundwork to overcome the social disconnection and disempowerment imposed by punitive workfare ideology.³⁸ To lay that groundwork, these models neither tinker around the edges nor embrace a nostalgic return to the way things were; instead, they recognize and anticipate global developments that have eroded the labor market and the patriarchal nuclear family as traditional—albeit always contested—structures of socioeconomic support.³⁹

I. WORKFARE AS PUNISHMENT AND THE MARKET-FAMILY DIVIDE

The history of welfare reform in the United States reveals the powerful ideology of moral desert that limits basic social safety net support to those who follow the rules—however onerous or invasive.⁴⁰ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)⁴¹ restricted federal social

36. See *infra* Part IV.

37. See, e.g., Maxine Eichner, *The Family and the Market — Redux*, 13 THEORETICAL INQUIRIES L. 97, 98 (2012) (“Feminists have forcefully pointed out that the family-market demarcation is not a natural or inevitable feature of the world, but instead a conceptual distinction that is relatively recent, and which was founded on a particular set of political and economic assumptions.”).

38. See, e.g., Cottam, *Relational Welfare*, *supra* note 28, at 137–40, 143 (discussing value of relational welfare programs supported by modern technology and story of a family experiencing social disconnection).

39. See *infra* notes 290–97 and accompanying text.

40. See Failinger, *supra* note 9, at 214 (describing the tendency to consider welfare recipients morally and socially different as a dynamic embedded into the structure of workfare mandates).

41. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2105; see Ezra Rosser, *Introduction*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 1, 5 (Ezra Rosser ed., 2019) (“The move from a federally funded, rights-based cash welfare system to a block grant system that gave

spending to sanction single mothers—primarily perceived as Black “welfare queen[s]” living off the hard work of others⁴²—for behavior falling outside the patriarchal norms of “job preparation, work, and marriage.”⁴³ By conditioning receipt of subsistence-level benefits on compliance with strict rules governing work, family, and other life choices, workfare operates as an intrusive, punitive, and stigmatizing method of regulating the labor, sexuality, reproduction, and personal autonomy of poor people—especially women and people of color.⁴⁴ Decades later, federally funded cash assistance to families with dependent children reaches fewer and fewer households due to a combination of strict time limits on receipt, sanctions for failure to comply with work requirements,⁴⁵ and complicated, frequent, and intrusive rules for verifying ongoing financial need.⁴⁶ Yet, work requirements are increasingly featured in other forms of government assistance, like state waivers for Medicaid and Supplemental Nutrition Assistance (formerly known as food stamps),⁴⁷ that have historically had broader coverage, including for childless adults and those with greater financial resources.⁴⁸ As Ezra Rosser observes, “The challenge when it comes to cash welfare is the tremendous imbalance between the number of people it serves and the hold it has on the discourse about poverty.”⁴⁹ The expansion of work ideology to all forms of government assistance threatens to eliminate social

tremendous latitude to states fundamentally rewrote the relationship between federalism and antipoverty efforts.”).

42. See Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 S. CAL. INTERDISC. L.J. 257, 258 (2016); see Ann Cammett, *Welfare Queens Redux: Criminalizing Black Mothers in the Age of Neoliberalism*, 25 S. CAL. INTERDISC. L.J. 363, 391 (2016).

43. 42 U.S.C. § 601 (2012) (establishing block grants to states to implement Temporary Assistance to Needy Families (TANF)); see Mink, *supra* note 18, at 80 (“TANF’s foremost objective is to restore the patriarchal family.”).

44. See Mink, *supra* note 18, at 80. As Monica Bell and her co-authors note, “[a]lthough welfare rolls have never been majority black or Latinx, ‘controlling images’ of unmarried black and Puerto Rican women as welfare recipients began to guide political frames and political action on welfare” in the 1960s. Monica Bell et al., *Laboratories of Suffering: Toward Democratic Welfare Governance*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY, *supra* note 41, at 40, 46–47.

45. Rosser, *supra* note 41, at 5 (“The 1996 welfare reform act had three major components: work requirements, time limits, and block grants.”).

46. *Id.* at 6.

47. *Id.* at 11.

48. See *id.* at 9–10.

49. *Id.* at 5.

support for the growing number of people displaced from a shrinking market for jobs with livable wages.⁵⁰

Proponents of work requirements as a condition of receiving safety net benefits ground their argument in the assumption of a social contract or covenant that exacts social obligation in exchange for social support.⁵¹ As articulated by workfare architect Lawrence Mead, all major cultural and religious traditions share a consensus that society is obliged to provide relief to those few citizens who may suffer bad luck or hardship, and even to forgive those who transgress social norms.⁵² That relief must necessarily be confined to a small and narrowly defined subset of the population.⁵³ In exchange, recipients of poor relief must demonstrate their willingness to perform their moral obligation to society to the extent they are able, and those who do not are left to suffer as a disincentive to shirk their duties.⁵⁴ In this way, the number of recipients, in theory, may be cabined to only the most needy.⁵⁵

By purporting to eliminate any legal entitlement to basic subsistence benefits and instead imposing strict time limits and work mandates, welfare reform enacted a deficit model of poverty as an unending debt to society owed by inferior people undeserving of any assistance beyond the narrow and temporary.⁵⁶ Failing identifies an undercurrent of individual deficiency in the punitive history of public assistance culminating in workfare, which treats “[d]ifference as [s]ubordinating,” and economic disadvantage as justification for government oversight and discipline.⁵⁷ In keeping with what Failing coins the “tyranny of legal binaries” that pit work and morality against need and perceived laziness,⁵⁸ these assumptions

50. *Id.* at 5, 10.

51. *See id.* at 5, 13.

52. Lawrence M. Mead, *Moral Overload*, AM. AFFAIRS (Jan. 23, 2018), <https://americanaffairsjournal.org/2018/01/moral-overload/> [<https://perma.cc/E2VY-RD5D>].

53. *Id.*

54. *See* JOHN GILLIOM, *OVERSEERS OF THE POOR: SURVEILLANCE, RESISTANCE, AND THE LIMITS OF PRIVACY* 19–20 (2001). Gilliom identifies the central force behind welfare surveillance to detect fraud and unreported earned income as “the ‘means test’ which consists of some mechanism for determining if someone is eligible by assessing their needs, their resources, or their capacity to work” and that such focus on surveillance “reflect[s] both our faith in the importance of labor and our suspicion that people will do nearly anything to avoid it.” *Id.*

55. *See* Mead, *supra* note 52.

56. *See* Failing, *supra* note 9, at 214–15, 229.

57. *Id.* at 213, 225–26.

58. *Id.* at 218.

give rise, in modern workfare regimes, to expressions of work as punishment for failure,⁵⁹ work as medicine for physical or mental deficiency,⁶⁰ and work as payback for financial need.⁶¹ Such obligations can only be excused for limited reasons characterized as personal defects deserving of economic sanction.⁶² In addition, workfare depends on “[t]he [h]ypocrisy of [p]rogress,”⁶³ which credits individuals for upward economic mobility buoyed by social support, yet punishes individuals when it is societal support that is lacking, in the form of educational access, job security, or protection against discrimination or intimate partner violence.⁶⁴ In line with “the deeply held Western view of time as progressive, rather than cyclical or episodic,” individuals never merit relief for delays, interruptions, or backsliding from the elusive goal of financial independence—whatever the reason.⁶⁵

In addition to implementing a punitive philosophy, the recent history of social welfare in the United States is one of abdication of responsibility for structural economic inequality and disparities based on race, gender, geography, and other divides.⁶⁶ As David Super has documented, welfare administration has long been subject to various forms of decentralization and devolution⁶⁷: (1) to states, which retain authority to determine minimum benefit levels and eligibility criteria; (2) to government officials and agency caseworkers, who retain discretion to prioritize efficiency over equity; (3) to private actors, who have financial incentives to partner with agencies to provide public services with little accountability;⁶⁸ and finally, (4) to automated systems driven by artificial intelligence, which can permit little human intervention, or worse, import human biases and prejudices into algorithms with a life of their own.⁶⁹ As a result, the

59. *Id.* at 225.

60. *Id.* at 227.

61. *Id.* at 230.

62. *See id.* at 221–22.

63. *Id.* at 222.

64. *Id.* at 222–24.

65. *Id.* at 222.

66. *Id.* at 216–18.

67. *See* David A. Super, *Laboratories of Destitution: Democratic Experimentalism and the Failure of Antipoverty Law*, 157 U. PA. L. REV. 541, 545–46 (2008) (criticizing how decentralized decision making has negatively impacted antipoverty law).

68. *See id.* at 547.

69. *See* CATHY O’NEIL, *WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY* 5–9, 12–13 (2016) (discussing how lack of regulation and challenge to current algorithms has reinforced discrimination).

system permits and perpetuates abuses of power without meaningful public oversight.⁷⁰

In theory, welfare administration could be an opportunity for “democratic experimentalism,” as the resulting hybrid schemes between public and private, market-based and philanthropic, and federal and local entities can promote innovation by a range of stakeholders.⁷¹ Yet, Super notes that people living in poverty and struggling to survive on a daily basis may be the least able to engage in the governmental decisions that directly impact their lives in regular and meaningful ways, and are thus left out of the process.⁷² Dean Spade and other advocates of mutual aid see opportunities for community members to voluntarily organize themselves and provide for material needs of members through non-hierarchical networks based on reciprocal social provision and participatory decisionmaking for collective action.⁷³ When “real material needs” are effectively met, substantial commitment to sharing power in communities through such networks can, as organizer Mariame Kaba puts it, “build the relationships that are needed to push back on the state.”⁷⁴ Community organizing in this vein could work either alongside formal government or independent of the subordinating structures of either state or market-based systems, “in which wealth

70. *See id.* at 138–41.

71. *See, e.g.,* ZOE GANNON & NEAL LAWSON, CO-PRODUCTION: THE MODERNIZATION OF PUBLIC SERVICES BY STAFF AND USERS 21–22 (2008), <https://www.compassonline.org.uk/wp-content/uploads/2013/05/CO-PRODUCTION.pdf> [<https://perma.cc/2SSU-FQJR>] (advocating for participatory co-production that would “creat[e] a new settlement between government, workers and the people who use and need [public] services.”).

72. *See* Super, *supra* note 67, at 547; *see also* Bell et al., *supra* note 44, at 66 (“[W]elfare policy most directly affects the poorest Americans, yet poor Americans have long had virtually no power over the institutions and actors that make decisions about welfare policy.”).

73. *See* Dean Spade, *Solidarity Not Charity: Mutual Aid for Mobilization and Survival*, 38 SOC. TEXT 131, 136–46 (2020). Spade calls for the creation of “horizontal, participatory decision-making processes [that] . . . utilize consensus decision making to cultivate meaningful collective control and present co-optation.” *Id.* at 144. *See also* THE CARE COLLECTIVE, THE CARE MANIFESTO: THE POLITICS OF INTERDEPENDENCE 46 (2020) (“[M]utual support, public space, shared resources and local democracy” are four crucial features that “[c]aring communities need to be strengthened, pluralized and diversified” and “which, brought together, form what we call a ‘sharing infrastructure’ at community level.”).

74. Jia Tolentino, *Can I Help You? The Meaning of Mutual Aid During a Pandemic*, NEW YORKER, May 18, 2020, at 24, 26.

and resources are extracted and concentrated and most people can survive only by participating in various extractive relationships.”⁷⁵

Nonetheless, a strong governmental social safety net remains a necessary pre-condition of any form of civic engagement.⁷⁶ Amid the explicit sexual regulation and implicit victim-blaming ideology espoused by welfare reform that withholds state support, many women and people of color are hard-pressed to find accessible spaces in which their voices and choices can be heard and valued without additional reciprocal obligations.⁷⁷ The micromanagement of women’s lives and those of their children threatens to keep them trapped in systems that are not of their own making and difficult to escape, even with empowering community care and support.⁷⁸

Lucie White’s reflection on the experience of a composite client, Mrs. G., highlights the transitory power of defiance against governmental accusations of fraud and mismanagement of meager public benefits to stave off the invasive and punitive welfare system, with its far-reaching control of women’s daily lives and decisionmaking for their own families.⁷⁹ Rather than humble herself to the level of welfare agency rules that permit spending on necessary items only, a mother defiantly and proudly announces she has spent money received from the settlement of a lawsuit to purchase not bare essentials, but the luxury of Sunday shoes for her children.⁸⁰ In so doing, she simultaneously redefines need and necessary living expenses on her own terms and displays her household spending to all without shame.⁸¹ Indeed, following the standard rules requires exposing personal and financial choices to scrutiny.⁸² For example, Mrs. G’s own attorney casually and routinely assumes that Mrs. G.

