

THE COMMODIFICATION OF CHILDREN AND THE POOR, AND THE THEORY OF STATEGRAFT

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Across the country, human service agencies, juvenile and family courts, prosecutors, probation departments, police officers, sheriffs, and detention and treatment facilities are churning impoverished children and adults through revenue operations with starkly disproportionate racial impact. Rather than being true to their intended missions of improving welfare and providing equal justice for vulnerable populations, the institutions are mining them with extractive practices that are harmful, unlawful, unconstitutional, and unethical. This Essay considers such commodification schemes under the lens of Professor Bernadette Atuahene’s excellent and important theory of stategraft. The examples discussed provide support for Atuahene’s theory, and this Essay simultaneously urges a broad understanding of the theory’s definitional elements to fully capture the scope of stategraft practices—and to help expand and link the community of scholars and advocates working to expose, unravel, and end such state-led predatory mechanisms.

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INTRODUCTION

America’s institutions of welfare and justice are commodifying children and the poor.¹ As state and local governments have chosen not to generate sufficient revenue through fair and equitable taxation, the

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1. Although low-income individuals are diverse and each person faces unique circumstances, this Essay sometimes refers to the “poor” as a group to describe how they are similarly targeted by commodification practices.

purposeful austerity has contributed to the devolution of state institutions through a distorted mix of Darwin-like self-preservation and capitalism. Across the country, human service agencies, juvenile and family courts, prosecutors, probation departments, police, sheriffs, and detention and treatment facilities are acting like rattling parts of a factory business, churning impoverished children and adults through symbiotic revenue operations that operate with starkly disproportionate racial impact: “In a vicious, racialized, industrialized, and monetized cycle, harm fuels and feeds on harm.”² Rather than staying true to their intended missions of providing vulnerable populations with improved welfare and equal justice, these institutions are mining them with extractive practices that are harmful, unlawful, unconstitutional, and unethical.³

This Essay considers how my research regarding vast commodification schemes carried out by state agencies and justice institutions supports Professor Bernadette Atuahene’s excellent and important theory of stategraft.⁴ Part I addresses how human service agencies are commodifying the populations they are intended to serve, considered under the lens of stategraft theory. It primarily focuses on one example: child welfare agencies seeking out foster children who are disabled or orphaned in order to take their disability and survivor benefits to bolster state coffers.⁵ And to understand the scope of how this scheme is, unfortunately, only one of several agency extractive practices, it is placed in the context of interlinked variations—all forms of stategraft.⁶

Part II then considers how our very systems of justice have also joined this poverty industry, carrying out commodification practices that form additional types of stategraft.⁷ It highlights a stark example: how juvenile courts are contracting to generate revenue when ordering the removal of children from their homes. And again, to consider the scope, this Essay places such practice in context of the interlinked extractive

2. DANIEL L. HATCHER, *INJUSTICE, INC: HOW AMERICA’S JUSTICE SYSTEM COMMODIFIES CHILDREN AND THE POOR* 158 (2023) [hereinafter *INJUSTICE, INC.*].

3. This Essay uses the term “vulnerable,” but not to imply weakness. Rather, vulnerability requires great strength. Ultimately, we are all vulnerable and are all interdependent on each other and the institutions of welfare and justice intended to serve us.

4. See generally Bernadette Atuahene, *A Theory of Stategraft*, 98 N.Y.U. L. REV. 1, 7–8 (2023).

5. See Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 CARDOZO L. REV. 1797, 1803–07 (2006) (exposing details of the practice and analyzing its harm and illegality).

6. For details of the agency practices, see DANIEL L. HATCHER, *THE POVERTY INDUSTRY: THE EXPLOITATION OF AMERICA’S MOST VULNERABLE CITIZENS* (2016) [hereinafter *THE POVERTY INDUSTRY*].

7. Details of the justice system’s commodification practices are uncovered in *INJUSTICE, INC.*, *supra* note 2.

harm carried out by each part of our foundational justice systems. This Essay concludes with further support for Atuahene's theory of stategraft and simultaneously urges a broad understanding of the theory's definitional elements to fully capture the scope of the practices—and to help expand and link the community of scholars and advocates working to expose, unravel, and end such state-led predatory mechanisms.

I. HUMAN SERVICE AGENCIES COMMODIFYING CHILDREN AND THE POOR

Over the past several decades, America's federal, state, and local governments have increasingly abandoned equitable and progressive taxation in favor of regressive government financing.⁸ The rich have become richer while being taxed less, and the non-rich have lost relative income and wealth while being taxed more.⁹ Meanwhile, state and local governments have partnered with private companies to expand the harmful regressivity exponentially—converting agencies of aid into factories of extractive harm that commodify the most vulnerable among us.

Human service agencies and their private partners formed a poverty industry engaged in what I have argued are illegal monetization schemes, including multiple child support cost recovery strategies, numerous child welfare revenue schemes, Medicaid maximization and diversion strategies, nursing home revenue practices, school-based Medicaid schemes, contractual partnerships with private revenue contractors, and more—all diverting funds intended to help vulnerable populations into

8. Eric Kades, *Giving Credit Where Credit Is Due: Fighting Inequality with a Progressive State Tax Credit*, 77 LA. L. REV. 359, 360, 363–77 (2016).

9. See Rakesh Kochhar & Stella Sechopoulos, *How the American Middle Class Has Changed in the Past Five Decades*, PEW RSCH. CTR. (Apr. 20, 2022), <https://www.pewresearch.org/short-reads/2022/04/20/how-the-american-middle-class-has-changed-in-the-past-five-decades/> [https://perma.cc/WW6J-7MQZ]. The shift results from more regressive income tax rates, greater tax loopholes for the rich, and greater targeting of consumption taxes and user fees against the non-rich. See, e.g., Nicholas Johnson & Iris J. Lav, *Are State Taxes Becoming More Regressive?*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/sites/default/files/archive/930sttax.htm> [https://perma.cc/9CQL-2MNA] (Oct. 29, 1997); Michael Greenstone & Adam Looney, *Just How Progressive Is the U.S. Tax Code?*, BROOKINGS INST. (Apr. 13, 2012), <https://www.brookings.edu/articles/just-how-progressive-is-the-u-s-tax-code/> [https://perma.cc/2TF9-3HM6]; Melissa Hellman, Maya Srikrishnan, Ashley Clarke & Joe Yerardi, *How State Taxes Make Inequality Worse*, CTR. FOR PUB. INTEGRITY (Sept. 14, 2022), <https://publicintegrity.org/inequality-poverty-opportunity/taxes/unequal-burden/taxes-inequality-worse-progressive-tax/> [https://perma.cc/KTE2-H5A2]. See also Kades, *supra* note 8; DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021).

government coffers.¹⁰ To illustrate how these revenue strategies are arguably forms of statecraft, this Part first highlights a stark example—foster care agencies taking resources from children in their care—and then briefly summarizes other examples to understand the scope of the interlinked harm.

A. Foster Care Agencies Extracting Resources from Foster Children

Child welfare agencies are perhaps the clearest example of human service agencies undermining their intended purpose to promote the welfare of vulnerable populations.¹¹ In a country-wide revenue scheme,

10. Much of my past scholarship has addressed these practices. *E.g.*, Hatcher, *supra* note 5; 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 (2007) [hereinafter *Child Support Harming Children*]; Daniel L. Hatcher, *Collateral Children: Consequence and Illegality at the Intersection of Foster Care and Child Support*, 74 BROOK. L. REV. 1333 (2009) [hereinafter *Collateral Children*]; Daniel L. Hatcher, *Poverty Revenue: The Subversion of Fiscal Federalism*, 52 ARIZ. L. REV. 675 (2010) [hereinafter *Poverty Revenue*]; Daniel L. Hatcher, *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*, 20 AM. U. J. GENDER SOC. POL'Y & L. 775 (2012); Daniel L. Hatcher, *Purpose vs. Power: Parens Patriae and Agency Self-Interest*, 42 N.M. L. REV. 159 (2012) [hereinafter *Purpose vs. Power*]; Daniel L. Hatcher, *Forgotten Fathers*, 93 B.U. L. REV. 897 (2013); Daniel L. Hatcher, *Medicaid Maximization and Diversion: Illusory State Practices that Convert Federal Aid into General State Revenue*, 39 SEATTLE U. L. REV. 1225 (2016) [hereinafter *Medicaid Maximization and Diversion*]; THE POVERTY INDUSTRY, *supra* note 6; Daniel L. Hatcher, *States Diverting Funds from the Poor*, in HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 151 (Ezra Rosser ed., 2019); Daniel L. Hatcher, *Stop Foster Care Agencies from Taking Children's Resources*, 71 FLA. L. REV. F. 104 (2019), <https://www.floridalawreview.com/article/89240> [<https://perma.cc/L2EW-S3AH>]; Daniel L. Hatcher, *Juvenile Court Interagency Agreements: Subverting Impartial Justice To Maximize Revenue from Children*, 76 N.Y.U. ANN. SURV. AM. L. 33 (2020); Daniel L. Hatcher, *Commodified Inequality: Racialized Harm to Children and Families in the Injustice Enterprise*, 61 FAM. CT. REV. 341 (2023); INJUSTICE, INC., *supra* note 2.

