

2021

## Social Services and Mutual Aid in Times of COVID-19 and Beyond: A Brief Critique

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### Recommended Citation

Neacsu, Dana (2021) "Social Services and Mutual Aid in Times of COVID-19 and Beyond: A Brief Critique," *Human Rights Brief*. Vol. 25: Iss. 1, Article 4.

Available at: <https://digitalcommons.wcl.american.edu/hrbrief/vol25/iss1/4>

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# SOCIAL SERVICES AND MUTUAL AID IN TIMES OF COVID-19 AND BEYOND: A BRIEF CRITIQUE *by Dana Neacsu\**

May 19, 2021, marked a crucial point in the United States' fight against the COVID-19 pandemic: sixty percent of U.S. adults had been vaccinated.<sup>1</sup> Since then, Americans have witnessed the beginning of the end of the COVID-19 pandemic, but its long-term effects are here to stay. Ironically, some are unexpectedly welcome. Among the lasting positive changes is an augmented sense of individual involvement in community well-being. This multifaceted phenomenon has given rise to #BLM

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<sup>1</sup> Christina Maxouris & Holly Yan, *About 60% Of American Adults Have Had At Least One Dose Of Covid-19 Vaccine, Including More People of Color*, CNN (May 19, 2021), <https://www.cnn.com/2021/05/18/health/us-coronavirus-tuesday/index.html>.

allyship<sup>2</sup> and heightened interest in mutual aid networks.<sup>3</sup> In the legal realm, it has manifested with law students, their educators, lawyers, and the American Bar Association (ABA) proposing new educational standards: law schools ought to build a curriculum centered on social justice, equity, diversity, and inclusion rather than the traditional fixation of “thinking like a lawyer” law programs.<sup>4</sup>

On a larger, political, social, and legal plan, calling for social justice is a call for sustainable democratic capitalism.<sup>5</sup> And a democracy is as vibrant as its welfare system is.<sup>6</sup> Calling out social services for being unsatisfactory and inadequate is not and cannot be tantamount to suggesting that the answer was their cancelation.<sup>7</sup> On the contrary, a

<sup>2</sup> See, e.g., Dana Neacsu, *George Floyd Protests and Black Lives Matter Roundtable (Pt. II)*, ARK REPUBLIC (June 14, 2020), <https://www.arkrepublic.com/2020/06/14/ark-republic-roundtable-pt-2/>.

<sup>3</sup> See, e.g., Andy Newman, *Able to Save 8 Tons of Food in a Single Day: Here Come the Food Rescuers*, N.Y. TIMES (May 27, 2021), <https://www.nytimes.com/2021/05/21/nyregion/food-rescue-new-york-covid.html> (noting that an army of volunteers in New York tried to make the best of an inherently wasteful grocery system).

<sup>4</sup> Proposed Changes to Standards 205 and 206, 303 and 508, and 507, May 7, 2021, ABA, [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf); see also April M. Barton, *Teaching Lawyers to Think like Leaders: The Next Big Shift in Legal Education* 73 BAYLOR L. REV. 115, 117 (2021) (for Duquesne University Dean April M. Barton's teaching philosophy of leading with empathy: “Lawyers are taught to advocate, to persuade, to analyze, to parse, to spot issues, even to convince others that they are right. *These skills, while admirable, do not always align with good leadership; in fact, if not balanced with emotional intelligence, self-awareness, and social awareness, these skills can defy good leadership.*” (emphasis added)).

<sup>5</sup> In the introductory chapter of an upcoming co-authored book on SUSTAINABLE CAPITALISM: CONTRADICTION IN TERMS OR ESSENTIAL WORK FOR THE ANTHROPOCENE (INARA SCOTT, ed), I develop my ideas about how a functional relationship between a vibrant democracy and capitalism might save capitalism from a Κρόνος (Krónos)-like future.

<sup>6</sup> Dana Neacsu, *A Brief Critique of the Emaciated State and Its Reliance on Non-Governmental Organizations to Provide Social Services*, 9 N.Y. CITY L. REV. 405–35 (2006).