75. Spade, *supra* note 73, at 136. In Spade’s conception, “mutual aid is an often devalued iteration of radical collective care that provides a transformative alternative” that would not just reform but “dismantle” systems that inhibit collective self-determination. *Id.* at 131, 133. Instead, proponents of mutual aid driven by “solidarity not charity” seek systems of material aid “controlled by the people who use it.” *Id.* at 135.

76. See Johnathan Conning & Michael Kevane, *Community-Based Targeting Mechanisms for Social Safety Nets: A Critical Review*, 30 *WORLD DEV.* 375, 375–76 (2002).

77. See Bell et al., *supra* note 44, at 67 (“The problem of legal estrangement – a process by which institutions signal to poor people that they are outsiders within their own nation – also chills their democratic participation.”).

78. See *id.* at 40–42.

79. Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 *BUFF. L. REV.* 1, 48 (1990).

80. See *id.* at 31.

81. See *id.* at 48–51.

82. See *id.* at 30–31 (highlighting scrutiny of personal finances as proof of benefit eligibility during a welfare hearing).

can and will bring in actual pairs of her children's delapidated shoes as evidence of her impoverished and destitute situation, rather than letting her own truth-telling testimony speak for itself.⁸³

Mrs. G's considerable dependence on the discretion of government actors, who retain the authority to bestow or withhold crucial assistance at will, requires conformity and leaves her perpetually uncertain about her chances for a favorable outcome in any given conflict or dispute with the welfare agency.⁸⁴ In this setting, Mrs. G's intervention on her own behalf is limited to acquiescence, supplication, or a limited form of resistance only in the moment, before she is subject to subordination once again.⁸⁵ Mrs. G's story powerfully captures the routine disempowerment that the welfare system enacts on families—and their advocates—as a condition of receiving basic subsistence assistance that a humane society owes its citizens, without questions asked.⁸⁶ The level of discipline and punishment involved in endlessly justifying one's deservingness of social support is excessive and intrusive.⁸⁷ In order to receive basic benefits for survival, the poor give up their right to be left alone,⁸⁸ and the burden falls mainly on the shoulders of Black single mothers.⁸⁹

One condition of government assistance is acceptance of the first job available, at whatever wage, and under any work conditions.⁹⁰

83. *See id.* at 30.

84. *See generally id.* at 22–30.

85. *See id.* at 31–32.

86. *See generally id.* at 32–44.

87. *See id.*

88. Khiara Bridges makes the compelling argument that Black women and poor women have been entirely “dispossessed of privacy rights; they are not bearers of privacy rights.” KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* 11 (2017); *see* Mink, *supra* note 18, at 80 (TANF “disciplines recipients by either stealing or impairing their basic rights.”); *see also* GILLIOM, *supra* note 54, at 125 (recognizing that “[p]rivacy” is a very important and meaningful thing to lots of people,” but is underenforced, particularly for the poor).

89. GILLIOM, *supra* note 54, at 27 (stating the federal welfare program’s “emphasis on the individual determination of need, frequent reporting, and ongoing determinations of ‘worthiness,’ is driven to engage in some of the most invasive forms of scrutiny imaginable[,]” and that such programs “are also tied to the fact that they deal with those who would be considered society’s least powerful—poor, often minority, women and children.”).

90. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 12–14 (2d ed. 1993); *see also* William P. Quigley, *Backwards into the Future: How Welfare Changes in the Millennium Resemble English Poor Law of the Middle Ages*, 9 *STAN. L. & POL’Y REV.* 101, 102 (1998); *see*

The benefits system also requires applicants to exhaust existing resources before authorizing public assistance.⁹¹ The additional requirement that single parents cooperate with child support enforcement against the noncustodial parent, or risk reduction of benefits as a sanction, pushes such a philosophy to extremes; it does so even where custodial parents—disproportionately mothers—have good reasons not to upset a delicate existing balance of in-kind support or voluntary childcare arrangements that coercive economic sanctions would endanger.⁹² Receipt of subsistence benefits thus requires the surrender of “vocational freedom, sexual privacy, and reproductive choice, as well as the right to make intimate decisions about how to be and raise a family.”⁹³ This system regulates women’s fertility, relationships with absent fathers, relationships to the job market, and relationships to agency caseworkers who have the authority to withhold essential assistance.⁹⁴ It permits intrusions where households fail to conform to the accepted model that privileges households with a male provider, and normalizes intrusion and invasion into the privacy of only some households.⁹⁵

The invasive welfare regime enacts surveillance and punishment as a vestige of patriarchal, racist, and capitalist control of women’s bodies and reproductive capabilities, binding them in dependence on state assistance in the absence of a male breadwinner.⁹⁶ As Anna Marie Smith recounts, PRWORA enacted a regime of regulation and control of poor women’s fertility and sexual freedom that more economically secure women do not face.⁹⁷ She examines the sexual regulation of women through welfare policies controlling mandatory abstinence education, sanctions for “noncooperation” with child support enforcement, and family cap policies limiting assistance

also Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39 U. BALT. L.F. 1, 3–5 (2008).

91. See Quigley, *supra* note 90, at 102.

92. See Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1029 (2007) (“Fragile relationships between mothers, fathers, and children are often broken. . . . And the social fabric is torn as significant numbers of welfare fathers retreat from the workforce and their families.”).

93. Mink, *supra* note 18, at 79.

94. *Id.* at 81 (“[T]he TANF regime treats wage work as the alternative to marriage, not to welfare—as punishment for mothers’ independence.”).

95. See Gilman, *supra* note 90, at 2.

96. See Randy Albelda, *Fallacies of Welfare-to-Work Policies*, in LOST GROUND: WELFARE REFORM, POVERTY AND BEYOND 79, 88–90 (Albelda & Withorn eds., 2002).

97. Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 144–45 (2002).

regardless of the number of children in the household, finding disparate exposure to invasions of privacy at every turn.⁹⁸ “In essence, every mother who wishes to freely determine the structure of her childbearing and household must not only secure the cooperation of the biological father; she must also be wealthy enough to purchase, in effect, governmental respect for her autonomy.”⁹⁹

White’s analysis of Mrs. G’s administrative welfare hearing lays bare both the possibilities and limits of a context in which a welfare recipient and her entire experience of intimidation, humiliation, and objectification culminate in a few minutes of rebellion, defiance, and reclamation in front of institutional actors who may or may not fully receive the message.¹⁰⁰ Regardless of the power of her declaration in the moment, “it was an act that did little to change the harsh landscape which constricts Mrs. G. from more sustained and more effective political participation. Substantial change in that landscape will come only as such fragile moments of dignity are supported and validated by the law.”¹⁰¹ White acknowledges that this form of resistance is limited without the substantive legal changes that would transform the punitive system into a supportive one; a new system that would restore entitlement to social support as the norm, rather than as a devalued alternative to the patriarchal model favoring a male breadwinner supported by a female caregiver and reproducer of labor.¹⁰²

Essential for upholding neoliberal and patriarchal dichotomies between private and public forms of social support is the failure to value carework in the home and the need for low-wage workers in the labor market.¹⁰³ The stigma attached to benefit receipt and poverty more generally derives from expectations of male breadwinners as heads of traditional heterosexual nuclear households and women’s roles as uncompensated caregivers in the home.¹⁰⁴ At the same time, regulation of the labor market to keep wages low and labor supplies dependent on employers has limited women in their

98. *Id.* at 140.

99. *Id.*; see also Michele Estrin Gilman, *The Class Differential in Privacy Law*, 77 BROOK. L. REV. 1389, 1406 (2012).

100. See White, *supra* note 79, at 32–33.

101. *Id.* at 52; see also Gilman, *supra* note 99, at 1442.

102. See White, *supra* note 79, at 53–54.

103. See Cammett, *supra* note 42, at 374 (describing criminalization of low-income, Black working mothers who may rely on community support provided in the form of informal, uncompensated childcare).

104. See Albelda, *supra* note 96, at 91 (“For some families having the sole adult in the labor force is not always possible or desirable.”).

ability to fill jobs typically reserved for males, and has limited the wages available for women to be heads of their own households without men.¹⁰⁵ The ideal of marriage with women in the home—versus single women in the labor market—enforces patriarchal dependence on men to a damaging degree, particularly where intimate partner violence may occur.¹⁰⁶ Strict definitions of such violence also limit who can claim good cause to be excused from application of the most punitive and invasive rules.¹⁰⁷ Within this system, according to the market discipline of workfare, opportunities for impacted individuals to have a voice and a life outside its control are scarce.¹⁰⁸

Of course, federal constitutional protections have nothing to say beyond offering the most minimal due process protections,¹⁰⁹ with any protection beyond the minimum depending in part on a kind of cost-benefit analysis that favors efficiency overall.¹¹⁰ The bruising rollbacks enacted by welfare reform in 1996 show a glaring need for restored federal government oversight and strong legal protections for those in need of social support.¹¹¹ Even with minimal due

105. Mink, *supra* note 18, at 81.

106. *Id.* (“Far from ‘ending dependency,’ the TANF regime actually favors poor mothers’ dependence on individual men.”).

107. 42 U.S.C. § 602(a)(7) (2018); 45 C.F.R. §§ 260.50–.59 (2019) (stating the option to create special programs that permit domestic violence survivors to waive certain workfare requirements).

108. *See* Bell et al., *supra* note 44, at 65.

For roughly one decade in welfare’s 73-year history, welfare recipients were part of a movement [the National Welfare Rights Organization] that shaped the national agenda and pushed against the dehumanization of welfare recipients. Since the demise of the welfare rights movement, families who rely on welfare have become faceless, nameless and, too often, mired in shame.

Id.

109. *See* Lindsey v. Normet, 405 U.S. 56, 74 (1972) (stating “the Constitution does not provide judicial remedies for every social and economic ill[,]” such as accrual of debt for uninhabitable residence); *see also* Jefferson v. Hackney, 406 U.S. 535, 546 (1972) (“[T]he [state] legislature’s efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket.”); *see also* Bell et al., *supra* note 44, at 48–49 (discussing “tentative” Supreme Court support for “a somewhat more nationally standardized approach to [welfare] during the 1960s and 1970s.”) (footnote omitted).

110. *See* Julie A. Nice, *No Scrutiny Whatsoever: Deconstitutionalization of Poverty Law, Dual Rules of Law, & Dialogic Default*, 35 *FORDHAM URB. L.J.* 629, 670 (2008); *see also* Gilman, *supra* note 99, at 1444–45.