11. Several excellent scholars and advocates have addressed the harmful misuse of police-like power by these agencies. *See, e.g.*, Martin Guggenheim, *Somebody's Children: Sustaining the Family's Place in Child Welfare Policy*, 113 HARV. L. REV. 1716 (2000) (book review); DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002); Matthew I. Fraidin, Essay, *Changing the Narrative of Child Welfare*, 19 GEO. J. ON POVERTY L. & POL'Y 97, 100 (2012); Vivek Sankaran & Christopher Church, *Rethinking Foster Care: Why Our Current Approach to Child Welfare Has Failed*, 73 SMU L. REV. F. 123 (2020), <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1017&context=smulrforum>; Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841 (2020); DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD (2022) [hereinafter TORN APART]; Tarek Z. Ismail, *Family Policing and the Fourth Amendment*, 111 CALIF. L. REV. 1485 (2023); Shanta Trivedi, *The Adoption and Safe Families Act Is Not Worth Saving: The Case for Repeal*, 61 FAM. CT. REV. 315 (2023).

child welfare agencies are taking children's resources and then diverting the funds as a source of county and state revenue.¹² The agencies look for children struggling with disabilities, not to better serve them but to take their Social Security disability (SSI) benefits.¹³ Foster children traumatized by their parents' deaths are not told that their parents were able to leave them Social Security survivor benefits, as the agencies secretly take the funds—depriving the children of using their own money to help themselves and stripping the children of the invaluable emotional connection the benefits could have provided to their deceased parents.¹⁴ Further, the agencies in many states also take other resources from foster children, including veteran's assistance benefits, cash assets, insurance, the children's own income, and more.¹⁵ The Nebraska agency, for example, crafted a regulation so it could take virtually everything from foster children, even burial plots.¹⁶ Consider the story of Alex, one of my former clients:

Alex was taken into foster care at age twelve after his mother's death. Over a six-year period, he was moved at least twenty times between temporary placements and group homes. Soon after losing his mother, Alex learned his older brother might be able to care for him, but then his brother died. There were also hopes that Alex could go to live with his father, but then his father died as well.

Unknown to Alex, he was eligible to receive Social Security survivor benefits after his father died. These funds could have provided an invaluable benefit to Alex, supplying an emotional connection to his deceased father and financial resources to help with his difficult transition out of foster care.

But without telling Alex, the Maryland foster care agency applied for the survivor benefits on his behalf and to become

12. See, e.g., *Foster Children Paying for Foster Care*, *supra* note 5 (exposing details of the practice and analyzing the harm and illegality).

13. *Id.* at 1803–08.

14. *See id.*

15. *See id.* at 1798–807; THE POVERTY INDUSTRY, *supra* note 6, at 65–110.

16. THE POVERTY INDUSTRY, *supra* note 6, at 76–77 (explaining that Nebraska's administrative code allows the agency to take children's resources, including “1. Cash on hand; 2. Cash in savings or checking accounts; 3. Stocks; 4. Bonds; 5. Certificates of deposit; 6. Investments; 7. Collectable unpaid notes or loans; 8. Promissory notes; 9. Mortgages; 10. Land contracts; 11. Land leases; 12. Revocable burial funds; 13. Trust or guardianship funds; 14. Cash value of insurance policies; 15. Real estate; 16. Trailer houses; 17. Burial spaces; 18. Life estates; 19. Farm and business equipment; 20. Livestock; 21. Poultry and crops; 22. Household goods and other personal effects; and 23. Federal and state tax refunds.” (quoting 479 NEB. ADMIN. CODE § 2-001.08 (1995) (repealed 2023))).

his representative payee. Then, although obligated to only use the benefits for the child's best interests, the agency took every payment from Alex. The agency didn't tell Alex it was applying for the funds, and didn't tell him when the agency took the money for itself. Alex struggled during his years in foster care, left foster care penniless, and continued to struggle on his own. And after taking Alex's funds, the agency hired a private revenue contractor to learn how to obtain more resources from foster children.¹⁷

In this process of taking disability and survivor benefits from children like Alex, the agency looked for help. In a contract document prepared by MAXIMUS, Inc., for the Maryland human service agency, the company includes a section entitled "Current and Potential Revenue Acquisition," and refers to foster children as a "revenue generating mechanism."¹⁸ And agencies in several other states also seek the assistance of private revenue contractors in the effort to mine foster children for funds. Contract documents obtained from public records requests describe the targeting of foster children as revenue "units," using them in "data match algorithms," and prioritizing and "dissecting" foster children in terms of which children will bring in the most money.¹⁹

Often with the assistance of such private contractors, foster care agencies across the country are taking over \$250 million in disability and survivor benefits each year from children in their care.²⁰ The agencies search for children who may be eligible for Social Security benefits, either because the children have potential to be labeled with a qualifying disability or because the children's parents have died or are disabled.²¹ The agencies apply for the benefits on the children's behalf and then take control of funds by applying to become the children's representative payee.²² Then, although the agencies' core purpose is to serve and protect the welfare of children, the agencies use the money as government revenue rather than for the children's individualized needs and best interests.²³ The agency rationale for the takings is to divert the children's funds to pay back the cost of foster care, but children have no legal

17. THE POVERTY INDUSTRY, *supra* note 6, at 1.

18. *Id.* at 2 (citing MAXIMUS, SSI/SSDI ASSESSMENT REPORT 5 (2013) (on file with author) (prepared for the Maryland Department of Human Resources)).

19. *Id.* at 82–90.

20. *Id.* at 80.

21. *Id.*

22. *Id.*

23. *Id.* at 80–82.

obligation to pay for their own care.²⁴ All of this is usually done without telling the children or their legal advocates.²⁵

Considering this practice under the theory of stategraft, Professor Atuahene lays out four elements of the framework in her article, “A Theory of Stategraft”: state agent involvement, transfer of property from persons, state benefit, and illegality.²⁶ This harmful revenue scheme clearly satisfies the first three elements. The state or county agencies are involved in carrying out the practice (often with private assistance), the practice involves the transfer of children’s property interests in their Social Security benefits, and the states or counties are financially benefiting by taking the children’s resources.

However, regarding the fourth element, Professor Atuahene suggests that a declaration of illegality is required, resulting in more complex and uncertain analysis. I have long argued through scholarship and advocacy that this practice of foster care agencies taking children’s Social Security benefits should be considered illegal, but the status across the country regarding declarations of illegality is varied and evolving.²⁷ The struggle for judicial rulings and legislative policy reform is often long and results can vary state by state and county by county.²⁸ My first law review article in 2006 exposed this practice and set out detailed arguments why the agency revenue scheme violates federal and state legal and constitutional requirements.²⁹ I provided that article to a journalist, leading to a front page story in the *New York Times*.³⁰ That led to a phone call the next day from the office of Congressman Pete Stark, requesting assistance in drafting a federal bill to stop the practice. Congressman Stark first introduced the bill in 2007.³¹ Despite multiple bill introductions over the years by Stark’s office and then by Congressman Danny Davis’s office, legal memoranda to federal agency leaders, congressional testimony, and multiple congressional briefings with excellent advocates, the bill has still not received a committee vote and the federal legislative effort therefore continues.³²

24. *Id.*

25. *Id.* at 102.

26. Atuahene, *supra* note 4, at 8–22.

27. *See, e.g.*, THE POVERTY INDUSTRY, *supra* note 6, at 101–10.

28. *See, e.g., id.* at 210–17.

29. *Foster Children Paying for Foster Care*, *supra* note 5, at 1826–44. *See also* THE POVERTY INDUSTRY, *supra* note 6, at 102–10.

30. Erik Eckholm, *Welfare Agencies Seek Foster Children’s Assets*, N.Y. TIMES, Feb. 17, 2006, at A1.

31. Foster Children Self-Support Act, H.R. 1104, 110th Cong. (2007).

32. *E.g.*, Foster Children Self-Support Act, H.R. 6192, 111th Cong. (2010); Protecting Foster Youth Resources to Promote Self-Sufficiency Act, H.R. 5737, 114th Cong. (2016); Protecting Foster Youth Resources to Promote Self-Sufficiency Act, H.R.