<sup>7</sup> *Id.*

true critique ought to call for their democratic re-evaluation and improvement so that they address intersectional and systemic ills. This article wants to dispel any lingering confusion, especially now that a “newer left” hurries to embrace mutual aid<sup>8</sup> *in lieu of* the welfare state, which it describes as either cold, dead, or moribund.<sup>9</sup> Such a simplistic attitude cannot be but a grave mistake when, globally and historically, the only safety network that has reliably provided for all economically vulnerable has been, and remains, state-sponsored social services.<sup>10</sup> This article argues that the pandemic has only magnified the inadequacies of institutional aid to those in need, *not* its irrelevance. Faced with deepened levels of societal vulnerability, my argument remains the same as 15 years ago.<sup>11</sup> Today, our troubled American democracy needs pragmatic innovation of steady governmental services. As researchers from Columbia University showed, only the Coronavirus Aid, Relief, and Economic Security (CARES) Act—a

legislative act—lifted an estimated 18 million people out of poverty.<sup>12</sup> No pandemic-made trillionaire offered similar aid to the needy.<sup>13</sup> No mutual aid network, to my knowledge, could or did match that level of resources.

Nevertheless, governmental services remain inadequate with millions of Americans still in poverty.<sup>14</sup> In this environment, the pandemic has cleared the path for “tax-exempt” charity or neighborhood mutual aid networks as a welcome band-aid. Meanwhile, as a society, we ought to decide how to sustain our market-based, profit-driven democracy while complying with

<sup>8</sup> A version of this paper was presented to AFTER THE WELFARE STATE: RECONCEIVING MUTUAL AID, THE 2020 ANNUAL TELOS-PAUL PICCONE INSTITUTE CONFERENCE, NYC, February 2020, <https://www.youtube.com/watch?v=vxDt9JFuVUY>.

<sup>9</sup> See the call for papers for AFTER THE WELFARE STATE: RECONCEIVING MUTUAL AID, THE 2020 ANNUAL TELOS-PAUL PICCONE INSTITUTE CONFERENCE, NYC, February 2020.

<sup>10</sup> See, e.g. FRANK LOEWENBERG, FROM CHARITY TO SOCIAL: THE EMERGENCE OF COMMUNAL INSTITUTIONS FOR THE SUPPORT OF THE POOR IN ANCIENT JUDAISM (2017) (noting a historical example where only institutional support promotes social justice at the level of policy, while non governmental support, often charity, perpetuates status quo and inequality).

<sup>11</sup> Neacsu, *supra* note 6, at 405–35.

<sup>12</sup> Pam Fessler, *U.S. Census Bureau Reports Poverty Rate Down, But Millions Still Poor*, NPR (September 10, 2019); Priyanka Boghani, *How COVID Has Impacted Poverty in America*, PBS (Dec. 8, 2020), <https://www.pbs.org/wgbh/frontline/article/covid-poverty-america/> (The Census Bureau releases poverty figures on an annual basis with a one-year lag, so the September figures don’t capture COVID-19 realities. When the pandemic started, researchers at Columbia University’s Center on Poverty & Social Policy set out to fill that gap. They began estimating poverty in the U.S. on a monthly basis using the supplemental poverty measure, which takes into account families’ expenses and government assistance. The researchers put the poverty rate in America before the crisis began at around 15 percent. Even as COVID-19 prompted initial shutdowns in March and some sectors of the economy ground to a halt, income tax credits for eligible families helped offset losses, lowering the poverty rate to 12 percent for that month. In April, the impact of record high unemployment was blunted by a federal economic relief package. Individuals who qualified received stimulus checks of \$1,200; married couples received \$2,400; and those with children received an additional \$500 per child. People who successfully filed for unemployment received an additional \$600 per week from the federal government. Columbia researchers estimated that without the support provided by the CARES Act, poverty in April would have jumped to 19.4 percent. With the support, the month ended at 13.9 percent. Researchers estimated 18 million people were lifted out of poverty in April by the federal relief package.).

<sup>13</sup> Juliana Kaplan, *Billionaires Made \$3.9 trillion during the Pandemic—Enough to Pay for Everyone’s Vaccine*, BUS. INSIDER (Jan. 21, 2021), <https://www.businessinsider.com/billionaires-made-39-trillion-during-the-pandemic-coronavirus-vaccines-2021-1>.