111. *See* Nice, *supra* note 110, at 633–36.

process protections of notice and an opportunity to be heard, without actual outcomes that guarantee assistance—and some measure of autonomy—the system remains a harsh gatekeeper that exacts high costs deemed appropriate to achieve the goal of excluding all but the most desperate and willing to abide by harsh rules.¹¹²

Relational models that explicitly seek to return human relationships to social welfare provision are among the new models of welfare that have been proposed or piloted as an alternative to the punitive, bureaucratic, and dehumanizing workfare system.¹¹³ While alternative models hold promise for blunting the harsh work ideology that exposes women—disproportionately women of color—to stigma based on their sexual and family relationships and labor market choices, without additional safeguards, women may be unable to transcend the dichotomy of labor market and family relations, the inevitability of state intrusion into social support, or the potential abuses of power these issues permit and perpetuate.¹¹⁴

II. RESTORING THE SAFETY NET FOR SANCTIONS: RESTORATIVE JUSTICE AS AN ALTERNATIVE TO PUNITIVE WORKFARE

A. *Choosing Relationships Over Retribution*

Restorative justice advocates have made inroads into entrenched systems of mass incarceration and overcriminalization that operate disproportionately as mechanisms of behavioral control in urban, low-income, and predominately Black communities.¹¹⁵ By shifting

112. See Gilman, *supra* note 99, at 1390–93, 1397–98, 1410–12.

113. See Failinger, *supra* note 9, at 234–40; see also Cottam, *Relational Welfare*, *supra* note 28, at 136–41.

114. See discussion *infra* Part IV.

115. See Julie Goldscheid, #MeToo, *Sexual Harassment and Accountability: Considering the Role of Restorative Approaches*, OHIO STATE J. DISP. RESOL. (forthcoming 2021) (manuscript at 15–16). Some version of restorative justice—including more broadly transformative justice—may be a component of broader calls for prison abolition and decriminalization in light of the failure of retributive criminal legal systems to realize public safety. See, e.g., I. Bennet Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 56 (2019) (imagining a future in which majority-minority population creates conditions rendering crimes of violence “relatively rare” and punishable by “treatment and therapy to work through anger issues, as well as restorative justice, perhaps in the form of sessions with survivors of the victim.”); see also Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 3, 46 (2019) (“Rejecting the carceral paradigm, black feminist abolitionists have proposed community-based transformative justice responses that

the criminal legal system's focus and funding from retributive punishment to restoration of the community bonds that are broken by harmful conduct, restorative justice circles and similar processes seek to hold individuals accountable for their behavior, while also providing community support to manage the external forces that can influence individual decisions or motivations.¹¹⁶ Instead of, for example, depriving whole neighborhoods of potentially productive residents through prolonged mass incarceration, restorative justice would use the power of human relationships to foster dialogue and ongoing engagement with individuals accused of violating community norms, thereby reshaping social interactions to build stronger, safer communities with more empowered and engaged members.¹¹⁷ As an alternative to harsh punishment for past wrongs meted out through retributive justice channels, restorative justice offers a more forward-looking bridge between socially disconnected individuals and the communities that surround them,¹¹⁸ and balances the goal of fostering personal accountability against the goal of providing community support to individuals so that they may thrive in society and support others.¹¹⁹

Restorative justice is used in contexts ranging from juvenile offenses to intimate partner violence to other violent offenses.¹²⁰ Restorative justice circles traditionally take place as regular, non-hierarchical gatherings involving different community stakeholders, at which everyone affected by an individual's behavior is empowered

address the social causes of violence and hold people accountable without exposing them to police violence and state incarceration.”).

116. See Goldscheid, *supra* note 115 (manuscript at 22) (“Some commentators endeavor to synthesize the various benefits and risks of restorative approaches and urge an integrated, multi-perspective and context-dependent approach to developing strategies. They argue that critics of restorative justice often incorrectly assume that the current system keeps women safe, which it does not.”).
117. See *id.* (manuscript at 15–18).
118. See Failing, *supra* note 9, at 234–40.
119. *Id.* at 324–42; see generally Goldscheid, *supra* note 115 (manuscript at 15–24) (defining restorative practices and discussing feminist debates about application of restorative justice to gender violence).
120. Charisa Smith, *Nothing About Us Without Us! The Failure of the Modern Juvenile Justice System and a Call for Community-Based Justice*, 4 J. APPLIED RSCH. ON CHILD., no. 1, 2013, at 1, 20–23; Leigh Goodmark, *Stop Treating Domestic Violence Differently from Other Crimes*, N.Y. TIMES (July 23, 2019), <https://www.nytimes.com/2019/07/23/opinion/domestic-violence-criminal-justice-reform-too.html> [<https://perma.cc/JK3M-9SA5>]; see, e.g., Charisa Klyö Smith, *#WhoAmI?: Harm & Remedy for Youth of the #MeToo Era*, 23 U. PA. J.L. & SOC. CHANGE (forthcoming 2020) (manuscript at 47–55).

to speak candidly without fear of reprisals or repercussions.¹²¹ Crucially, participation in restorative justice is voluntary and decoupled from negative consequences, although it usually occurs in the shadow of harsher enforcement mechanisms.¹²² While punishment may remain as an ultimate option, the focus has shifted away from individual retribution and stigmatization towards restoring and strengthening bonds of trust and mutual reliance for the future.¹²³ As Marie Failinger observes, “restorative systems put significant weight on the interdependence of the community and individual in the circle, and the acceptance of responsibility by both for the other.”¹²⁴ Restorative justice thus retains an emphasis on personal accountability while also recognizing society’s obligations to individual members, and removes the harshest consequences for failure to uphold one’s end of the bargain, at least until all alternatives have been exhausted.¹²⁵

Extended beyond the criminal or juvenile legal systems, restorative justice may seem ripe for application to the workfare context, designed as it is to provide or withhold basic cash assistance based on moral desert.¹²⁶ Faced with a host of complicated and strict rules intended to weed out undeserving claims—for example, due to untapped family resources, unreported income, or failure to accept the first available job regardless of pay or conditions—individuals in need risk appearing deficient at best and, at worst, deceitful.¹²⁷ Failinger argues that the existing system, which builds “work programs on paradigms that punish recipients, treat[s] them as diseases upon the body politic, or send[s] forth a multitude of unclear expectations about what a recipient ‘owes’ the public for support [is] ultimately self-defeating.”¹²⁸ Restorative justice aims to achieve

121. See Goldscheid, *supra* note 115 (manuscript at 18) (“[R]estorative practices invite empathy, responsibility and truth telling; by contrast, legal proceedings, whether civil or criminal, dis-incentivize truth telling because those who committed harm know they will be punished or subject to liability if they admit what happened.”).

122. See *id.* (“[S]ome [restorative justice] proponents believe that for it to be effective, it must remain outside the purview of courts or other punishment-oriented systems.”).

123. See *id.* (manuscript at 15–19).

124. Failinger, *supra* note 9, at 239.

125. See *id.* at 239–40.

126. See *id.* at 211–12.

127. See *id.* at 218–21, 231; see generally Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 644–51, 653–55 (2009) (exploring direct links between welfare programs and criminal prosecution for fraud or related program violations).

128. Failinger, *supra* note 9, at 242.

more than punishment for past wrongs, but also behavioral change as a mutual obligation between society and individuals to maximize the public good.¹²⁹ Restorative justice has important lessons for the workfare regime that governs the poor and punishes—through reduction of the very financial support needed for subsistence—those who are financially needy, but may fail to comply with onerous work or financial eligibility requirements without legally or socially acceptable reasons.¹³⁰

Failinger imagines the extension of restorative justice principles to the workfare context in her recounting of a hypothetical “experience of a welfare client with limited work skills who is referred to a restorative justice circle as part of a welfare-to-work program.”¹³¹ In contrast to the scenario facing Mrs. G. in an administrative hearing before a stranger authorized to hold her benefits hostage for bad behavior,¹³² in Failinger’s imagined scenario, “Janice, twenty-one years old and the mother of two young children, enters a large room, only to be greeted and hugged by two of the members of her restorative justice circle.”¹³³ The participants maintain an emotional bond that is neither focused on assigning blame nor merely transactional.¹³⁴ Throughout the course of the session, Janice recounts her struggles with juggling the demands and uncertainties of a new job, childcare, and her own need for adult social interactions.¹³⁵ When she acknowledges that late nights out with friends may be affecting her job performance or childcare arrangements, the circle members respectfully, but directly, test Janice’s decisionmaking assumptions and possibly wishful thinking.¹³⁶

In a more formal welfare agency hearing, Janice’s circumstances might be found insufficient to excuse tardiness at work and could result in a welfare sanction and loss of subsistence benefits for noncompliance with work requirements.¹³⁷ By contrast, at the end of the restorative circle meeting, although the participants do not pronounce success or resolution, they take affirmative steps to address Janice’s self-identified challenges by offering assistance with

129. *See supra* text accompanying notes 115–25.

130. *See Failinger, supra* note 9, at 216, 218–24, 227, 231.

131. *Id.* at 234.

132. *See supra* text accompanying notes 79–89.

133. Failinger, *supra* note 9, at 234.

134. *See id.* at 234–36.

135. *Id.* at 235.

136. *See id.* at 235–36.

137. *Id.* at 226–27.

some of her daily struggles—e.g., obtaining childcare on weekend evenings—and then schedule the next circle.¹³⁸ Deliberate dialogue and reflection in a circle without judgment or excuses thus can result in practical interventions to challenges “tackled by circle members in partnership with the recipient, neither solving her problems for her nor expecting her to solve them by herself.”¹³⁹

In the welfare context, restorative justice can focus on better processes and more humane interactions over faceless and remote government bureaucracy on the one hand, and abandonment to and dependence on unaccountable, unsupportive, and even potentially abusive private relationships on the other.¹⁴⁰ A restorative justice system could surround a participant struggling to comply with welfare program rules—including, for example, cooperation with child support enforcement that could escalate family violence—with a support network of community members who would hold her to her own priorities, commitments, and aspirations in a more mutually reinforcing process.¹⁴¹ A regularly occurring restorative justice circle would effectively assist a participant in an ongoing, individualized balancing of her own expressed needs, resources, and struggles—e.g., maintaining their own boundaries for safe contact with a non-custodial parent—assisting where possible and challenging her when warranted.¹⁴² “[R]estorative justice offers practical processes that actually account for the complexity in a welfare recipient’s situation, behaviors, and character.”¹⁴³ Such processes are mechanisms not seen in “legalized benefit programs with standardized work rules and other sanctionable compliance mechanisms.”¹⁴⁴

As Failinger’s entirely plausible scenario illustrates, restorative justice alters many of the assumptions that underlie traditionally punitive and compliance-focused workfare schemes.¹⁴⁵ First, instead of insisting on conformity with patriarchal and market-based models for organizing family and work relationships—in which self-sufficiency and self-actualization require timely attainment of the universal goals of marriage or paid work—restorative justice eschews the expectation of regular and unwavering linear progress towards

138. *Id.* at 236.

139. *Id.* at 242.

140. *See infra* notes 141–61 and accompanying text.

141. *See* Failinger, *supra* note 9, at 234–36.

142. *Id.* at 238.

143. *Id.*

144. *Id.* at 236.

145. *Id.* at 212.

any fixed, readily identifiable target.¹⁴⁶ Restorative justice is “at once optimistic—it assumes that people really make changes in their behavior and patterns of life choices—and realistic—it does not assume that this change is easy or that it is simply a matter of education or a ‘will to change.’”¹⁴⁷ Outcomes for human experiences cannot be measured in linear fashion.¹⁴⁸ Accordingly, “[r]estorative justice anticipates a bumpy trajectory that may involve some reverses and stalls in the recipient’s move toward her goals for her family.”¹⁴⁹

In addition, instead of advancing a static conception of “financial independence” as measured by formulaic cost-benefit analysis, restorative justice countenances intangible, unquantifiable factors that add value to the human experience of interdependence.¹⁵⁰ The restorative justice model does not seek to primarily maximize efficiencies or improve short-term outcomes as explicit goals.¹⁵¹ In addition, it does not count reduced incidents of noncompliance, but instead tracks increased strength of relationships.¹⁵² In this way, it measures factors other than efficiency and recidivism, potentially registering qualitative and intangible factors such as satisfaction, interest, or trust.¹⁵³ Indeed, this is in contrast to the idea of a social contract underlying workfare, in which everyone must fulfill strict work requirements in exchange for subsistence income.¹⁵⁴ Restorative justice has been described as an explicit “wager” that communities make on the social commitment of their individual members; however, it is more than a cold calculation based on probabilistic chance.¹⁵⁵ Rather, societies can choose to invest in their members unconditionally, based on human dignity rather than perceived deficits, and pool their risk in recognition of the misfortunes and mistakes that can derail even the best bets.¹⁵⁶ The key distinction is that restorative justice does not quantify the relative obligations of individuals and their communities, and thus precludes

146. *See id.* at 238.