Alex, the youth described above, had already aged out of the foster care system when his case was referred to me, and I then filed a legal complaint against the Maryland agency on his behalf. Unfortunately, the child welfare agency convinced the courts that his lawsuit was time-barred.³³ Although neither Alex nor his lawyer at the time received any notice whatsoever of the agency's actions, the agency argued he had to file his claim within one year of when the agency became his representative payee and started taking his funds—while Alex was still a child in foster care.³⁴

I also collaborated with other advocates to serve both as an amicus and as counsel for amici in continuing state litigation.³⁵ In another Maryland case, a foster youth named Ryan encountered similar agency actions as Alex.³⁶ In a proceeding before the Maryland juvenile court, Ryan expressed his frustration but also his determination:

When I first wanted to move where I am now, they didn't want to do it, meaning they were fighting me. They thought I was better where I was in a group home, than be in a foster home where I was in a much better school, and getting the help I needed. For now, they're supposed to be here for me, but everything that benefits me they're fighting. My parents have passed away, you know. I loved my parents to death. I just lost my big brother. If my parents pass away, they would want me to have their work benefits, and DSS, they don't need it . . . You know, the thing is, they are survivor benefits. I am a survivor . . . Everyone's passed away, besides my aunt. I wish that I'd be able to get this, so I can move on with my life,

7296, 115th Cong. (2018); Protecting Foster Youth Resources to Promote Self-Sufficiency Act, H.R. 9654, 117th Cong. (2022); *To Review Proposals To Improve Child Protective Services: Hearing Before the Subcomm. on Hum. Res. of the H. Comm. on Ways & Means*, 109th Cong. 66–70 (2006) (statement of Daniel L. Hatcher) (addressing the concerns and recommendations in *Foster Children Paying for Foster Care*, *supra* note 5, and a legislative proposal to implement the article's recommendations); Memorandum from Daniel Hatcher to Assistant Sec'y January Contreras & Assoc. Comm'r Aysha Schomburg, U.S. Dep't of Health & Hum. Servs. (Sept. 5, 2022) (on file with author); Memorandum from Daniel L. Hatcher to SSA (Oct. 27, 2021) (on file with author).

33. *Purpose vs. Power*, *supra* note 10, at 175–78; *Myers v. Balt. Cnty. Dep't of Soc. Servs.*, No. 03-C-08-12642, 2009 WL 7215471 (Md. Cir. Ct. Apr. 10, 2009) (granting the agency's motion to dismiss).

34. *Purpose vs. Power*, *supra* note 10, at 177–78.

35. For analysis of the cases involving former Maryland foster youth, see *Purpose vs. Power*, *supra* note 10, at 175–94. See also Brief of Amicus Curiae, *State v. Z.C.*, No. S-18249/S-18259 (Alaska May 26, 2022), 2022 WL 3636184.

36. *Purpose vs. Power*, *supra* note 10, at 175–90.

and stop having to fight for everything that benefits me. That's what they ([Baltimore County Department of Social Services]) have been doing. They're my advocates? No they're not. To me, they're against me.³⁷

Ryan's case was appealed to the Maryland Court of Appeals, and although the court held that the agency violated Ryan's due process rights by not providing notice, the court unfortunately concluded that the agency did not otherwise violate Ryan's legal rights by taking his survivor benefits.³⁸

After the court decisions, I worked with advocates to draft and support legislation in Maryland to stop this practice. Again, results were mixed. After a five-year effort, the legislation originally sponsored by then-state senator Jamie Raskin was finally enacted in 2018.³⁹ But the original bill was amended due to strong agency resistance, with the agency lobbying so it could still take most of the children's funds. The final bill protected forty percent of the resources of foster youth beginning at age fourteen, gradually increasing to one hundred percent by age eighteen.⁴⁰ For all the rest of the foster youth, the agency has continued to target the children's funds to divert the money to state coffers.⁴¹ After the Maryland legislation was enacted, efforts to further inform journalists have led to press coverage over the years in several states and further national coverage in a collaborative series by NPR and the Marshall Project that was chosen as finalist for the Pulitzer Prize.⁴² With ongoing efforts, over twenty-five states and cities have now started to consider curtailing the harmful practice, but progress is often slow even in those states considering reform.⁴³

37. *Id.* at 175–76 (quoting *In re Ryan*, No. 802023006, at 3 (Balt. City Cir. Ct. June 16, 2011)).

38. *In re Ryan W.*, 76 A.3d 1049 (Md. 2013).

39. S.B. 291, 2018 Gen. Assemb., Reg. Sess. (Md. 2018).

40. *Id.* § 5–527.1(C)(2).

41. *Id.*

42. *Finalist: Eli Hager of the Marshall Project and Joseph Shapiro, Contributor, of National Public Radio, PULITZER PRIZES (2022)*, <https://www.pulitzer.org/finalists/eli-hager-marshall-project-and-joseph-shapiro-contributor-national-public-radio> [<https://perma.cc/9FB4-TLT2>] (“For powerful reporting that exposed how local government agencies throughout America quietly pocketed Social Security benefits intended for children in foster care.”). *See also* MELANIE DELGADO, KRISTE DRAPER & AMY HARFELD, CHILDREN'S ADVOCACY INSTITUTE, *THE FLEEING OF FOSTER CHILDREN* (2011).

43. *See State Reform Efforts*, CHILD.'S ADVOC. INST., UNIV. SAN DIEGO, <https://www.sandiego.edu/cai/advocacy/youth-benefits/state.php> [<https://perma.cc/FN3A-FWHZ>].

Returning to the theory of stategraft, this example illustrates how child welfare agencies, whose sole purpose is to serve and protect vulnerable youth, are instead generating revenue by taking the children's funds. I would argue that if any practice should be considered stategraft, this is it. However, if Professor Atuahene's suggested element of illegality is construed strictly, such a clear declaration regarding this practice has not yet been achieved in the courts or state legislatures. Maryland law currently only partially restricts the practice. A handful of states have enacted legislation to stop the practice, and several other states have started the legislative process (which can take multiple years). In some states, the efforts may even vary by county. In most states, however, the practice is still allowed or even encouraged. Therefore, as further explained in the Conclusion, I urge a broad framing of the illegality element to encompass practices that are clearly unjust even if not yet illegal.

B. The Web of Agency Commodification Schemes Extracting Billions from Children and the Poor

The practice of foster care agencies taking children's Social Security benefits is only one of several examples in which states and their agencies commodify the populations they are intended to serve. Thus, to understand the scope of the interlinked poverty industry practices—all arguably variations of stategraft—this Section briefly summarizes additional examples. The revenue schemes are vast and varied. Some are carried out at the state level, some at the county level—sometimes both—and with the government agencies often partnering with private contractors for help in the moneyed pursuit.

For example, if Ryan or Alex's custodial parents were alive when they were taken into foster care, in addition to taking their Social Security benefits, the agency would pursue child support against the impoverished parents—that the agency takes under the rationale of reimbursing the costs of foster care.⁴⁴ The practice devastates struggling parents who are desperately trying to reunify with their children.⁴⁵ Agencies treat the payment of such support as a requirement before allowing child

44. See generally *Collateral Children*, *supra* note 10.

45. *Id.* An agency report from the Orange County, California, Department of Child Support Services confirmed the practice harms impoverished parents' reunification efforts through the ruthless enforcement actions and also hurt the parents' ability to obtain housing, to set up utilities like water and heat, to obtain work, to obtain necessary loans, or to purchase a car necessary for work. ORANGE CNTY. DEP'T OF CHILD SUPPORT SERVS., CHILD SUPPORT AND FOSTER CARE IN CALIFORNIA (2019), <https://www.css.ocgov.com/sites/css/files/import/data/files/100280.pdf> [<https://perma.cc/T2T3-85C5>].

reunification, using foster children as collateral, which I have argued violates federal law requiring reunification plans to be in the best interests of children.⁴⁶ In fact, when an impoverished parent falls behind on unmanageable “child support” payments, some states will even terminate parental rights solely because of the debt.⁴⁷ For example, a North Carolina father was soon to be released from prison due to good behavior, he had a good job lined up, and he did everything he could to complete a reunification plan with his daughter that the child’s social worker supported, but the state took his daughter and terminated his parental rights for about \$70 in state-owed child support: “[A]t forty cents a day, the father earned only \$2.80 per week [in prison]. Thus, considering his total earnings and the maximum amount of support he could have paid during the six-month statutory period, the father’s parental rights were terminated for a government debt of \$72.80.”⁴⁸

This practice of using foster children as collateral is one of multiple ways that agencies commodify children and their families through the government IV-D child support system.⁴⁹ The IV-D system is immense, processing almost twenty percent of all children in the United States.⁵⁰ Most of the families are poor, and “Black parents are pulled into the system at more than twice the percentage of Black individuals in the overall population.”⁵¹ The federal government makes IV-D funds available to states for the intended purpose of helping children and families.⁵² But instead, state agencies often focus on the money: maximizing billions in the federal IV-D funds that are then used as state revenue by increased harmful processing of families through the system, including increased use of punitive enforcement tools.⁵³ Further, agencies

46. *Collateral Children*, *supra* note 10, at 1341–54.

47. *Id.* at 1359–70.