<sup>14</sup> See Fessler, *supra* note 12 ([T]he Census Bureau found that 38.1 million people in 2018 were poor. This was 1.4 million fewer poor people than in 2017, but about one in eight Americans still lived below the poverty line—\$25,465 for a family with two adults and two children.).

international standards of access to basic human rights.<sup>15</sup>

### I. THE PANDEMIC MUTUAL AID

In early 2020, the COVID-19 pandemic was an unfortunate event, still far away from the American shores. At that point, the pandemic had not impacted our American-made reality. And then, suddenly, within months, the COVID-19 pandemic reached the United States. Like Christopher Columbus' ships, cramped and filled with an unknown illness, which took over a vast continent and made it theirs, the pandemic also redefined our Americas and our way of life in ways unimaginable beforehand.<sup>16</sup> The institutional support of vulnerable communities appeared inadequate.<sup>17</sup> Globally, it is still hard to achieve it when international organizations rate human rights performance without poverty data.<sup>18</sup> For instance, there are fifty countries on the developed countries list, including the Russian Federation and the United States, though none provides the percent of their population living in poverty.<sup>19</sup> Mutual aid appears as the easy way out—below the radar. Indeed, it is the cheapest—it asks

<sup>15</sup> See, e.g., *International Human Rights Law*, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/en/professionalinterest/pages/internationallaw.aspx> (for more on basic human rights); *Human Rights by Country: United States*, United Nations Human Rights Office of the High Commissioner, <https://www.ohchr.org/EN/Countries/LACRegion/Pages/USIndex.aspx> (for the United States adherence to those international instruments).

<sup>16</sup> Dave Roos, *The Ships of Christopher Columbus Were Sleek, Fast—and Cramped*, HISTORY (Oct. 10, 2019), <https://www.history.com/news/christopher-columbus-ships-caravels>.

<sup>17</sup> See *Disaster Financial Assistance with Food, Housing, and Bills*, USA.gov, <https://www.usa.gov/disaster-help-food-housing-bills> (noting that the eviction moratorium was temporary).

<sup>18</sup> See UNITED NATIONS DEVELOPMENT PROGRAMME, GLOBAL HUMAN DEVELOPMENT INDICATORS, <http://hdr.undp.org/en/countries>.

<sup>19</sup> *Id.*

for voluntary action—and also the fastest manner of assistance to use in times of crisis.<sup>20</sup>

Unable to face and fight the invisible enemy, individuals, disoriented and scared, found that there were no sufficient resources and networks to catch the most vulnerable ones. Fear in a time of crisis is, at first, a source of collective paralysis. Then, it pushes people, if not governments, to organize and help each other.<sup>21</sup> Not a moment too soon, because new needs, pandemic produced, demanded new and diverse resources. For instance, as workplace closures and self-isolation spread throughout the country, the ordinary ways to feed the hungry became inadequate. Thus, when informal networks organized to meet new, specific, pandemic-created

<sup>20</sup> See generally NICHOLE GEORGEOU, NEOLIBERALISM, DEVELOPMENT, AND AID VOLUNTEERING 10 (2012) (“Crisis” is understood here as both a natural catastrophic event, such as a hurricane or the COVID-19 pandemic, but also as the result of centuries of institutional neglect of a social issue. Natural catastrophes bring out altruism and volunteerism, “within the realm of civil service: providing for the “needs of those in need.”); Diane Pien, *Black Panther Party’s Free Breakfast Program (1969-1980)*, BLACKPAST (Feb. 11, 2010), <https://www.blackpast.org/african-american-history/black-panther-party-free-breakfast-program-1969-1980/> (Governmental neglect of issues, such as the hunger of black children, produced a more organized type of volunteerism. For instance, in 1966, the federal government initiated the School Lunch Program in response to wide-spread poverty. However it only provided reduced-price, and not free lunches for poor children from a few rural schools. Because hunger and poverty was affecting black communities in urban areas, and made it difficult for many poor black children to stay and learn in school, the Black Panthers started the Free Breakfast Program in Oakland, California, and it was open to all children enrolled.); THE DR. HUEY P. NEWTON FOUNDATION, THE BLACK PANTHER PARTY: SERVICE TO THE PEOPLE PROGRAMS 30-34 (2008) (The Panthers’ Free Breakfast Program focused national attention on the urgent need to give poor children nutritious meals so they could be successful in school. In 1973, this attention helped lead to Congress’ dramatic increase in funding of the national School Lunch Program so poor children could get free lunches. The Panther’s Free Breakfast Program spotlighted the limited scope of the national School Breakfast Program and helped pressure Congress to authorize expansion of the program to all public schools in 1975.).