147. *Id.* at 237.

148. *See id.* at 223.

149. *Id.* at 242.

150. *See id.* at 237.

151. *See id.* at 242–43.

152. *See id.* at 239–40.

153. *See id.* at 239.

154. *See infra* notes 155–57 and accompanying text.

155. *See* Marie A. Failing, *Ophelia with Child: A Restorative Approach to Legal Decision-Making by Teen Mothers*, 28 L. & INEQ., 255, 280–81 (2010).

156. *See* Failing, *supra* note 9, at 239 (“[R]estorative systems put significant weight on the interdependence of the community and the individual in the circle, and the acceptance of responsibility by both for the other.”).

the conclusion that anyone “owes” a debt to another, but at the same time takes mutuality of obligation in society into account as its own value.¹⁵⁷

Finally, restorative justice, by its nature, embodies an iterative process that can adapt to ever-changing, indeterminate individual and community needs and hopes.¹⁵⁸ What may make sense for one individual at one time may be utterly ineffective or impossible for another individual or another time.¹⁵⁹ As Failinger explains, “[b]ecause restorative processes are focused on past, present and future, the drive toward ensuring that individuals are always ‘progressing’ along a scale to some desired level of economic, psychological and social self-sufficiency will be muted to a large extent.”¹⁶⁰ Instead, “the restorative paradigm offers appropriate processes for the recipient to be accountable in a realistic way, factoring in limitations and modifying goals in a flexible manner which traditional welfare work programs, with their rigid ‘objective’ criteria and time limitations, cannot possibly achieve.”¹⁶¹

This flexibility and the lack of tangible outcome measures pegged to linear progress milestones may make systemic reform of punitive workfare difficult beyond altering the process used for resolving individual conflicts or disputes about who is ready, willing, or able to work.¹⁶² Nevertheless, so long as the workfare scheme remains focused on individual failings or desert, even small procedural reforms can improve experiences for many individuals whom society could better support and protect from destitution.¹⁶³ Even as relational approaches such as restorative justice reveal the reality of human interdependence and expose the myth of autonomy or self-sufficiency, minimal safety net and procedural protections remain essential to guard against further denigration of those who find

157. See Nicole Concordia, *Preserving Liberty in the American Justice System Through Circle Processes*, U. ST. THOMAS J.L. & PUB. POL’Y, Spring 2011, at 67, 76.

158. See Laurie S. Kohn, *What’s So Funny About Peace, Love, and Understanding? Restorative Justice as a New Paradigm for Domestic Violence Intervention*, 40 SETON HALL L. REV. 517, 570 (2010) (“A restorative justice session can adapt to the needs of the parties involved.”).

159. See *id.*

160. Failinger, *supra* note 9, at 242.

161. *Id.* at 239.

162. See *id.* at 226–27.

163. See *id.* at 225–26 (describing implication that workfare recipients are not equally deserving of employment opportunities because of their prior failures).

themselves on the undeserving side of the workfare equation and still subject to its unforgiving demands.¹⁶⁴

B. The Long Shadow of Sanctions

Restorative justice is positioned and interposed as a kinder, gentler form of dispute resolution.¹⁶⁵ Failinger envisions an alternative to punishment that would accomplish the dual goals of supporting participants while promoting accountability on a voluntary basis to foster greater self-determination.¹⁶⁶ Failinger explains that:

The goal of the restorative process is not punishment for bad behavior, nor is it to provide a convenient excuse for workers who have failed to live up to others' expectations. Rather, it is to hold the recipient accountable to her own self and goals with appropriate regard for unforeseen obstacles she may have encountered that have thwarted her ability to meet her own expectations.¹⁶⁷

Yet the restorative process still assumes the existence of disputes arising within a compliance enforcement system in which fault, liability, accountability, and responsibility are assigned against the individual for diffuse harms to society resulting from a failure to abide by its rules.¹⁶⁸ For example, individual decisions to decline employment for unacceptable reasons (e.g., an excessive commute, perhaps, or lack of career advancement opportunities) or to engage in creative household accounting deemed to be "mismanagement of funds," continue to subject welfare recipients to sanctions for decisions other workers or consumers routinely make without consequence.¹⁶⁹ Even with restorative justice available as an alternative, scrutiny of everyday work-life decisions as a condition of receiving subsistence benefits remains a burden for welfare recipients that the general public does not share.¹⁷⁰

164. See *supra* notes 25–27, 44–49 and accompanying text.

165. See Maggie T. Grace, *Criminal Alternative Dispute Resolution: Restoring Justice, Respecting Responsibility, and Renewing Public Norms*, 34 VT. L. REV. 563, 589 (2010) (juxtaposing restorative justice concepts against traditional punitive punishment dispute resolution).

166. See *infra* text accompanying notes 167–70.

167. Failinger, *supra* note 9, at 239.

168. See *id.* (alluding to desire of a compliance enforcement system to exert power over offenders to maintain social order).

169. See *id.* at 226–27.

170. *Id.*

Under workfare ideology, those who do not or cannot comply, but choose not to engage in restorative justice processes, remain subject to a punitive compliance mechanism.¹⁷¹ In this way, restorative justice remains a system of discipline.¹⁷² As Failinger observes, restorative justice is designed to preclude participants from “rationaliz[ing] (sometimes even justly) behavior that does not cooperate with the demands of the welfare system and is not in the best interests of their family,” as defined by the state.¹⁷³ Restorative justice circles may serve only as a safety valve in an unjust system—through which individuals beaten down by the unreasonable constraints and rules of profit maximization can gain some measure of individualized relief, understanding, or compassion—but true repair of dignitary harm remains elusive.¹⁷⁴ In a restorative justice system, emotions such as insolence or anger directed at a harsh workfare regime may count for little unless they can move the community forward toward strength.¹⁷⁵ Instead, to a degree, participants in restorative justice circles must embrace “internal change” and avoid a “victim mentality.”¹⁷⁶ Perhaps this is the price for the culture change needed to turn political support away from punishment and back towards entitlement based on human dignity.¹⁷⁷ Ultimately, however, the model may not be radical but merely reflect societal norms as they currently exist.¹⁷⁸ Indeed, Failinger acknowledges that “restorative circle participants bring with them the core values that we may expect those in the market economy to embrace and participate with welfare recipients in living out those values.”¹⁷⁹ As Dean Spade concludes, and the unprecedented unemployment crisis of the COVID-19 pandemic confirms, such expectations merely reinforce the characterization of “people who

171. See Noah D. Zatz, *Poverty Unmodified?: Critical Reflections on the Deserving/Undeserving Distinction*, 59 UCLA L. REV. 550, 556–57 (2012) (arguing for expanded eligibility and definition of need in a less punitive welfare system).

172. See *id.*

173. Failinger, *supra* note 9, at 239.

174. See *id.*

175. See *id.*

176. *Id.* at 238.

177. See Amy J. Cohen, *Moral Restorative Justice: A Political Genealogy of Activism and Neoliberalism in the United States*, 104 MINN. L. REV. 889, 892–93 (2019) (noting restorative justice is gaining political support in both national and state institutions).

178. Failinger, *supra* note 9, at 242.

179. *Id.*; see also Gilman, *supra* note 99, at 1442.

were already displaced by the ordinary disasters of capitalism [as] blameworthy.”¹⁸⁰

By contrast, what may truly be needed is a way to redefine “compliance” to account for realities of life and lived experiences that depart from market norms and values that privilege rational cost-benefit analysis for decisionmaking.¹⁸¹ Numerous studies warn against assuming that human beings may be simplistically influenced in their behavior by sticks or carrots—or solely responsible for the outcomes, whether good or bad.¹⁸² Likewise, the expectation that participants can self-define their own goals in restorative circles may presuppose a level of rational decisionmaking divorced from cognitive bias or emotional investment that few truly possess.¹⁸³

The decision to participate in restorative justice itself may be less than fully autonomous, even if rational.¹⁸⁴ Rather than mandate participation, as is the case with many forms of alternative dispute resolution,¹⁸⁵ restorative justice processes must be voluntary and not coerced, which seems nearly impossible when basic subsistence or family preservation may be at stake.¹⁸⁶ Even as a fully voluntary process, restorative justice requires transparency so that potential participants may assess its value for their own unique, individual circumstances.¹⁸⁷ What might such a process offer to someone like Mrs. G., whose experience with government-administered assistance involves only hierarchical processes and arbitrary exercises of agency discretion, even when occasionally applied in her favor for unknown and unpredictable reasons?¹⁸⁸ Restorative justice is also discretionary and individualized, which might more reliably offer solutions and support in Mrs. G.’s favor, particularly where her own involvement and voice are central and amplified.¹⁸⁹ Perhaps

180. Spade, *supra* note 73, at 141.

181. Mink, *supra* note 18, at 88 (“The main reasons for the persistence of poverty among former TANF recipients is that they are moving primarily into low-wage and contingent jobs without benefits, losing access to food stamps and Medicaid, and surrendering as much as 25 percent of their paychecks to child care.”).

182. See, e.g., Esther Duflo & Abhijit Banerjee, *Economic Incentives Don’t Always Do What We Want Them To*, N.Y. TIMES (Oct. 26, 2019), <https://www.nytimes.com/2019/10/26/opinion/sunday/duflo-banerjee-economic-incentives.html> [<https://perma.cc/RAB3-JBXN>].

183. Failing, *supra* note 9, at 237.

184. See *id.* at 238.

185. See *id.*

186. See *id.*

187. See *id.*

188. See *supra* text accompanying notes 79–89.

189. See White, *supra* note 79, at 52–53.

disapprobation could be replaced by compassion and understanding.¹⁹⁰ But the potential for broader legal change beyond her individual circumstances remains limited.¹⁹¹ Precisely because the stakes are lowered, the power of Mrs. G's voice and defiance may be diluted—perhaps in exchange for a better individual experience and safer space—but with less urgency to expand minimal protections for all.¹⁹²

In addition, the restorative justice process may involve disclosure of private information, including confessions of personal transgressions, which one might ordinarily and quite reasonably want to keep secret from neighbors, community members, or even close friends.¹⁹³ Intrusions on privacy—as personal details are freely discussed by restorative justice circle members—may be tolerated as a condition of participation on the ground that the process itself cannot result in loss of benefits to promote candid self-reflection without fear of repercussions.¹⁹⁴ Some measure of protection can result from the involvement of multiple stakeholders to check discretion or abuse on the part of other participants, especially if all stakeholders are invested in the outcome without conflicts of interest tied to any external incentives.¹⁹⁵ But restorative justice remains in the shadow of greater punishment or coercive effects, should restorative processes fail to repair harm.¹⁹⁶

Also left unspecified is what society, through its system of government, owes to its neediest members as individuals or as a group. What would it look like to hold government officials accountable to individuals by calling them into a restorative circle or hearing in front of the people most directly affected by their actions

190. *See id.* at 52.

191. *See supra* text accompanying notes 79–89.

192. *See supra* text accompanying notes 79–89.

193. *See* Failinger, *supra* note 9, at 240–41.

194. *See id.*

195. *Id.* at 242.

[T]he more public nature of the circle—with its checks and balances coming from the open discussion among members who have different reasons for being in the circle, who represent different views of the community's expectations for the recipient—make it much less likely that a single professional worker can abuse a recipient in the process of the exercise of discretion.

Id.