48. *Id.* at 1360–62 (footnotes omitted).

49. 42 U.S.C. §§ 651–69b. *See also* Vicki Turetsky, *Reforming Child Support To Improve Outcomes for Children and Families*, ABELL REP., June 2019, at 1, 4.

50. INJUSTICE, INC., *supra* note 2, at 157.

51. *Id.* *See also* Turetsky, *supra* note 49; Tonya L. Brito, David J. Pate, Jr. & Jia-Hui Stefanie Wong, “*I Do for My Kids*”: *Negotiating Race and Racial Inequality in Family Court*, 83 FORDHAM L. REV. 3027 (2015); Ann Cammett, *Deadbeat Dads & Welfare Queens: How Metaphor Shapes Poverty Law*, 34 B.C. J. L. & SOC. JUST. 233, 237–38 (2014); Dennis Putze, *Who Owes the Child Support Debt?*, OFF. CHILD SUPPORT SERVS., U.S. DEP’T HEALTH & HUM. SERVS. (Sept. 15, 2017), <https://www.acf.hhs.gov/css/ocsedatablog/2017/09/who-owes-child-support-debt> [<https://perma.cc/E8DF-7AQU>] (finding that over seventy percent of the child support debt nationwide is owed by parents with incomes of \$10,000 or less).

52. *Title IV-D – Child Support and Establishment of Paternity*, STATE JUST. INST., <https://fundingtoolkit.sji.gov/title-iv-d-child-support-and-establishment-of-paternity/> [<https://perma.cc/J8F7-N5VV>].

53. THE POVERTY INDUSTRY, *supra* note 6, at 143–51.

are also incentivized to pursue poor noncustodial parents for payments that are taken from the families to replenish state revenue. When impoverished parents need Medicaid or welfare assistance, states force them to sue the other parents for “child support” that is diverted to the government.⁵⁴ Impoverished fragile families are further torn apart as one parent is forced to sue the other for payments that do not benefit their children.⁵⁵ The processing is harmful, and the extraction is harmful.

Considering the IV-D child support revenue practices within the framework of statecraft, the first three elements are met. First, the state and county agencies are involved. Second, the practice arguably involves the transfer of property interests in diverting child support payments to government coffers—even taking children from their parents. Third, the agencies seek financial benefit.⁵⁶ But finally, regarding illegality, although I have long argued such practices should be considered illegal, courts have mostly not yet agreed and state legislatures continue to allow and even encourage such practices.⁵⁷

Next, interlinked with the foster care and child support revenue strategies, states and their agencies also use vulnerable populations as a source of extracting even more funds—in the billions—through several Medicaid maximization and diversion schemes.⁵⁸ The practices focus on facilities where vulnerable populations can be easily targeted to divert their Medicaid funding to state coffers, including nursing homes, hospitals serving a disproportionate share of the poor (*e.g.*,

54. *Id.* at 157–64.

55. *See id.* at 162–63.

56. However, the administrative cost of enforcement is often greater than collections. *See Child Support Harming Children*, *supra* note 10, at 1070–74; ORANGE CNTY. DEP’T OF CHILD SUPPORT SERVS., *supra* note 45, at 6 (finding that child support orders against parents in the foster care system were financially harmful to the state, because “[f]or every dollar it expends, only 27 cents is collected”).

57. *E.g.*, THE POVERTY INDUSTRY, *supra* note 6, at 143–79. *See also* Chris Gottlieb & Martin Guggenheim, *New York’s Unconstitutional Treatment of Unwed Fathers of Children in Foster Care*, 46 N.Y.U. REV. L. & SOC. CHANGE 309 (2022); Ann Cammett, *The Shadow Law of Child Support*, 102 B.U. L. REV. 2237 (2022). After several years of advocacy regarding the harm from child support enforcement in child welfare cases, the U.S. Department of Health and Human Services’s Children’s Bureau issued an important modified policy guidance that encourages states to reduce the imitation of child support against families pulled into the foster care system. The policy unfortunately does not prohibit the harmful actions but rather clarifies that states have the option to stop the harm. *See 8.4C Title IV-E, General Title IV-E Requirements, Child Support*, OFF. ADMIN. FOR CHILD. & FAMS., U.S. DEP’T HEALTH & HUM. SERVS. (June 6, 2022), https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=170 [https://perma.cc/8RVK-HEYT].

58. *See generally Medicaid Maximization and Diversion*, *supra* note 10; *Poverty Revenue*, *supra* note 10; THE POVERTY INDUSTRY, *supra* note 6, at 111–42.

Disproportionate Share hospitals), and schools with high numbers of impoverished children.⁵⁹ The same foster children such as Alex or Ryan could be targeted by the state agency for their Social Security funds, their parents then targeted to pursue and take child support payments while generating IV-D funds—and then the children and their families could be further targeted to take their Medicaid funds.

For example, New Jersey hired a revenue maximization contractor to help run the state's "Special Education Medicaid Initiative," plugging disabled children into revenue claiming equations.⁶⁰ The state then diverted 82.5 percent of the federal aid intended for children's special education related services to the state general coffers.⁶¹ Tellingly, details about the revenue scheme are located on the website for New Jersey's Department of the Treasury rather than the education department.⁶² Meanwhile, Texas uses schemes to route billions in federal Medicaid matching funds to general coffers while the state has led the nation in the percentage of residents lacking access to crucially needed Medicaid services.⁶³ Similarly, an Indianapolis agency has been buying private nursing homes across the state, not with the goal of bringing the nursing homes under government control to improve services, but to divert billions in desperately needed Medicaid funds from the disabled and elderly residents into government coffers.⁶⁴ The state and local

59. *Medicaid Maximization and Diversion*, *supra* note 10, at 1229–55. *See also* Teresa A. Coughlin, Brian K. Bruen & Jennifer King, *States' Use of Medicaid UPL and DSH Financing Mechanisms*, HEALTH AFFS., Mar./Apr. 2004, at 245.

60. THE POVERTY INDUSTRY, *supra* note 6, at 130–31.

61. *Id.* at 131.

62. Div. of Admin., N.J. Treasury, *Special Education Medicaid Initiative (SEMI)*, OFF. SITE ST. N.J., <https://www.state.nj.us/treasury/administration/semi-mac/semi.shtml> [<https://perma.cc/QZ6N-MFJH>] (Jan. 31, 2023).

63. THE POVERTY INDUSTRY, *supra* note 6, at 118; Spencer Grubbs & Bruce Wright, *Uninsured Texans*, COMPTROLLER.TEX.GOV: FISCAL NOTES (Oct. 2020), <https://comptroller.texas.gov/economy/fiscal-notes/archive/2020/oct/uninsured.php> [<https://perma.cc/PE9V-JCD9>]. A budget document describes Texas claiming the federal aid from the drug rebate program, the Disproportionate Share Hospital program (hospitals serving a disproportionate share of the poor), and the Medicaid Uncompensated Care program. Each of these programs is intended to improve care for impoverished Texans, but the funds are instead diverted into the state general finances: "these funds and rebates comprise state revenue," and, "[t]he [general revenue] portion of these funds and rebates is expected to total \$2.02 billion." GLENN HEGAR, TEX. COMPTROLLER OF PUB. ACCTS., 87TH TEX. LEGISLATURE, BIENNIAL REVENUE ESTIMATE: 2022-2023 BIENNium 21 (2021), <https://comptroller.texas.gov/transparency/reports/biennial-revenue-estimate/2022-23/> [<https://perma.cc/AGK3-W66W>].

64. THE POVERTY INDUSTRY, *supra* note 6, at 193–97. Reporting by the *IndyStar* indicates that as of 2020, the Indianapolis agency used this scheme to divert at least \$1 billion in Medicaid funds that was intended for nursing home care and that amount "could be nearly \$3 billion." Tim Evans, Emily Hopkins & Tony Cook, *Nursing Home Residents Suffer as County Hospitals Rake in Millions*, INDYSTAR,

government has saved revenue, and the city agency obtains funds to use for other purposes, while the elderly poor have been trapped in substandard care.⁶⁵

Again, considering such practices under the stategraft lens, the states carry out the Medicaid schemes with contractor assistance. The states are financially benefiting by taking the individuals' entitlement interests to Medicaid-eligible funding and services, and also by diverting the public's interest in the proper use of the federal funds that were paid for by public taxation. My scholarship explains why such Medicaid revenue strategies should arguably be considered illegal, undermining the statutory purpose and structure of Medicaid and taking the individuals' federal aid as they often struggle with insufficient services. However, courts and legislatures have not provided declarations of illegality—so the practices unfortunately continue.⁶⁶

II. JUSTICE INSTITUTIONS COMMODYING CHILDREN AND THE POOR

The above agency revenue operations are vast, and the summaries only scratch the surface of the web of intersecting variations.⁶⁷ And while

<https://www.indystar.com/in-depth/news/investigations/2020/03/11/indiana-nursing-home-patients-suffer-medicaid-money-diverted-hospitals/2517834001/>
[<https://perma.cc/PEV6-JHGU>] (Feb. 2, 2021, 3:53 PM).