<sup>21</sup> See generally Timothy Luke, *The Dawn of the COVID-19 Pandemic: The Administration of Fear and Fear of Administration in the United States*, 2020 TELOS 191 (2020).

wants, their success was nothing short of a miracle for those faced with the sudden shortage of services. For instance, in Aurora, Colorado, librarians assembled kits of essentials for the elderly and children who would not have access to meals,<sup>22</sup> and in the San Francisco Bay Area, people organized assistance for one another.<sup>23</sup> Similarly, in Seattle, Washington, volunteers came together to help undocumented people in their communities.<sup>24</sup>

The pandemic conquered the world in a few months, borders closed, and the international flow of goods, people, and services halted. Entire countries were under lockdown, and this brought the global economy to almost a standstill. The fundamental challenges of the pandemic shook the rules that govern our social, political, and economic lives, exposing their inadequacy. With each day, the pandemic challenged electoral, legislative, and judicial processes, all while disrupting lives beyond what was imaginable. Legal scholars shared knowledge and insights about how law shapes responses to—and is itself shaped by—the unfolding crisis.<sup>25</sup> Other scholars recorded the impromptu networks of mutual aid that have taken over the world.<sup>26</sup> The press, too, has continued to bring to life stories about this immediate outpouring of self-organized voluntarism in hopes to inspire more action.<sup>27</sup>

<sup>22</sup> Jia Tolentino, *Can I Help You?*, *NEW YORKER* 25 (May 18, 2020).

<sup>23</sup> See Neacsu, *supra* note 6.

<sup>24</sup> See Tolentino, *supra* note 22, at 25–26. In New York City, dozens of groups across all five boroughs signed up volunteers to provide childcare and pet care, deliver medicine and groceries, and raise money for food and rent. Relief funds were organized for movie-theatre employees, sex workers, and street vendors. *Id.* Shortly before the city's restaurants closed, on March 16th, leaving nearly a quarter of a million people out of work, three restaurant employees started the Service Workers Coalition, quickly raising more than twenty-five thousand dollars to distribute as weekly stipends.

<sup>25</sup> KATHARINA PISTOR, *LAW IN THE TIME OF COVID-19* ix, (Columbia Law School, 2020).

<sup>26</sup> See generally REBECCA SOLNIT, *PANDEMIC SOLIDARITY: MUTUAL AID DURING THE COVID-19 CRISIS* (2020).

<sup>27</sup> See Neacsu, *supra* note 6.

Due to the pandemic, “mutual aid” entered the lexicon of the coronavirus era.<sup>28</sup> Alongside “social distancing” and “flattening the curve,” mutuality has encapsulated a social phenomenon, and legal narratives (like this one) brought it to center stage. During the pandemic, mutual aid has proved providential. But shall the question become, can mutual aid replace everyday welfare as a sustainable solution for the many ills of our market-based, profit-driven, American society? The answer needs to be a resounding no. Moreover, democratically speaking, is it a good idea to suggest something so akin and prone to *clientelism* in lieu of welfare services?<sup>29</sup> As insufficient and impersonal as welfare is, it doesn't come with that potential level of subordination and indignity: there are no one's whims to negotiate.

Mutual aid services have garnered so much praise recently as ad-hoc organizations of neighbors and do-gooders because they are personal, and do not threaten the dignity of those receiving them. Could that be, perhaps ironically, because they are temporary?<sup>30</sup> Consequently, recipients of such temporary services cannot and are not described with derogatory terms like “freeloaders.”<sup>31</sup> Moreover, due to their contained scope, they effectively respond to the specific vulnerability of the people they help. They are construed to offer specific aid in times of crisis. They also do not depend on a bureaucracy, which runs the risks of creating delays between the appearance of needs and their satisfaction. Provided by ad-hoc networks of neighbors, for instance, these services can start where they are needed almost as soon as they are needed. They can quickly address specific needs that are usually ignored. They provide

<sup>28</sup> See generally SOLNIT, *supra* note 26.

<sup>29</sup> See, e.g., Philip Keefer & Răzvan Vlaicu, *Democracy, Credibility, and Clientelism*, 24 *J. L., ECON., & ORG.* 371–406 (2008) (describing political clientelism).

<sup>30</sup> DEAN SPADE, *MUTUAL AID: BUILDING SOLIDARITY DURING THIS CRISIS (AND THE NEXT)* 13–19 (2020).