196. *Id.* at 239.

or failures to act? In a public hearing, a government representative may not be the person who actually took the action or had knowledge of the individual case.¹⁹⁷ High caseloads may prevent government case workers from obtaining actual knowledge or details about the people involved, or worse, permit abuse of discretion on the basis of administratively expedient proxies and prejudices.¹⁹⁸ Without some assurance against adverse consequences, government representatives have no incentive to voluntarily take responsibility for harms to individual community members resulting in deprivation of needed subsistence benefits.¹⁹⁹ Still, the ongoing dialogue and mutual accountability offered by restorative justice circles could consciously include individual government actors with some degree of immunity, and could go a long way toward fostering trust and a shared commitment to problem-solving, rather than adversarial posturing and coercion.²⁰⁰

Critics of restorative justice might well wonder whether it can ever succeed in the absence of genuine choice or, alternatively, genuine consequences for ongoing failures to uphold societal obligations to individuals in need of support. Yet, in keeping with the view of restorative justice as a wager—one society is bound to make—all participants share the risk and must be genuinely willing both to change behavior and to accept varying individual results, for good or ill.²⁰¹ At least as an alternative to the hard and fast, comply-or-else sanction system—where barriers to self-sufficiency remain—restorative justice circles formed on a voluntary basis could provide the needed support system to facilitate more than just self-sufficiency, but genuine social contribution on an individual basis.²⁰² Accordingly, restorative justice may hold some promise as a way of recognizing, prioritizing, and centering the relationships between individuals and society in dialogue and interactions that go above and beyond the bare minimum.²⁰³

What restorative justice may not accomplish in individual circles, however mutually supportive, is the elimination of systemic problems that impact individuals and require law reform or political

197. *See id.* at 242–43.

198. *See id.*

199. *See id.* at 218.

200. *See id.* at 242–43.

201. *See supra* text accompanying notes 151–57.

202. *See supra* text accompanying notes 121–24, 138–44.

203. *See supra* text accompanying notes 133–39, 141–42.

change.²⁰⁴ Advocates might imagine scaling up restorative justice circles to become larger group conflict-resolution strategies or participatory decisionmaking processes in which all are empowered to speak and act to strengthen the community and the welfare system as a whole.²⁰⁵ But at least in a welfare system wedded to workfare ideology, restorative justice may require further re-imagining and re-tooling to expand its impact beyond limited individual contexts.²⁰⁶

III. REVIVING RELATIONAL WORK: RADICAL HELP AS VOLUNTARY AFFIRMATIVE SUPPORT

A. *Harnessing Technology for Human Flourishing*

Motivated by many of the same concerns highlighted by Failinger and others in promoting more meaningful human relationships over retributive justice,²⁰⁷ British design pioneer Hilary Cottam untethers welfare provision entirely from its current bureaucratic moorings.²⁰⁸ Her work in this regard is a conscious and deliberate attempt to remake a welfare system that takes little account of humans and has thus arguably lost sight of its purpose.²⁰⁹ Explicitly justifying the need for a new model due to a range of crises growing in urgency since the 20th century, Cottam cites “[g]lobal warming, mass migration, demographic changes, chronic disease epidemics,” obesity, ageing, and globalized changes to work, “poverty and inequality,” loneliness, and, at bottom, “a crisis of care[] [because] [w]e cannot find ways to provide or pay for kind and human care.”²¹⁰ The U.K. contexts in which Cottam operates range from unengaged

204. See Natalie Delgadillo, *Restorative Justice Has the D.C. Attorney General’s Office Looking at Prosecutions in a New Light*, DCIST (May 8, 2020, 1:33 PM), <https://dcist.com/story/20/05/08/restorative-justice-has-the-d-c-attorney-generals-office-looking-at-prosecutions-in-a-new-light/> [<https://perma.cc/A2E9-AAKT>] (discussing the implementation of restorative justice approaches and categories of crimes and conflicts with an inappropriate or an insufficient remedy).

205. See Failinger, *supra* note 9, at 212.

206. See *supra* text accompanying notes 44–55, 201–03.

207. See *supra* text accompanying notes 116–19, 123–25.

208. See COTTAM, *RADICAL HELP*, *supra* note 28, at 45–46.

209. See PARTICIPLE, BEVERIDGE 4.0 4–8 (2008), http://www.participle.net/includes/downloader/MzExYWNjYWU3ZGZkMjQ5YmI0MjkxOTUxNGY2NzBmN2Fvy_Bkw5J5tvpI8s7ajaLKVGHIMHZCTHdsZGwzUGlQUmJYVzMrb0dFdmxBVDJwc3Bxc2Y5dXEyRGg0OTA1VTkxT0VuVDhoV3FmZmFXyTNzN1IzR2dzRHRmNWorMVZlQThPNUIvV0E9PQ [<https://perma.cc/8HJ7-XZU6>] (mission statement for group seeking to reevaluate and reform the British welfare system).

210. COTTAM, *RADICAL HELP*, *supra* note 28, at 29.

youth, to retired seniors, to out-of-work adults, to families facing a perfect storm of issues, and includes everything from eviction for nonpayment of rent to child removal for abuse or neglect.²¹¹ While none of these contexts entail an explicit workfare regime subject to punitive sanction, each involves serious life issues exacerbated by poverty and joblessness, triggering intensive interactions with government authorities.²¹²

Like Failinger's restorative welfare model,²¹³ Cottam's relational model is entirely voluntary, not punitive, involves no adverse consequences, and aims to connect people who share affinities or resources to cut through endless requirements, legal constraints, and assumptions to help people help one other and themselves.²¹⁴ Her approach, recounted in her book *Radical Help: How We Can Remake the Relationships Between Us and Revolutionise the Welfare State*, does not view underemployed or disengaged individuals as deficient or undeserving, but as full of untapped capabilities, which need to be defined broadly, analyzed accurately, and activated through connection with and support from others rather than through coercion or punishment.²¹⁵ Importantly, Cottam builds on a baseline of minimal social protection as a safety net that the current U.S. workfare regime shows no signs of guaranteeing.²¹⁶

Informed by international micro-development lessons as well as by design thinking, Cottam aims to harness resources and technology to create hitherto nonexistent connections by engaging and empowering a diverse range of stakeholders in a joint effort to break out of bureaucratic constraints.²¹⁷ Cottam lays out the philosophy behind her design lab's pilot programs that link individuals in need of social supports to local community members—potentially even including government workers—willing and able to provide such assistance.²¹⁸ Whether actual human contact is the goal (as with linking the elderly to community members for help with odd jobs around the house) or a means to an end (e.g., using social networks based on shared goals and experiences rather than centralized résumé banks to publicize jobs and identify potential candidates), Cottam designs ways to bring

211. *See id.* at 29–35, 36–37.

212. *See id.* at 49, 281–82 n.1 (stating one family routinely had contact with more than seventy different government workers over the course of their lives).

213. *See supra* text accompanying notes 131–44.

214. *See* COTTAM, *RADICAL HELP*, *supra* note 28, at 14–15, 18.

215. *See id.* at 114, 121–23.

216. *See id.* at 42–43.

217. *See id.* at 237–40.

218. *See id.* at 208.

people together through stories, shared hobbies, interests, affinities, and technology.²¹⁹ Importantly, the programs target certain populations, but also rely on others outside the target group to assist and normalize the interactions.²²⁰ Based on her pilot program results, bureaucratic solutions are a non-starter for assisting people with some of the most intractable problems, like social isolation of the elderly.²²¹ For the elderly, “the practical support would need to be on demand; the social connections would need to be authentic, and made through shared interests, not a charitable wish to help another.”²²²

Cottam draws on the capability approach,²²³ which “grapples with . . . knotty issues of power, access[,] and learnt norms of what is and is not acceptable. It starts . . . by assuming agency, and that people want to flourish.”²²⁴ She intends for her systems to be sustainable on a modest scale, with buy-in from local governments and communities that can build wide enough networks with the resources to expand over space and time.²²⁵ “[O]ur ability to flourish depends on marrying internal preparedness (for example feelings, knowledge[,] and skills) with change in external realities (for example environmental and social conditions and government policy).”²²⁶

Like restorative justice circles,²²⁷ Cottam’s pilot programs (one of which is called “Circle”) rely on voluntary participation, nonlinear progress, and deep inquiry into individual motives, assessments, and capabilities.²²⁸ She aims to take “an approach that is rooted in relationships and a broad understanding of capability [which] can make a real difference—and can cost less.”²²⁹ Even if the cost were high, however, Cottam argues that compared with the time and money spent excluding people from assistance, the cost seems justified.²³⁰ Using mobile apps and social media to bridge

219. *See id.* at 205–09.

220. *See id.* at 206–07.

221. *See id.* at 170–73.

222. *See id.* at 221.

223. *See* Amartya Sen, *Poor, Relatively Speaking*, 35 OXFORD ECON. PAPERS 153, 160 (1983), <https://are.berkeley.edu/courses/ARE251/fall2008/Papers/sen83.pdf> [<https://perma.cc/HU74-P29X>]; *see also* Martha C. Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice*, 9 FEMINIST ECON. 33, 33 (2003).

224. COTTAM, RADICAL HELP, *supra* note 28, at 202.

225. *See* Cottam, *Relational Welfare*, *supra* note 28, at 136–37.

226. COTTAM, RADICAL HELP, *supra* note 28, at 202.

227. *See supra* notes 120–23 and accompanying text.

228. *See, e.g.*, COTTAM, RADICAL HELP, *supra* note 28, at 179–80.

229. *Id.* at 136–37.

230. *See id.* at 14–15.

geographic and social divides among people, while trusting in human relationships to motivate and facilitate lasting individual capacity building, Cottam envisions relational welfare as building on human empathy and resilience; thus, relational welfare can improve the quality and character of an individual's life experiences, including their interactions with government-funded support programs over time.²³¹

Cottam's conception of "radical help" is a variation of "relational welfare" that foregrounds individual relationships without assigning responsibilities or liability, which is done to circumvent administrative burdens and costs imposed under outdated systems designed to manage scarce resources and meet quantitative data outcomes.²³² Cottam's approach focuses on the individual in relationship to others to weave genuine social bonds into a strong safety net that effectively lays down new connections and bypasses existing bureaucratic logjams.²³³ Indeed, measuring the success of the new networks might depend on the vibrancy and frequency of recourse to social relationships as resources, rather than independence from social networks (or worse, exclusion from societal resources altogether).²³⁴

For Cottam's radical help, as with restorative justice, measurement of outcomes relies not on linear or temporal data points, but includes intangible measures such as personal satisfaction and outlook.²³⁵ "[M]any, if not most, people actually move backwards at the very moment that they are really going forwards: the moment when we really see the challenge and start to take action is frequently an unstable one."²³⁶ Her thoughtful experiments develop with participants' lives and feedback, in time to implement changes without interrupting the momentum and good faith generated by up-front investment in relationships with total strangers.²³⁷

Cottam refuses to allow existing bureaucracy even to identify the problems to be solved, instead inviting program participants to posit their own personal goals and catalog their own strengths.²³⁸ The differences between capabilities surfaced this way and those based in

231. *See id.* at 184, 238–39, 254–55.

232. *See Cottam, Relational Welfare, supra* note 28, at 134.

233. *See id.* at 139–40.

234. *See COTTAM, RADICAL HELP, supra* note 28, at 197.

235. *See id.*

236. *Id.* at 261.

237. *See id.* at 273.

238. *See id.* at 269.

conventional wisdom are striking.²³⁹ For example, to assist job seekers, she invites participants to leave behind agency job bank databases and even job coaching to engage in activities with people who share similar backgrounds and goals, in order to let job connections develop organically; this process offers more of a restorative problem-solving circle for intensive, tailored, holistic support, instead of piecemeal interactions with specialized agencies.²⁴⁰

“Existing services categorise those out of work according to their formal qualifications and the length of time they have been unemployed. The lower the skill and the longer the time out of work, the more dismal your chances are expected to be.”²⁴¹ Yet Cottam finds “no clear match” between these criteria and lack of “purpose and motivation.”²⁴² By contrast, she sorts individuals based on “[w]hether participants had a dream of where they wanted to go, and whether this dream was a place in which to hide or a glint of something they really wanted to aim for, [as] a key differentiator.”²⁴³ In this process, success is measured not necessarily by achieving one’s dream, but in taking steps toward that dream and voluntarily accessing genuine support to assist people on the journey.²⁴⁴

B. Curbing Power in the Private Sphere

At the foundation of radical help is a refusal to settle for bureaucracy.²⁴⁵ While “[b]ureaucracy and an arm’s length culture can and have worked powerfully against prejudice,”²⁴⁶ focusing on equal application of laws and supports, Cottam insists it is time for a new approach, or perhaps a new look at an old approach.²⁴⁷ She argues that social welfare pioneer William Beveridge’s underappreciated “insight that solutions start with people and the relationships between them marks the starting point of a potential future path.”²⁴⁸ Concluding that bureaucracy impedes the human tendency to collaborate with and support others, Cottam highlights

239. *See id.* at 203–04.