65. My research was submitted in an amicus brief to the Supreme Court in support of the nursing home residents. See Brief for *Amicus Curiae* Daniel L. Hatcher in Support of Respondent Ivanka Talevski, Personal Representative of the Estate of Gorgi Talevski, Deceased at 1–2, *Health & Hosp. Corp. of Marion Cnty. v. Taleveski*, 143 S. Ct. 1444 (2023) (No. 21-806), 2022 WL 4536275, at *1–2.

66. See e.g., THE POVERTY INDUSTRY, *supra* note 6, at 111–42; *Medicaid Maximization and Diversion*, *supra* note 10, at 1257–61. The GAO agrees: “The U.S. Government Accountability Office, however, believes the money should be used for its intended purpose. ‘Our position is that Medicaid payments should be made for Medicaid services made to Medicaid patients’” Harvey Rice, *State Takes Charity Care Money from UTMB*, HOUS. CHRON., <https://www.houstonchronicle.com/news/houston-texas/houston/article/state-takes-charity-care-money-from-utmb-4398633.php> (Mar. 31, 2013, 10:53 PM) (quoting Katherine Iritani, GAO Director for Health Care Issues).

67. See generally, e.g., Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. REV. 2 (2018); Rebekah Diller, Mitali Nagrecha & Alicia Bannon, *Reflections on Fees and Fines as Stategraft*, 98 N.Y.U. L. REV. ONLINE 262 (2023), https://www.nyulawreview.org/wp-content/uploads/2023/05/NYULawReview98_DillerNagrechaBannon-1.pdf [<https://perma.cc/243U-HMGB>]; Jeffrey Selbin, *Juvenile Fee Abolition in California: Early Lessons and Challenges for the Debt-Free Justice Movement*, 98 N.C. L. REV. 401 (2020); Christine A. Budasoff, *Modern Civil Forfeiture Is Unconstitutional*, 23 TEX. REV. L. & POL. 467 (2019); Sonia M. Gipson Rankin, *The MIDAS Touch: Atuahene’s “Stategraft” and Unregulated Artificial Intelligence*, 98 N.Y.U. L. REV. ONLINE 225 (2023), <https://www.nyulawreview.org/wp-content/uploads/2023/05/NYULawReview-Volume98-GipsonRankin-2.pdf>

much of my early scholarship exposed how human service agencies partner with companies to extract revenue and profit from the vulnerable, my new book, *Injustice, Inc.*, reveals an even greater concern: our very systems of justice have joined the poverty industry operations.⁶⁸ Not only are human service agencies extracting revenue from youth like Ryan and Alex, the justice systems are as well.

This Part begins by highlighting one of the starker examples: juvenile courts making money by removing children from their homes. Further, to understand how the practice of courts monetizing child removals is interlinked with several more variations of stategraft, this Part then summarizes other extractive revenue operations carried out by each part of our justice systems. America's foundational courts, prosecutors, probation departments, police, sheriffs, and detention facilities are all contractually collaborating with each other and with the state human service agencies, operating like symbiotic divisions of a factory business to commodify children and the poor.⁶⁹ The story turns to Ohio.

A. Juvenile Courts Monetizing Child Removals

Independence between juvenile courts and agencies is crucial. Normally, foster care agencies are supposed to provide foster care services. The federal government provides Title IV-E foster care funds to help the state agencies.⁷⁰ And juvenile courts are supposed to review the agency actions through several hearings to ensure the agencies are complying with legal requirements and only acting in the best interests

[<https://perma.cc/Y84P-DAN6>]; Katie Thomas & Jessica Silver-Greenberg, *How a Hospital Chain Used a Poor Neighborhood To Turn Huge Profits*, N.Y. TIMES, <https://www.nytimes.com/2022/09/24/health/bon-secoure-mercy-health-profit-poor-neighborhood.html> (Sept. 27, 2022); Matthew Cunningham-Cook, *The Company Salivating Over the Medicaid Disaster*, LEVER (July 12, 2023), <https://www.levernews.com/the-company-salivating-over-the-medicaid-disaster/> [<https://perma.cc/B8SV-XYDK>] (generating private profit and bolstering state coffers by disenrolling millions of people from Medicaid); Eli Hager, *Utah Makes Welfare So Hard To Get, Some Feel They Must Join the LDS Church To Get Aid*, PROPUBLICA (Dec. 2, 2021, 5:00 AM), <https://www.propublica.org/article/utahs-social-safety-net-is-the-church-of-jesus-christ-of-latter-day-saints-what-does-that-mean-if-youre-not-one> [<https://perma.cc/X8MY-PUNN>]; *State Fact Sheets: How States Spend Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL'Y PRIORITIES, <https://www.cbpp.org/research/family-income-support/state-fact-sheets-how-states-have-spent-funds-under-the-tanf-block> [<https://perma.cc/C5GS-R6GP>] (Mar. 17, 2023) (noting that fourteen states spent less than ten percent of TANF funds on basic assistance).

68. See generally *INJUSTICE INC.*, *supra* note 2.

69. *Id.* at 2.

70. 42 U.S.C. §§ 670–79c.

of children, especially considering the traumatic agency actions of breaking up families by removing children from their homes.⁷¹ However, the Ohio juvenile courts created a plan to combine and monetize the whole process.⁷²

Since 1996, the juvenile courts in Ohio have entered contractual “subgrant agreements” with the state’s human service agency.⁷³ Through the agreements, the courts contract to become the local foster care agencies while still serving as the courts, so they can review their own actions as the local agencies—in order to make money from the child removal process.⁷⁴ If a juvenile court judge rules that a child from an impoverished family is “unruly” or delinquent and orders the child to be removed from their home, the court can claim the federal Title IV-E foster care funds intended for the foster care agency.⁷⁵ The more children the court removes from their homes, the more money the court can claim. Also, the courts can claim additional funds by labeling other children as foster care “candidates,” and then the courts can keep processing the children—at a constant risk of removal—and claim Title IV-E revenue for the courts’ operations.⁷⁶

In such a system, youth like Alex and Ryan become commodities. The juvenile courts receive trainings about how to maximize Title IV-E funds, plugging children into equations called the “eligibility ratio” or “penetration rate.”⁷⁷ The greater the resulting “percentage of poor children removed by the courts into foster care, and the longer those children are held in foster care as compared to nonpoor children, the

71. 42 U.S.C. §§ 675(5), 675a.

72. INJUSTICE, INC., *supra* note 2, at 33–35.

73. *Id.* See also Patrick Griffin & Gregory Halemba, *Federal Placement Assistance Funding for Delinquency Services*, CHILD. FAMS. & CTS., Winter 2003, at 1, 1, <http://www.ncjj.org/PDF/winter2003cfc.pdf> [<https://perma.cc/3U7N-ZGHH>]; Subgrant Agreement between the Ohio Dep’t of Job & Fam. Servs., the Lucas Cnty. Juv. Ct., the Lucas Cnty. Bd. of Comm’rs, and the Ohio Dep’t of Medicaid (Sept. 17, 2019) (G-2021-06-0072), <https://lcapps.co.lucas.oh.us/carts/resos/23039.pdf> [<https://perma.cc/WME9-DTSN>] [hereinafter Subgrant Agreement].

74. INJUSTICE, INC., *supra* note 2, at 34. See also Subgrant Agreement, *supra* note 73, at 2.

75. INJUSTICE, INC., *supra* note 2, at 33–39.

76. *Id.* at 39.

77. See Denise Navarre Cubbon & Steve Hanson, *Permanency – A Forever Home for Children in Foster Care: What Courts Can Do*, CHILD. FAMS. & CTS., Fall 2012, at 1, 8, <http://ohiofamilyrights.com/Reports/Special-Reports-Page-3/Permanency--A-Forever-Home-for-Children-in-Foster-Care-What-Courts-Can-Do.pdf> [<https://perma.cc/54J5-EQP4>] (“The Bureau of Fiscal Administration and Fiscal Accountability, located within the Ohio Department of Job and Family Services’ Office of Families and Children is offering a two-day ‘Guidance Training’ for courts interested in understanding ways to increase funding through the Title IV-E program.”); INJUSTICE, INC., *supra* note 2, at 35.

more money the juvenile courts can obtain.”⁷⁸ As one county juvenile court judge explains, “the more kids that are placed out of their homes, the more money the court gets, which might lead some people to question the court’s motivation: helping the youngsters or getting the money?”⁷⁹ Then, in addition to generating revenue from direct foster care services, the training materials explain how courts can obtain even more revenue from youth through a seemingly endless list of administrative cost claiming.