240. *See id.* at 122–23, 130–31.

241. *Id.* at 231.

242. *See id.* at 233.

243. *See id.* at 231–32.

244. *See id.* at 232–33.

245. *See supra* notes 30–33 and accompanying text.

246. COTTAM, RADICAL HELP, *supra* note 28, at 45.

247. *See id.* at 45–46.

248. *Id.* at 46.

the social connections among people—and not only those among blood relations.²⁴⁹ Accordingly, “[w]e need to create systems that make participation easy, intuitive[,] and natural. And to do this we need to start in people’s lives. We need to stand in communities and understand both the problems and the possibilities from this everyday perspective.”²⁵⁰

Cottam’s vision for a new society devoted to the general welfare tackles the worst impulses of entrenched, politicized, funding-dependent bureaucracy through a dogged, patient, deliberate process of brainstorming, building relationships and trust, testing and fine-tuning, and finally, handing off the reins for continuing the journey to local communities.²⁵¹ What is replicated is not a cookie-cutter welfare-in-a-box model, but a framework, process, and full-on commitment to localized, community-based, participatory, and shared systems of interdependence.²⁵² The role of the state, while crucial, is relegated to the background, as local actors and impacted individuals lead the process and set the goals for public administration.²⁵³

Like restorative justice, the capacity to be nimble, flexible, responsive, and even go back to the drawing board if necessary, is in stark contrast to the embedded and ossified procedures of large bureaucracies, even where experienced government agency workers retain substantial discretion and time to develop and implement individualized solutions.²⁵⁴ As Cottam notes, many agency workers

249. *See id.* at 64–66, 205, 253–54.

250. *Id.* at 46.

251. *See id.* at 64–66, 71, 93–94, 104–05, 118–20, 171–73.

252. *Id.* at 216–18 (mapping out the design process).

253. *See id.* at 220, 222–23. Cottam’s work has influenced some advocates of co-production as a more egalitarian and participatory form of public service provision that expands rather than replaces minimum social support. *See, e.g.,* GANNON & LAWSON, *supra* note 71, at 21–22 (“This report works from a definition of co-production as all service stakeholders work[] together to create or improve a service by making it both more innovative and fairer. . . . It is about creating a new settlement between government, workers and the people who use and need the services.”).

254. *See* COTTAM, *RADICAL HELP*, *supra* note 28, at 73–75. Cottam’s model differs in important ways from superficially analogous models proposed in the U.S. to make expensive and ineffective punitive models more client-centered and individualized—but still administered by government agencies vesting discretion in agency workers. *See, e.g.,* Michelle Derr, *Key Considerations for TANF Reauthorization*, THE HILL (Oct. 7, 2019, 11:30 AM), <https://thehill.com/blogs/congress-blog/politics/464644-key-considerations-for-tanf-reauthorization> [<https://perma.cc/RX82-BTEX>] (advocating use in state workfare agencies of “[s]trategies such as WOOP (Wish, Outcome, Obstacle, Plan), also called mental contrasting, implement intentions, mindfulness, and structured goal pursuit practices, which have been informed by recent advances in

sincerely believe they are already engaging in the kind of relationship building Cottam’s team emphasizes by managing individuals with intensity but little ability to actually elicit voluntary behavioral changes through concrete forms of help, however small.²⁵⁵ Experts and professionals tasked with administering social welfare programs may burn out or become complicit in their gatekeeper status, and thus become unable to accurately identify the root causes of the challenges facing the people they are paid to help.²⁵⁶ “It is hard to understand the realities of each other’s lives. And this gap in understanding becomes a gulf when we are in a position of power or authority and try to help others.”²⁵⁷

Cottam’s frustration with bureaucracy and its constraints comes through loud and clear.²⁵⁸ She criticizes knee-jerk resistance to new solutions: “See the same doctor? Too expensive. Help another young person? Too risky. Provide through a known community group? Against the rules of competition.”²⁵⁹ Glossed over are very real problems of prejudice, power, and privacy, including but not limited to possible youth or elder abuse in the private sphere without nuanced oversight.²⁶⁰ As with individual nonlinear progress—in which a step forward may be precisely the point at which the greatest challenges present themselves—the task of moving beyond individuals to developing broader networks that facilitate relationships reveals the constraints of the relational approach.²⁶¹ Conflicts of interest, ulterior motives, exploitation, prejudice, and bias may go unchecked where no government official is ultimately

behavioral science[.]”); *see also* MICHELLE DERR ET AL., OFF. OF PLAN., RSCH., & EVALUATION, OPRE REP. NO. 2019-40, IMPROVING EMPLOYMENT OUTCOMES: USING INNOVATIVE GOAL-ORIENTED STRATEGIES IN TANF PROGRAMS 2–6, 11 (2019), https://www.acf.hhs.gov/sites/default/files/opre/50020_goals_rb_improving_employment_outcomes_022119_508.pdf [<https://perma.cc/Y3AF-EZCN>] (“The interventions . . . are well-grounded in the science of self-regulation and are designed to help participants reach their personal and job-related goals.”).

255. *See* COTTAM, RADICAL HELP, *supra* note 28, at 10–11.

256. *See id.* at 10–11, 73–75.

257. *Id.* at 212.

258. *See id.* at 44.

259. *Id.*

260. *Id.* at 58–59, 67.

261. *See* Milena Marchesi, *The Intimate Public of Relational Welfare in Milan*, ETHNOGRAPHY, Feb. 23, 2020, at 1, 3, 11, 13–14, 16–17, 19–20, <https://journals.sagepub.com/doi/pdf/10.1177/1466138119897094> (describing problems relational welfare workers encounter in trying to build networks); *see also* Cottam, *The Relational Society*, *supra* note 11, at 105–06.

responsible for any given relationship with a vulnerable person.²⁶² The risk of toxic yet invisible abuse or prejudice lurks in the most intimate of relationships, and radical help is not immune to such concerns where legal protections or government oversight are sparse, whether through neglect or by design.²⁶³ While restorative practices could play some role in resolving such situations, they may be even less effective in a context devoid of systemwide procedural protections as a backstop.²⁶⁴

As with restorative justice, the participation of individuals willing to expose their life challenges to the scrutiny of neighbors, community members, and social workers on a voluntary basis potentially subjects them to judgment by others. Such interactions may occur with insufficient oversight if the social relationships formed remain private, with no recourse for private harms, including everything from financial exploitation to emotional or sexual abuse by those purporting to help.²⁶⁵ As with Failinger's restorative justice model, radical help remains rooted in existing political and economic structures of power and privilege that exploit any difference to sustain inequality.²⁶⁶ We cannot be certain that the benefits of individual connections—even according to Cottam's different measures and assuming a baseline guarantee of minimum basic support for all—are worth the risks of possible abuses.²⁶⁷

Finally, Cottam herself recognizes the particular danger of relegating individuals disengaged from society, disproportionately women of color, to the work of relationships—whether as uncompensated careworkers in the home, or through underpaid, devalued, exploitative labor in other people's homes—without adequate safeguards and support.²⁶⁸ Her radical help would be for

262. See Marchesi, *supra* note 261 at 14, 19–20.

263. See *id.* at 14, 17, 19–20 (noting that even professionals involved in relational help approaches have biases and inequality of relationships with families they help makes it easy to disrupt familial autonomy).

264. See *supra* notes 30–35 and accompanying text.

265. See COTTAM, RADICAL HELP, *supra* note 28, at 58, 67.

266. *Id.* at 245–46, 248–49.

267. See Cottam, *Relational Welfare*, *supra* note 28, at 141–44.

268. Cottam, *The Relational Society*, *supra* note 11, at 105; see Nancy E. Shurtz, *Long-Term Care and the Tax Code: A Feminist Perspective on Elder Care*, 20 GEO. J. GENDER & L. 107, 110, 129–30 (2018) (describing low economic status of paid direct caregivers to the elderly); see also Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J.L. & FEMINISM 317, 324 (2013) (“[A]s wealthier women seek to meet the care needs of their families, they employ poor, disproportionately immigrant women and provide them with generally low wages and even fewer benefits.”).

naught if it merely resulted in women taking on even more of the burden to support community members in need, in addition to family members and employers.²⁶⁹ Cottam takes some proponents of relational forms of welfare to task for failing to account for the gendered aspects of a system built around relationships that have kept women in the home or limited to low-paid care work in the labor market.²⁷⁰ Even if welfare didn't already have its sights on women's sexual and economic independence,²⁷¹ the emphasis on private relationships to solve structural inequality strikes Cottam as suspect, as it should.²⁷² As Cottam states:

Relationships are powerfully gendered, and . . . without exploring these dynamics head-on, we will push some of our deepest social challenges behind doors and back into the domestic sphere, just as happened in the 1950s welfare state, which in reality depended largely on women to shoulder the care of the young and old[.]²⁷³

To the contrary, like some other feminist theorists, Cottam seeks to transform societal disregard for private relationships, thereby reversing the dynamic that denigrates them.²⁷⁴ “In our everyday lives, relationships feel as if they are in conflict with the market and with state bureaucracy.”²⁷⁵ She prefers to redefine and remake relationships to maximize their promise, protecting against the worst abuses as a way of resisting pressure under workfare ideology to abandon the private sphere for low-paid work: “The expressed aims are no longer those of nurture, well-being and quality of life; rather, there is ambition to keep as many of us as possible in the labour market for as long as possible—each day and over the years.”²⁷⁶

Ultimately, Cottam's proposal is one attempt to empower individuals within relationships as a way to invest in, valorize, and

269. See Cottam, *The Relational Society*, *supra* note 11, at 105.

270. See *id.*; see also Maxine Eichner, *Market-Cautious Feminism*, 69 *STUD. L. POL. & SOC'Y* 141, 141 (2016) (describing ways “in which women's participation in the labor market is mistakenly equated with liberation” while “other far-ranging effects of the market system on women's lives inside and outside of work – many of them negative – are overlooked” yet require regulation “to serve women's interests.”).

271. See *supra* note 77 and accompanying text.

272. See Cottam, *The Relational Society*, *supra* note 11, at 105–06.

273. *Id.* at 105.

274. *Id.*

275. *Id.*

276. *Id.*

even compensate or reciprocate the relational work that all community members do, and could do in an even more powerful and productive fashion, with visibility and value.²⁷⁷ The appeal of relational welfare is strong if only because so few options or opportunities have centered on women's own agency in counteracting entrenched stereotypes and structural biases.²⁷⁸ Whether women—particularly low-income women of color—can succeed in reclaiming the choice to participate in the labor market or engage in carework without getting stuck in one sphere or the other, remains to be seen.

The challenge remains of how to break out of dichotomies of dominance.²⁷⁹ While trying to shore up the value of relational work and resist being forced into labor market participation without power or support,²⁸⁰ we currently lack the legal safeguards to make relational support a meaningful guarantee for all, rather than an aspiration only for some.²⁸¹ This may be the Achilles heel of radical help; if characterized as affirmative support above and beyond a minimum level of subsistence support, it becomes extraneous, discretionary, and therefore neither legally nor politically guaranteed, and not equally accessible to all.²⁸² Cottam's own critique of relying on gendered relationships to save or strengthen society raises precisely these concerns and may not yet, without more, be able to surmount them.²⁸³

IV. REIMAGINING WORK AND CARE BEYOND WORKFARE'S MARKET-FAMILY DIVIDE

Failing's attempt to reduce the harm of workfare sanctions through restorative justice²⁸⁴ and Cottam's more "radical" plan to boost individual capabilities through relational welfare²⁸⁵ offer humane solutions, while recognizing the challenges of dismantling structural barriers to economic security.²⁸⁶ Even if scaled up for widespread use, both proposals leave those who are unable or

277. See *supra* notes 235–37 and accompanying text.

278. See Cottam, *The Relational Society*, *supra* note 11, at 106.

279. See *supra* notes 103–04 and accompanying text.

280. See *supra* notes 104–05 and accompanying text.

281. See Cottam, *Relational Welfare*, note 28, at 135–36.

282. See *id.*

283. See Cottam, *The Relational Society*, *supra* note 11, at 105.

284. See *supra* notes 9, 21–22 and accompanying text.

285. See *supra* notes 28–31 and accompanying text.

286. See Failing, *supra* note 9, at 238; see also Cottam, *Relational Welfare*, *supra* note 28, at 134.

unwilling to participate in the market for paid work dependent on private relationships for support, with no mechanism for public accountability that would hold the government responsible for ensuring basic minimum protections.²⁸⁷ Holding out the private sphere (even with active community participation) as the primary source of social support may be insufficient without effective oversight and safeguards against abuses of discretion or private power.²⁸⁸ Both proposals thus risk reinscribing a divide between the family sphere and the labor market that limits individual choices and opportunities.²⁸⁹

Feminists have long been wary of the restoration of the private family sphere as an alternative to the labor market because of the perpetual devaluation—sometimes disguised as romanticization—of women’s place in the home.²⁹⁰ They have rejected nostalgia for the devolved domestic sphere as an ideal, safe, insular space from which to resist market forces and state intervention.²⁹¹ By relegating women’s dependent carework to the private sphere, society permits—and depends on—their subjugation within that very sphere to reproduce the next generation of low-wage labor.²⁹² Any new formulation of social welfare provision that reinscribes this private sphere may only disrupt, but not transform, the existing punitive workfare system, rendering it less harsh but still preventing it from fully supporting the dignity and empowerment of all.²⁹³

It may yet be possible to envision new models of welfare provision that can alleviate the harms of poverty and ensure affirmative support for individuals, and begin to counteract the devaluation and disempowerment of particular social roles in the process.²⁹⁴ Feminist

287. See Failinger, *supra* note 9, at 209; see Cottam, *Relational Welfare*, *supra* note 28, at 135; see also Robson, *supra* note 2, at 15 (“[W]e should renew the quest for a more positive constitutionalism in which we routinely make demands on government rather than emphasize its limits.”).

288. See Robson, *supra* note 2, at 15.

289. See *supra* notes 11–14 and accompanying text.

290. See Gilman, *supra* note 90, at 14–15.

291. See Eichner, *supra* note 37, at 98–99 (citing Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983)); see also Gilman, *supra* note 90, at 1 (“[Second-wave feminists] assailed the patriarchal divide between the public and the private sphere that trapped women in the home and subjected them to domestic abuse.”).

292. See Eichner, *supra* note 37, at 114–15.

293. See *supra* text accompanying notes 11–14.

294. See Hi’ilei Julia Kawehipuaakahaopulani Hobart & Tamara Kneese, *Radical Care: Survival Strategies for Uncertain Times*, 38 SOC. TEXT 1, 9–10 (2020), [http://read.dukeupress.edu/social-text/article-pdf/38/1\(142\)/1/781472/0380001.pdf](http://read.dukeupress.edu/social-text/article-pdf/38/1(142)/1/781472/0380001.pdf) [https://pe

and antiracist theorists argue that women have long traveled between private and public spheres out of need or desire, but always at great cost, including costs disparately borne by women of color.²⁹⁵ They highlight the need for greater support for women's freedom to choose whether and when to participate in either sphere, including bolstering women's competitiveness in the labor market and/or compensating carework in the home.²⁹⁶ Remaking social support to address the deficiencies of privileging one sphere over the other thus requires grappling with the same contested notions of agency, choice, autonomy, and subjectivity that feminist and antiracist theorists have long confronted.²⁹⁷

Feminist legal scholars observe that women have always participated in wage work outside the home, but subject to discrimination and without supports, leaving some to rely on the marketplace to purchase substitute childcare.²⁹⁸ Like Cottam,²⁹⁹ they remain critical of an unquestioned assumption that social welfare can be fully relational without substantial transformation of existing power dynamics and structures that leave some women to do all the carework regardless of whether they also work for wages outside the home.³⁰⁰ Such reforms may seem superficial or shortsighted where they seek to remedy that disparity merely by compensating care labor in the home, rather than fully empowering all individuals to have meaningful choices while deciding whether and when to engage in carework or other forms of labor.³⁰¹

More comprehensively, Maxine Eichner argues against a free-market vision of family that supports and reproduces itself solely through reliance on private, domestic carework, as the purported result of rational informed choices and resource maximization that is

rma.cc/EZ7V-S7UZ]. New theorists of radical care reject the notion that private radical care need be abusive or hierarchical. *See id.* at 10. They seek to mobilize individuals to collectively create and employ participatory mechanisms for creating horizontal networks of radical care based in mutual, reciprocal fulfillment of material needs independent of formal governmental state structures or authority. *See id.*

295. *See id.* at 11.

296. *See id.* at 6.

297. *See* Eichner, *supra* note 37, at 98.

298. *See id.* at 108–12.

299. *See generally supra* Part III.

300. *See* Maxine Eichner, *The Privatized American Family*, 93 NOTRE DAME L. REV. 213, 215–18 (2017).

301. MAXINE EICHNER, *THE FREE-MARKET FAMILY: HOW THE MARKET CRUSHED THE AMERICAN DREAM (AND HOW IT CAN BE RESTORED)* xxiv, xix (2019) (advocating for “pro-family policies” that “allow workers to limit their work hours[] [to] help[] them spend more time with their families without reducing their wages.”).

based on market exchange value alone.³⁰² In contrast, she advances targeted “pro-family” policies through which the state supports people in nurturing others without sacrificing their own economic security, arguing that the government plays a key role in optimizing genuine choices for all without unduly privileging or devaluing the private sphere.³⁰³ Eichner recognizes the importance of bonds among family—defined more broadly than the heteronormative nuclear unit—and argues that the state must protect them against market forces that “leave[] significant gaps in the economic system in ensuring families have what they need to thrive.”³⁰⁴ If backed by strong government support and oversight, restorative or relational approaches to workfare could form part of this necessary buffer.³⁰⁵

From a different vantage point, Martha Fineman’s concept of responsive government represents a broader vision of universal social support. She envisions a system centered not on an idealized autonomous worker able to purchase all they need, but on a universal vulnerable subject—vulnerable at different times and life stages, and in need of some form of support from society at every phase of life.³⁰⁶ No particular type of vulnerability or ability would be prioritized over others or used to justify discrimination or subordination, as vulnerability in general is experienced by all, at a minimum in infancy and old age—though with greater or lesser harm for some populations.³⁰⁷ Even in this scenario, the relative vulnerability of individuals at different times and for different reasons may continue to fall into categories in line with traditional

302. See Eichner, *supra* note 37, at 102–03; see also EICHNER, *supra* note 301, at xix (“[M]any things that people need to flourish, like the nurturing that parents provide, aren’t distributed through markets. And some things that can be distributed through markets, like high-quality daycare, aren’t affordable for many families.”).

303. See Eichner, *supra* note 37, at 102–03.

304. EICHNER, *supra* note 301, at xxvi; see Eichner, *supra* note 37, at 102 (“[A] broad range of relationships should be supported as ‘families.’”); see also Eichner, *supra* note 300, at 216–17 (arguing that government should buffer families from the effects of market forces).

305. See EICHNER, *supra* note 301, at xvii (“[T]he defeat of American families by market forces . . . occurred because, beginning in the 1970s, American policymakers began to sell families out to a misguided ideal of free markets” rather than “buffer[ing] families from harmful market forces.”); see also Eichner, *supra* note 300, at 216–17.

306. Martha Albertson Fineman, *The Vulnerable Subject and the Responsive State*, 60 EMORY L.J. 251, 255–56 (2010) [hereinafter Fineman, *The Vulnerable Subject*]; Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 YALE J.L. & FEMINISM 1, 1–2 (2008).

307. See Fineman, *The Vulnerable Subject*, *supra* note 306, at 266–67.

concepts of desert or need, whether based in morality, ability, or financial circumstances.³⁰⁸

By identifying vulnerability as a shared universal condition, Fineman argues that society owes each and every member protection and support against deprivation, but the question remains to what degree for each individual, as we are vulnerable in different ways.³⁰⁹ Thus, Wendy Bach cautions, “if we are to build institutions that are responsive to some of the most vulnerable among us, we must seek to understand the particular institutional realities that constitute the relationship between poor and disproportionately African-American women and the current state,” and “ask how these particular realities impact the path to a supportive or responsive state.”³¹⁰ Bach details the myriad ways in which administrative schemes ostensibly designed to improve community welfare operate as a form of social control instead.³¹¹ Unraveling and remedying the long history of what Bach terms “hyperregulation” of low-income communities, and especially Black women and women of color,³¹² may require more than merely removing the harshest consequences or expanding basic minimum support to all, but some form of reparations or, at a minimum, rethinking of the particular relationships,³¹³ perspectives, and subjectivities privileged by existing welfare systems.³¹⁴

Central to the project of reenvisioning social support and reconciling the differences between universal or more targeted solutions, is rethinking expectations or assumptions of the liberal ideal of an autonomous, unitary, essential subject entitled to social status. As a rational and efficient actor without cognitive bias or interrelational dependency, this ideal subject is solely deserving of social support because they are least in need of it.³¹⁵ In fact, choice, agency, and autonomy are contested and may be coopted by a welfare model that frames women’s devaluation and subordination as

308. *See id.* at 268.

309. *See* Bach, *supra* note 268, at 319.

310. *Id.*

311. *Id.* at 372 (introducing “hyperregulation – the targeting by race, class, gender[,] and place of particular people so as to exert social control on those people” through administrative apparatus).

312. *Id.* at 319–20, 336.

313. *See generally id.* at 366–79 (discussing how to counteract the effects of hyperregulation).

314. *Id.* at 366–70, 377.