After determining that youth like Alex or Ryan are delinquent or unruly, the courts leverage the children to fund overhead and operations, including paying for the payroll and fringe benefit costs of court staff, equipment and supply costs, depreciation costs of court buildings, and much more.⁸⁰ The training slides even explain how courts can use a pyramid-like strategy: first plugging the children into calculations to generate Title IV-E revenue through these numerous asserted administrative overhead costs, and then generating revenue on top of that revenue—by claiming administrative costs for the courts’ process of claiming the administrative costs.⁸¹ Further, to help with the process of maximizing Title IV-E funds from children, many of the Ohio juvenile courts hired a private revenue contractor, Justice Benefits, Inc. (JBI).⁸² A Miami County commissioners’ meeting explains how JBI is incentivized by a percentage of money claimed through the children: “JBI is paid 22% on monies recovered through claims submitted by the Court, and will be paid from the Juvenile Court Title IV-E Fund”⁸³

The removal and processing of children is lucrative for the courts. For example, as of 2019, the Cuyahoga County Juvenile Court was extracting about \$1.5 million a year in Title IV-E revenue from low-

78. INJUSTICE, INC., *supra* note 2, at 35.

79. Encarnacion Pyle, *Juvenile Courts’ Role Debated*, COLUMBUS DISPATCH, Sept. 11, 2006, at B1.

80. *Injustice, Inc.*, *supra* note 2, at 37–38.

81. OHIO DEP’T. OF JOB & FAM. SERVS., BUREAU OF FISCAL ACCOUNTABILITY, HOW TO ALLOCATE COSTS (DEVELOP THE ALLOWABLE COST POOL) AND COMPLETE THE QUARTERLY BILLING FORM (JFS 01797) FOR TITLE IV-E 15–46 [<https://perma.cc/UU7F-CNT5>]; Subgrant Agreement, *supra* note 73.

82. *Web Based System for the Ohio Juvenile Courts*, JBI (2018), <https://perma.cc/C7SD-A453>. See also Res. 18-07-899, July 19, 2019 Mtg. (Bd. of Mia. Cnty. Comm’rs 2019), <https://www.co.miami.oh.us/ArchiveCenter/ViewFile/Item/1469> [<https://perma.cc/6M38-DK5D>] (renewing and extending the contract with JBI).

83. Res. 14-12-1828, Dec. 30, 2014 Mtg. (Bd. of Mia. Cnty. Comm’rs 2014), <https://www.co.miami.oh.us/Archive/ViewFile/Item/379> [<https://perma.cc/FCP7-L8GP>].

income children.⁸⁴ The Montgomery County juvenile court estimated pulling in over \$2.3 million in 2019, which doesn't include millions in revenue obtained from the court's own residential treatment center.⁸⁵ And realizing the amount of money they can generate from poor children, many other states have unfortunately followed Ohio's lead.⁸⁶ Documents from Louisiana even illustrate a process of court personnel wearing pager-like devices "programmed to alert them to record information in a way that maximizes revenue from the children."⁸⁷

Considering the elements of statecraft, this process of juvenile courts commodifying child removals should be considered another variation. Although the state actors (*i.e.*, courts) are not directly taking assets from individuals, the courts are generating revenue through a process that takes children from their families and restricts the freedom of the individuals—and Professor Atuahene recognizes that freedom and control of the human body should be considered a property interest under the elements of statecraft.⁸⁸ A declaration of illegality regarding the process has not been formalized by courts or legislatures, but my research and analysis uncovers how the scheme violates the separation of powers by having courts rule on their own actions, violates due process impartiality by financially incentivizing the courts, and violates judicial ethics in numerous ways.⁸⁹ In fact, the juvenile courts' contractual deal to rule on their own actions contradicts a principle that has existed since the beginnings of American jurisprudence, as stated by James Madison: "No man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity."⁹⁰

84. CUYAHOGA CNTY. OFF. OF BUDGET & MGMT., 2018-2019 BIENNIAL BUDGET SCHEDULES 15 [<https://perma.cc/T7XY-KTHG>].

85. MONTGOMERY CNTY. OFF. OF MGMT. & BUDGET, 2020 ADOPTED BUDGET AND PLAN: DETAILED BUDGETS BY DEPARTMENT 363, <https://www.mcoho.org/ArchiveCenter/ViewFile/Item/89> [<https://perma.cc/27XE-UTUQ>].

86. Documents reveal similar court IV-E revenue strategies in Arizona, Illinois, Iowa, Louisiana, Missouri, Texas, and possibly more states. INJUSTICE, INC., *supra* note 2, at 39–40.

87. *Id.* at 39; JUV. CT. OF THE PAR. OF JEFFERSON, STATE OF LA., FINANCIAL STATEMENTS WITH INDEPENDENT AUDITOR'S REPORT THEREON: YEAR ENDED DEC. 31, 2005, at 7–8 (2006), [https://app.la.state.la.us/PublicReports.nsf/AC395D55385EFD5D862571CB00533F01/\\$FILE/00000544.pdf](https://app.la.state.la.us/PublicReports.nsf/AC395D55385EFD5D862571CB00533F01/$FILE/00000544.pdf) [<https://perma.cc/M8CE-LE2G>].

88. Atuahene, *supra* note 4, at 13.

89. INJUSTICE, INC., *supra* note 2, at 41–48.

90. THE FEDERALIST NO. 10, at 59 (James Madison) (Jacob E. Cooke ed., Wesleyan Univ. Press reprt. 2010). *See also* Paul R. Verkuil, *Separation of Powers, the Rule of Law and the Idea of Independence*, 30 WM. & MARY 301, 305 (1989).

B. Further Interlinked Justice System Commodification

Unfortunately for youth like Alex and Ryan, the juvenile court practice of generating revenue from child removals is only one variation of several carried out by each part of America's foundational justice systems.⁹¹ Similar to the structure of foster care Title IV-E funds, the federal government provides Title IV-D child support funds to help state child support agencies, but courts again developed contractual mechanisms to obtain the money.⁹² The structures vary, from states like Pennsylvania and Michigan—where the family courts contracted to take over the entire local child support agency function—to states like Ohio and Maryland—where the courts enter contracts to essentially act as Title IV-D mercenaries—with the child support agencies paying the judicial officials' salaries and benefits, incentivizing their decisions.⁹³ In Pennsylvania, the courts—contractually acting as the local child support agencies—even agree to petition themselves for contempt sanctions against struggling parents and then rule on their own petitions.⁹⁴ The more punitive orders the courts issue, and the more payments extracted from families in welfare or foster care cases, the more money the courts can make.⁹⁵

Although prosecutors are supposed to serve as attorneys for the people, they are also collaborating with the courts and other agencies to extract revenue from children and impoverished families.⁹⁶ For example, many state and county prosecutors have contracted to claim federal Title IV-E foster care funds by prosecuting child removals, including contracts where prosecutors can generate more revenue if they cause the removal

91. For an additional excellent critique of family and juvenile courts, see JANE M. SPINAK, *THE END OF FAMILY COURT: HOW ABOLISHING THE COURT BRINGS JUSTICE TO CHILDREN AND FAMILIES* (2023).

92. INJUSTICE, INC., *supra* note 2, at 49–69.

93. *Id.* at 58–68.

94. *Id.* at 58.

95. Further, America's foundational courts are using many other mechanisms to extract revenue from children and the poor—including collaborating with prosecutors, probation, and policing agencies—to make billions from unending fines and fees that contribute to trapping vulnerable populations in poverty. *Id.* at 27–28, 81–83, 91–94, 101–11. See also, e.g., Colgan, *supra* note 67; Diller, Mitali & Bannon, *supra* note 67; Selbin, *supra* note 67; Chris Albin-Lackey, *Fines, Fees, and Fundamental Rights: How the Fifty States Measure Up, Seven Years After Ferguson*, 34 FED. SENT'G REP. 107 (2021); SHARON BRETT, NEDA KHOSHKHOO & MITALI NAGRECHA, CRIM. JUST. POL'Y PROGRAM, HARV. L. SCH., *PAYING ON PROBATION: HOW FINANCIAL SANCTIONS INTERSECT WITH PROBATION TO TARGET, TRAP AND PUNISH PEOPLE WHO CANNOT PAY* (2020).