315. *See* MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* xiii (2004) (critiquing American “core myths . . . interwoven through political rhetoric and popular ideology[,]” that promote “the desirability and attainability of autonomy for individuals and families[.]”).

the natural consequence of rational economic choices based on perfect information and predictable priorities.³¹⁶ Any critique that fails to recognize the multiplicity of individual identities risks entrenching a framework of bias or essentialism that confines individuals to devalued social roles.³¹⁷

Kimberlé Crenshaw's concept of intersectionality has taken hold as a complex critique of essentialist categories, such as race or gender, without erasing the lived experiences and material needs of individuals based on the multiplicity of identities they inhabit, whether deliberately or incidentally.³¹⁸ Rather than replacing one flawed hierarchy with another, Crenshaw's concept of intersectionality questions and complicates the prioritization of any one individual's numerous chosen or perceived identities and,

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316. See Martha McCluskey, *The Politics of Economics in Welfare Reform*, in *FEMINISM CONFRONTS HOMO ECONOMICUS: GENDER, LAW, AND SOCIETY* 193, 193–94 (Martha Albertson Fineman & Terence Dougherty eds., 2005) (decrying “conventional wisdom” of neo-classical theory that uses “purportedly neutral economics principles to . . . attempt[] to make social welfare restrictions a matter of sensible science.”).
317. Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 *BERKELEY WOMEN'S L.J.* 16, 17, 22 (1995) (defining essentialism and intersectionality, then discussing lessons to learn from the anti-essentialism and intersectionality critiques).
318. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139, 140 [hereinafter Crenshaw, *Demarginalizing the Intersection of Race and Sex*] (explaining that focus on the most privileged members of any particular group classification “marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination. . . . [T]his focus on otherwise-privileged group members creates a distorted analysis of racism and sexism because the operative conceptions of race and sex become grounded in experiences that actually represent only a subset of a much more complex phenomenon.”); see Kimberlé W. Crenshaw, *Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality*, 46 *TULSA L. REV.* 151, 163 (2010) (inquiring “whether the theorization of race at issue takes gender structures as given and theorization of gender that takes racial structures as a given, reinforcing both structures by failing to contest them.”); see also BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 14–15, 92 (1984) (discussing the “sexist, racist, and classist oppression” of Black women and the development of “critical consciousness.”). But see Devon W. Carbado & Cheryl I. Harris, *Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory*, 132 *HARV. L. REV.* 2193, 2239 (2019) (seeking to “disaggregate intersectionality from anti-essentialism [and] articulate, if you like, the intersection [and tension] of dominance theory and intersectionality.”).

crucially, the primacy of the legal, economic, and social institutional structures that individuals choose to build and support.³¹⁹

The lived experience of intersectionality becomes visible, at least figuratively, in the “countermyth” of “cyborg” consciousness presciently recognized by Donna Haraway, as both an embodiment of and reflection of the complex hybrid identities occupied by people both marginalized by and central to a capitalist system that depends on their degraded labor.³²⁰ Haraway’s “A Cyborg Manifesto” describes the consignment of masses of people of color to a labor-intensive carework economy in which they are simultaneously essential and redundant due to high-tech innovations and automation.³²¹ Crenshaw, Haraway, and others provide modes of critique and ways of thinking about living under and resisting antiracist, neoliberal precarity.³²² They reject the possibility of a romantic ideal fantasy or an essentialist, unitary subjectivity, and embrace the necessity of adapting and integrating the unnatural, devalued, and/or unfamiliar into human existence.³²³ Cyborgs, even if not literally combining machine with human parts, merge hitherto distinct social spheres and categories into necessarily experimental, prototypical, and iterative entities, rather than fixed or stable selves.³²⁴ Like Cottam’s participants in radical help,³²⁵ cyborgs coalesce around shared affinities rather than some essential, predictable human nature in order to exist and resist obsolescence.³²⁶

319. See Jane Coaston, *The Intersectionality Wars*, VOX (May 28, 2019, 9:09 AM), <https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination> [<https://perma.cc/MF5T-4P4M>].

320. Donna J. Haraway, *A Cyborg Manifesto: Science, Technology, and Socialist Feminism in the Late Twentieth Century*, in SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE (1991) reprinted in MANIFESTLY HARAWAY 3, 7, 14, 16–17 (2016).

321. McKenzie Wark, *Blog-Post for Cyborgs—McKenzie Wark on Donna Haraway’s ‘Manifesto for Cyborgs’ 30 Years Later*, VERSO: BLOG (Sept. 28, 2015), <https://www.versobooks.com/blogs/2254-blog-post-for-cyborgs-mckenzie-wark-on-donna-haraway-s-manifesto-for-cyborgs-30-years-later> [<https://perma.cc/K46V-PBVT>].

322. Haraway, *supra* note 320, at 69 n.5; Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 318, at 139–40.

323. Haraway, *supra* note 320, at 16–17; Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 318, at 166–67.

324. Haraway, *supra* note 320, at 5–7.

325. See *supra* notes 231–37 and accompanying text.

326. Haraway, *supra* note 320, at 5–9, 14, 16–17, 21. Haraway and others recognized “a strongly bimodal social structure, with the masses of women and men of all ethnic groups, but especially people of color, confined to a homework economy” of unpredictable, underpaid, and insecure work and characterized by “massive intensification of insecurity and cultural impoverishment, with common failure of

Restorative and relational approaches to economic security and social support may begin the task of reimagining human connections in an era of intense technological, ecological, and economic shifts as similarly dynamic, organic spaces of possibility, rather than power or powerlessness.³²⁷

Some may object that the time has not come to reject the rational unitary subject with the powers of choice and agency, as entire groups have been excluded from that privileged social position.³²⁸ Feminist and antiracist theorists may understandably be wary of advancing any solution for the lived challenges of marginalized individuals that expects them to jettison privileges or rights they have only just begun to enjoy or still do not enjoy.³²⁹ Yet, while Haraway rejects romanticism, famously purporting to “rather be a cyborg than a goddess,”³³⁰ she may still leave open the possibility of deploying what Angela Harris describes as “strategic identities” for resistance, without settling into new forms of subordination.³³¹

Perhaps some security can be found in Patricia J. Williams’s enduring call for expansion of legal rights to those who have never been accorded them—descendants of slaves, those deemed to lack capacity to exercise rights, perhaps non-human companions or natural resources—without nostalgia or romanticism.³³² Williams is wary of “discarding rights altogether” because of the meaning and real impact fixed legal rights have for oppressed people:

Instead, society must *give* them away. Unlock them from reification by giving them to slaves. Give them to trees. Give them to cows. Give them to history. Give them to rivers and rocks. Give to all of society’s objects and

subsistence networks for the most vulnerable.” *Id.* at 44, 49–50; *see also* Micki McGee, *Capitalism’s Care Problem: Some Traces, Fixes, and Patches*, 38 *SOC. TEXT* 39, 55 (2020) (describing Haraway’s more recent exhortation to “stay[] with the trouble,” which “demand[s] both improvisation and ingenuity[.]”).

327. *See supra* notes 9–11, 284–86 and accompanying text.

328. *See generally* FEMINISM CONFRONTS HOMO ECONOMICUS: GENDER, LAW, AND SOCIETY (Martha Albertson Fineman & Terence Dougherty eds., 2005).

329. *Id.*

330. Haraway, *supra* note 320, at 68.

331. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 610 (1990).

332. *See* PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 146–65 (1991).

untouchables the rights of privacy, integrity, and self-assertion; give them distance and respect.³³³

Such a move would recognize individual integrity, autonomy, and dignity—and extend each without limit.³³⁴ Williams ends her appeal with a rejection of neoliberal values of property ownership that seeks to expand a narrow view of rights as scarce resources to be hoarded, “so that we may say not that we own gold but that a luminous golden spirit owns us.”³³⁵ At first glance, “a luminous golden spirit” may sound like a kind of goddess presiding on a pedestal.³³⁶ Yet its animating presence may have more in common with a cyborg consciousness after all, in its recognition of how our all-too-human selves continually reflect and reintegrate with social networks and structures of our own making.³³⁷

CONCLUSION

Critical analysis of global responses to pandemics, natural disasters, and disasters of human origin must highlight the entrenched institutional and ideological barriers that continue to limit, albeit in new and ever-evolving forms, human flourishing in communities.³³⁸ The COVID-19 pandemic and its disproportionate toll on Black people and people of color with limited access to quality jobs, health care, child care, and safe housing has only accelerated growing popular support for feminist, antiracist, and antipoverty platforms such as the Movement for Black Lives and the revived Poor People’s Campaign,³³⁹ among numerous other grassroots campaigns.³⁴⁰ These

333. *Id.* at 165.

334. *See id.*

335. *Id.*

336. *See id.*

337. *See generally* Haraway, *supra* note 320, at 35–37, 67.

338. *See supra* text accompanying notes 1–7.

339. KIM PARKER ET AL., PEW RSCH. CTR., AMID PROTESTS, MAJORITIES ACROSS RACIAL AND ETHNIC GROUPS EXPRESS SUPPORT FOR THE BLACK LIVES MATTER MOVEMENT 5, 7–8 (2020), <https://www.pewsocialtrends.org/2020/06/12/amid-protests-majorities-across-racial-and-ethnic-groups-express-support-for-the-black-lives-matter-movement/> [<https://perma.cc/Z87V-AM6X>]; Hannah Van Sickle, *Poor People’s Campaign ‘A Broad and Deep National Moral Fusion Movement’*, THE BERKSHIRE EDGE (June 19, 2020), <https://theberkshireedge.com/poor-peoples-campaign-a-broad-and-deep-national-moral-fusion-movement/> [<https://perma.cc/E894-BF6T>]; *see also* MOVEMENT FOR BLACK LIVES, www.m4bl.org [<https://perma.cc/59M9-VVT6>] (last visited Dec. 17, 2020); *see also* POOR PEOPLE’S CAMPAIGN: A NAT’L CALL FOR MORAL REVIVAL, <https://www.poorpeoplescampaign.org/> [<https://perma.cc/9MB5-GCVK>] (last visited Dec. 17, 2020).

movements have compelled policymakers, activists, and visionaries to seek new solutions to intractable social problems of poverty, inequality, prejudice, and disempowerment.³⁴¹

Advocates of any new model of welfare administration must walk a fine line between providing supportive safety nets and deepening social stigma;³⁴² between flexible, individually-tailored assistance and equitably administered benefits subject to minimum due process safeguards and privacy protections;³⁴³ and between the use of technology to reduce bureaucracy and busywork associated with high caseloads and the need to bolster the strength of human relationships to alleviate real suffering.³⁴⁴ At the same time, new models must move beyond confining dichotomies that punish disfavored choices, experiences, or backgrounds and divide the poor and marginalized into those deserving or undeserving of assistance.³⁴⁵

Restorative and relational iterations of social welfare reveal both the stubbornness of ideology tying social support to moral desert,³⁴⁶ and the infinite creativity of individuals and communities to respond to challenges.³⁴⁷ In the midst of increased urgency for solutions and competing constraints and priorities, feminist, antiracist, and anti-poverty advocates must bring their critical perspectives and lived experiences to bear on the way forward.³⁴⁸ Persistent social movements seeking widespread systemic change to eradicate

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340. See, e.g., Recognizing the Duty of the Federal Government to Create a Green New Deal, H.R. Res. 109, 116th Cong. (2019); see also Chris Winters, *It's Time for a Black New Deal*, YES! MAG. (June 8, 2020), <https://www.yesmagazine.org/opinion/2020/06/08/black-america-wealth-racial-equity/> [https://perma.cc/EW3Z-Z9PW].
341. See Tonya Mosley & Allison Hagan, 'An Extraordinary Moment': Angela Davis Says Protests Recognize Long Overdue Anti-Racist Work, WBUR (June 19, 2020), <https://www.wbur.org/hereandnow/2020/06/19/angela-davis-protests-anti-racism> [https://perma.cc/V3LV-VSJK].
342. See Robert A. Moffitt, *The Deserving Poor, the Family, and the U.S. Welfare System*, 52(3): 729–49 DEMOGRAPHY 1, 15–16 (June 2015).
343. See *id.*; see *Background Briefing: The Civil Liberties Issues of Welfare Reform*, ACLU, <https://www.aclu.org/other/background-briefing-civil-liberties-issues-welfare-reform> [https://perma.cc/M4LB-QHYC] (last visited Dec. 17, 2020).
344. JENNIFER EHRLE ET AL., URB. INST., WELFARE REFORM AND OPPORTUNITIES FOR COLLABORATION BETWEEN WELFARE AND CHILD WELFARE AGENCIES 1, 18, 20–21 (2001), <http://webarchive.urban.org/UploadedPDF/occa53.pdf> [https://perma.cc/P3UV-RQW2].
345. See Moffitt, *supra* note 342, at 14–15.
346. See *supra* notes 17–20, 40–49 and accompanying text.
347. See *supra* notes 73–75, 249–54 and accompanying text.
348. See *supra* text accompanying notes 294–97.

oppression and subordination at its roots and in all its myriad manifestations may be the living embodiment of cyborg consciousness, mining both history and lived experience to salvage what can still be used going forward without forever determining future iterations.³⁴⁹ If nothing else, restorative justice and relational principles applied to social welfare and safety net assistance create imaginative space for expanding our experience and understanding of need, capability, desert, and what humans have to offer each other.³⁵⁰ With no guarantee of success or progress, we at least have the opportunity to repair, renew, and reinvent the human relationships we need to survive and thrive now and in an uncertain future.³⁵¹

349. *See supra* text accompanying notes 320–27.

350. *See supra* text accompanying notes 140–44.

351. *See supra* text accompanying notes 9–16.