96. INJUSTICE, INC., *supra* note 2, at 69–83.

of more poor children from their homes.⁹⁷ Further, prosecutors' offices are also entering deals to extract revenue through harmful child support enforcement actions against impoverished parents.⁹⁸ The same court could contract to make money when ordering the removal of youth like Alex and Ryan from their homes, and then generate more revenue by ordering government-owed child support against the parents who are desperately trying to reunify with their children. Meanwhile, the prosecutor's office can simultaneously generate revenue from prosecuting both the child removal and the support enforcement actions.⁹⁹ Impartiality, the separation of powers, and ethics are all destroyed in the process—and the harm is devastating.¹⁰⁰

Piling onto the extractive harm, probation departments have also formed a large part of the factory-like revenue operations.¹⁰¹ Similar to courts and prosecutors, some states' juvenile probation departments enter contracts to claim federal Title IV-E foster care funds, generating revenue through their power to recommend that children charged with delinquency should be removed from their homes or by labeling and processing the children as foster care "candidates" at constant threat of removal.¹⁰² Training materials from California probation departments show how the probation officers are encouraged to increase negative information in summaries about children, so the agencies can generate millions in revenue through the children "because negative assessments are what keep the children in probation."¹⁰³ Through the extractive processing, probation officers inflict endless punitive requirements upon youth and their families, and they leverage the power to threaten detention and even the termination of parental rights—all while using the children to maximize Title IV-E funds.¹⁰⁴

97. *Id.* at 70–73.

98. *Id.* at 73–81.

99. And surrounding these revenue schemes, prosecutors are also collaborating with courts, probation, and policing agencies to pursue billions in fines and fees—often against the same children and parents. *Id.* at 27–28, 81–83.

100. *Id.* at 74–83.

101. *Id.* at 84–97. For an additional critique of the probation system, see VINCENT SCHIRALDI, *MASS SUPERVISION: PROBATION, PAROLE, AND THE ILLUSION OF SAFETY AND FREEDOM* (2023).

102. *INJUSTICE, INC.*, *supra* note 2, at 87–91.

103. *Id.* at 88. One of the training slides even "provides an example of a case note labeled as 'bad' because it indicates the probation officer visited the child and made the conclusion 'all okay.'" *Id.* (quoting DEBORAH LAFAYETTE, CHIEF PROBATION OFFICERS OF CALIFORNIA, *TITLE IV-E PROBATION CLAIMING 26* (2012), <https://www.slideserve.com/lecea/title-iv-e-probation-claiming> [<https://perma.cc/X6SR-ELZ9>]).

104. *Id.* at 87–91. Meanwhile in New Jersey, the probation departments work directly for the courts to extract IV-D child support revenue from struggling families,

Then come the police, sheriffs, city marshals, and constables, acting as the armed revenue enforcers.¹⁰⁵ Sheriffs extract millions in revenue by carrying out court-ordered arrests in Title IV-D child support proceedings.¹⁰⁶ In Florida, sheriffs contracted to claim millions in Title IV-E foster care funds by taking over the child protective service investigations and recommending child removals.¹⁰⁷ Across the country, sheriffs are incentivized through contingency fees in enforcing court-ordered fines and fees and collections.¹⁰⁸ In New York City, the mayor appoints city marshals who extract millions from the poor by pursuing fines and fees; carrying out evictions, foreclosures, and car repossessions; seizing bank accounts; and more—with each marshal racking up an average of \$420,000 in net income for sending millions into the city coffers.¹⁰⁹ Policing agencies also extract millions from civil forfeitures after seizing property and carrying out “sheriff’s sales”—a practice that originated with sheriffs selling enslaved persons to pay off court ordered debts—with sheriff’s offices generating governmental revenue from the sales.¹¹⁰

Further still, as a part of the intertwined money-driven processing by justice institutions, countless variations of carceral facilities contribute

and the probation offices simultaneously provide supervision to children pulled into delinquency proceedings. *Id.* at 91. Further, the probation business furthers the revenue extraction through forced unpaid work programs and enforcing endless fines and fees. *Id.* at 91–97.

105. *Id.* at 98–115.

106. *Id.* at 99–100. Carrying out their role in the factory process, the sheriff’s department in Prince George’s County, Maryland, received over \$2 million in child support revenue in one year. *Id.* at 100; OFF. OF THE SHERIFF, FY 2019 BUDGET SUMMARY 271, https://www.princegeorgescountymd.gov/sites/default/files/media-document/dcv21407_office-of-the-sheriffpdf.pdf [<https://perma.cc/PX9U-UVX5>].

107. INJUSTICE, INC., *supra*, note 2, at 100; PRO. STAFF OF THE COMM. ON CHILD. FAMS. & ELDER AFFS., FLA. SENATE, BILL ANALYSIS AND FISCAL IMPACT STATEMENT (2017), <https://www.flsenate.gov/Session/Bill/2017/1092/Analyses/2017s01092.pre.cf.PDF> [<https://perma.cc/H349-NUML>] (analyzing SB 1092). *See also* FLA. STAT. § 39.3065 (2022).

108. INJUSTICE, INC., *supra* note 2, at 101–07.

109. *Id.* at 101–02; SARAH STEFANSKI, N.Y.C. INDEP. BUDGET OFF., REVENUE OPTIONS: MAKE CITY MARSHALS CITY EMPLOYEES (2019), <https://ibo.nyc.ny.us/iboreports/revenue-options-fares-tolls-and-other-revenue-generators-2019.pdf> [<https://perma.cc/HU9K-XMRL>]; *NYC Marshalls*, N.Y.C. DEP’T INVESTIGATION, <https://www.nyc.gov/site/doi/offices/nyc-marshals.page> [<https://perma.cc/368L-A6FU>].

110. INJUSTICE, INC., *supra* note 2, at 104–07. Further still, sheriff’s departments extract more revenue through incentivized contracts to detain and jail undocumented individuals, and some sheriffs’ offices have even profited from incarcerating impoverished individuals and taking funds intended for the detainees’ food—and the revenue mechanisms continue. *Id.* at 111–12.

to the extractive revenue maximization by extracting freedom.¹¹¹ Jails; prisons; detention facilities; and positive sounding places such as “treatment” centers, “camps,” and “academies”; all follow the same moneyed formula: maximizing bodies in the beds while minimizing costs of care.¹¹² State entities extract revenue directly through government-operated facilities and when private entities take over the operations.¹¹³ A Texas county judge described “the juvenile detention center as a growing source of revenue for the county that helped to offset a decline in property values.”¹¹⁴ Maryland’s Department of Juvenile Services compared the economic benefit of a new jail for children to a factory producing automobiles.¹¹⁵ The scope, the money, and the harm are massive—as humans are essentially bought and sold by “real estate investment trusts,” used in “roll-up strategies” by private equity firms, or purchased by other large corporate entities that are traded on the stock market.¹¹⁶ Governments and their private partners generate billions while the warehoused humans—including youth like Alex and Ryan—are treated as remnants, suffering from poor care, abuse, or worse.¹¹⁷

Each variation of these interlinked justice system commodification practices should be considered a form of stategraft. The state actors are engaged in practices that take resources and freedom from vulnerable populations through mechanisms to generate state revenue. And each variation is arguably illegal in multiple ways, including the common refrain of the justice institutions violating the constitutional due process requirement of impartiality.¹¹⁸ Our institutions of justice are supposed to be solely incentivized by providing individuals with equal justice rather than by profiting from their harm.

111. *Id.* at 115–37.

112. *Id.* at 116, 120.

113. *Id.* at 137.

114. *Id.* at 118–19 (quoting Ciara McCarthy, *Revenue from Juvenile Detention Center Shows Growing Trend for Victoria County*, VICTORIA ADVOC., https://www.victoriaadvocate.com/news/government/revenue-from-juvenile-detention-center-shows-growing-trend-for-victoria-county/article_434d6a6e-b218-11e8-849d-1f19478df37d.html [<https://perma.cc/NZW5-PCWD>] (June 12, 2020)).

115. INJUSTICE, INC., *supra* note 2, at 118.

116. *Id.* at 132–137.

117. *Id.*

118. For detailed analysis regarding how the branches of our justice systems are each engaged in illegality through their commodification practices, see *id.* at 41–48, 56–68, 74–81, 92–97, 108–11, 113–14, 124–32, 134–37.

CONCLUSION

The numerous examples of the poverty industry practices summarized above are unfortunately only a partial listing of the intertwined revenue schemes. The vastness of the scope and complexities of the revenue practices can initially seem haphazard, but they begin to reveal themselves as synched in their common extractive goal. America's public institutions of welfare and justice are collaborating with each other and an expansive network of private contractors to generate revenue and profit from impoverished children and families. Government institutions intended to serve vulnerable individuals are instead churning them into unethical and unconstitutional mechanics of factory revenue operations—in symbiotic relationships that simultaneously power and are powered by each other, in which harm fuels and feeds from harm.

Details regarding these extractive revenue operations provide support for Professor Atuahene's important framing of stategraft theory. Simultaneously, my research and the excellent scholarship and advocacy of others regarding extractive practices raises questions about whether the proposed theory of stategraft could be framed even more broadly.¹¹⁹ Professor Atuahene's framing inspires "a robust conversation about stategraft," which she describes as one of her goals.¹²⁰

In her 2023 article, Atuahene suggests four definitional elements of the theoretical stategraft framework: state agent involvement, transfer of property from persons, state benefit, and illegality.¹²¹ Considering the first element, state agent involvement, Professor Atuahene importantly recognizes that private actors often play a role.¹²² My research into the contractual relationships of state agencies and justice institutions with

119. See, e.g., TORN APART, *supra* note 11, at 141–58; Diller, Nagrecha & Bannon, *supra* note 67; Colgan, *supra* note 67; Selbin, *supra* note 67; Albin-Lackey, *supra* note 95; LISA KNEPPER, JENNIFER McDONALD, KATHY SANCHEZ & ELYSE SMITH POHL, INST. FOR JUST., POLICING FOR PROFIT: THE ABUSE OF CIVIL ASSET FORFEITURE (3d ed. 2020), <https://ij.org/wp-content/uploads/2020/12/policing-for-profit-3-web.pdf> [<https://perma.cc/66PN-PF4H>]; NOAH ZATZ, TIA KOONSE, THERESA ZHEN, LUCERO HERRERA, HAN LU ET AL., UCLA INST. FOR RSCH. ON LAB. & EMP., GET TO WORK OR GO TO JAIL: WORKPLACE RIGHTS UNDER THREAT (2016), <https://www.labor.ucla.edu/wp-content/uploads/2018/06/Get-to-Work324.pdf> [<https://perma.cc/23MS-UWH4>]; HUM. RTS. WATCH, PROFITING FROM PROBATION: AMERICA'S "OFFENDER-FUNDED" PROBATION INDUSTRY (2014); HUM. RTS. WATCH, RUBBER STAMP JUSTICE: U.S. COURTS, DEBT BUYING CORPORATIONS, AND THE POOR (2016); Budasoff, *supra* note 67; Cammett, *supra* note 57; Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, Essay, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243 (2022); Gipson Rankin, *supra* note 67.

120. Atuahene, *supra* note 4, at 10.

121. *Id.* at 8–22.

122. See *id.* at 11.

private actors supports a broad understanding of the involvement of state actors. State entities sometimes lead the extractive practices while seeking private help, private entities sometimes lead the practices while buying off state collaboration, and the state entities and private actors combine for every iteration in between at every level of government. Further, not only are government agencies contracting *with* private entities, but the state institutions are also increasingly operating *like* the private entities—abdicating their intended missions of maximizing welfare and justice in service of vulnerable individuals to instead maximizing revenue and efficiency by using the individuals.¹²³ Mission matters, and I argue that the abdication of constitutional and statutory government mission is in itself a form of illegality imposed upon beneficiaries who are intended to benefit from governmental purpose rather than being subjected to extractive harm.¹²⁴

Professor Atuahene's second element requires the "transfer of property from persons," centering the element through traditional legal concepts of property law while also recognizing that the consideration of property should include "less conventional forms of property like the body."¹²⁵ I support a broad understanding of this element such that the framing should include extractive mechanisms in which state actors take property *from* persons to bolster government coffers, and also practices in which state entities extract revenue *through* vulnerable persons in factory-like processing. For example, my research has shown how state entities take property from foster youth while simultaneously extracting even more revenue through the complex financially incentivized processing of the children and their families to maximize federal funding streams: extractive mining and extractive processing.¹²⁶

Regarding the third element, state benefit, Professor Atuahene seeks to "demarcate clearly when the state is a beneficiary of an unjust property transfer and when it is not."¹²⁷ Although I certainly agree that clarity can be helpful, an assumption that such a line can always be clearly demarcated risks oversimplifying the extent, parameters, and incentives of the extractive harm. Professor Atuahene recognizes that varying factors can attenuate the nexus and obfuscate the line, and thus suggests that determinations on when the line is crossed "are appropriately made on a case-by-case basis."¹²⁸ In fact, many circumstances exist where state extractive revenue schemes actually result in less state revenue despite

123. INJUSTICE, INC., *supra* note 2, at 21–30.

124. *See, e.g.*, THE POVERTY INDUSTRY, *supra* note 6, at 11–27.

125. Atuahene, *supra* note 4, at 13–15.

126. *See e.g.*, THE POVERTY INDUSTRY, *supra* note 6, at 65–110.

127. Atuahene, *supra* note 4, at 15.

128. *Id.* at 16.

the intent to bolster coffers.¹²⁹ Also, the extractive revenue schemes often include multiple layers of complexity, including the participation of private actors along with competing financial self-interests between the different branches and levels of government that surround, subsume, disregard, and harm the interests of the intended beneficiaries.¹³⁰ One branch of government may financially benefit from extractive practices while another branch potentially loses funds.¹³¹ And, similarly, state-level actors may financially benefit from intertwined extractive practices while federal, county, and city entities may lose money.¹³² Therefore, I again support a broad understanding of this element—that stategraft, even when not financially successful for one government actor, is still stategraft.

Finally, Professor Atuahene suggests the last element of stategraft should be illegality, seeking to draw an additional line in the theoretical framework between illegal acts and “legal state predation.”¹³³ Of all the suggested elements, this proposed element of illegality is perhaps the element where I believe we need the most expansive understanding—and Professor Atuahene aptly recognizes numerous complexities incapsulated within the simply phrased term. She poses four categories of questions surrounding the illegality element: “(1) What is law? (2) Who decides illegality? (3) What are the obstacles to securing a formal or informal declaration of illegality? And (4) Why is the focus on illegality rather than injustice?”¹³⁴ Professor Atuahene’s analysis of these questions is excellent and important, although I ultimately believe this element should be more broadly construed, not as a demarcating line of “illegality rather than injustice”¹³⁵ but as an element encompassing both illegality and injustice.

In differentiating injustice from an illegal act, Professor Atuahene writes that “when an act is labeled unjust (although not illegal), this too is a moral claim, but in a world of competing moralities, this lends itself to the question, according to whom?”¹³⁶ The same question can of course be posed as to “illegality,” with declarations of illegality via statute, regulation, ordinance, agency directive, or executive order often fluctuating repeatedly through either the public-serving motives or the self-serving whims of those currently exercising political power. I

129. *E.g.*, *Child Support Harming Children*, *supra* note 10, at 1070–75.

130. *See supra* Sections I.B, II.B.

131. *See* INJUSTICE, INC., *supra* note 2, at 41–44.

132. *Child Support Harming Children*, *supra* note 10, at 1071.

133. Atuahene, *supra* note 4, at 17.

134. *Id.* at 17–22.

135. *Id.* at 17, 22–24.

136. *Id.* at 23.

appreciate how Professor Atuahene explains that “informal declarations” (including from lawyers or subject matter experts) should be considered as potentially rising to the level of meeting the illegality element,¹³⁷ but the same question continues of who decides when the element is met? For example, when I first started researching the harmful revenue scheme of state foster care agencies taking children’s resources, the practice was largely unknown to the public, to most lawmakers, and even to most children’s lawyers. As described in Part I of this Essay, I have long argued the practice violates constitutional protections and state and federal laws. I have been collaborating with advocates for over twenty years to increase awareness and to stop the practice through scholarship, increased media attention, litigation, federal and state legislative efforts, and efforts to encourage administrative change.¹³⁸ Now over twenty-five states and cities have started taking steps to consider at least curtailing the harmful practice.¹³⁹ However, if the illegality element is construed strictly, an argument can be made that the practice should not yet be considered illegal for the purposes of statecraft theory because most states have not yet formalized any court ruling or state policy to stop the revenue scheme—and in fact many states are still encouraging the practice.

In addition to being drawn in by the excellent analysis and questions posed and skillfully considered by Professor Atuahene, I found Atuahene’s iceberg analogy and graphic to be helpful to visualize the scope and mostly hidden nature of statecraft.¹⁴⁰ However, considering the questions and the theoretical elements that Professor Atuahene suggests, I find myself looking back to the image of the iceberg, and I question whether the water line could be depicted as a line of awareness of the injustice that lies below the surface. For unjust, harmful, and largely hidden extractive state revenue practices to be rendered illegal, we must first lift the practices above the line of awareness in order to summon the adjudicatory or political will to stop them.

137. *See id.*

138. A recent communication from the new commissioner of the Social Security Administration provides some hope for possible administrative reform. Letter from Martin O’Malley, Comm’r, SSA, to Rep. Danny K. Davis (Mar. 21, 2024) (on file with author) (“As I understand it, your greatest concern is that states often use SSA benefits to reimburse themselves for the cost of care of these children. The frequent end result is that none of the SSA payments are conserved. Once the children age-out of foster care, they have no resources to help build themselves a better future. I realize that SSA and your office had some prior back and forth discussion on these issues, but clearly we can and should do more.”).

139. *See State Reform Efforts, supra* note 43.

140. *Id.* at 25–26.

Ultimately, Professor Atuahene's theory of stategraft is a spark. Her excellent analysis and framing of the theoretical scaffolding encourages crucially needed discussions regarding parameters of the theory's suggested elements—including in this important symposium—as we strive to broaden and link the community of scholars and advocates working to expose and end these devastatingly harmful state-sponsored extractive practices.

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