<sup>31</sup> Derek Thompson, *Busting the Myth of ‘Welfare Makes People Lazy,’* *ATLANTIC* (Mar. 8, 2008) (explaining the politics behind demoralizing identifiers about the poor on welfare), <https://www.theatlantic.com/business/archive/2018/03/welfare-childhood/555119/>.

amazing relief to victims of storms, earthquakes, and other catastrophic events.<sup>32</sup> It could be such specific tasks as walking pets or rescuing victims, including helping undergraduates lost or merely abandoned in dormitories.<sup>33</sup>

Mutual aid projects have been successful in times of crisis. Unfortunately, like cancer, economic vulnerability is a chronic condition in our capitalist democracy that requires systemic solutions to manage it and, possibly, eradicate it. Welfare is meant to help all individuals live with dignity, and it achieves this by catching those who need help in a safety net. Welfare rests on the assumption that all citizens have a social right to a minimum standard of living.<sup>34</sup>

Months of various degrees of isolation forced U.S. citizens living at home and abroad to fall behind in their usual standards of living. Travel remains a risky prospect for many. We carry with us an invisible enemy, COVID-19, but also a contagious lack of leadership and a colossal lack of vision as a government of people.<sup>35</sup> Is it worth debating whether to offer daily support to our most vulnerable or whether we should charge their neighbors with that duty? The pandemic has exposed the cracks in our moral and social safety nets. Such services might prove as strong as a spider's web if we fill the safety nets with mutual aid alone, without building systemic support.<sup>36</sup>

<sup>32</sup> SPADE, *supra* note 30.

<sup>33</sup> *Id.*

<sup>34</sup> See generally JOHANNES KANANEN, *THE NORDIC WELFARE STATE IN THREE ERAS: FROM EMANCIPATION TO DISCIPLINE NEED* (2016).

<sup>35</sup> See Neacsu, *supra* note 6.

<sup>36</sup> E. B. WHITE, *CHARLOTTE'S WEB* (1952) (a children's novel which tells the story of a livestock pig named Wilbur and his friendship with a barn spider named Charlotte).

## II. HISTORICAL AND COMPARATIVE CONTEXTUALIZATION OF WELFARE SERVICES AND MUTUAL AID

There is plenty of history for a comparative contextualization to prevent uncritically embracing mutuality. If we visualize history as pageantry and democracy as theater, there are some well-written scripts and strong characters.

### *A. A Brief View of Mutuality in American History through the Ages*

Antiquity claimed to have birthed democracy, but it did it as a premature baby.<sup>37</sup> Athens limited the demos to the white male of means and thrust power at them.<sup>38</sup> That democracy brings to mind ours in its pre-American Civil War embodiment, much admired by Count de Tocqueville,<sup>39</sup> though, like in Athens, it ran alongside slavery and it ignored women and children.<sup>40</sup> It lacked welfare for all, but, as expected, charity and mutual aid existed if for

<sup>37</sup> See generally ARISTOTLE *POLITICS* (350), BOOK II (disparaging democracy), or NANCY EVANS, *CIVIC RITES: DEMOCRACY AND RELIGION IN ANCIENT ATHENS* (2010).

<sup>38</sup> *Id.*

<sup>39</sup> ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Eduardo Nolla ed., James T. Schleifer trans., Liberty Fund 2012) (1835).

<sup>40</sup> See, e.g., Aristotle, *THE ATHENIAN CONSTITUTION* (Sir Fred-eric G. Kenyon trans., 1903) (350 B.C.E) ("Not only was the constitution at this time oligarchical in every respect, but the poorer classes, men, women, and children, were the serfs of the rich. They were known as Pelatae and also as Hectemori, because they cultivated the lands of the rich at the rent thus indicated. The whole country was in the hands of a few persons, and if the tenants failed to pay their rent they were liable to be hauled into slavery, and their children with them. All loans secured upon the debtor's person, a custom which prevailed until the time of Solon, who was the first to appear as the champion of the people. But the hardest and bitterest part of the constitution in the eyes of the masses was their state of serfdom. Not but what they were also discontented with every other feature of their lot; for, to speak generally, they had no part nor share in anything.").

nothing else to welcome strangers, as Ovid reminds us in *Metamorphoses*.<sup>41</sup>

Democracy took center stage at the end of the eighteenth century, during the American and French Revolutions, with capitalism oiling its wheels.<sup>42</sup> Whether Napoleon I crushed the budding French democracy at the very beginning of the nineteenth century, or put an end to the terror responsible for its demise, is unclear.<sup>43</sup> That temporary defeat showcased through both its potential and limits, whatever its version, capitalist liberal democracy aimed at aristocratic honors, but not at privilege as an organizing principle. The United States, too, abhorred aristocratic privilege, although not privileged positions in a hierarchical society.<sup>44</sup> Unequal from its beginning, our democracy had to embrace all types of services for the vulnerable. Social welfare was born from a complex private and public endeavor.<sup>45</sup>

In a society where individuals were expected to be self-sufficient, welfare services were an anomaly.<sup>46</sup> As Tocqueville noted two centuries ago, each local community was supposed to take care of their “marginal” elements;<sup>47</sup> probably, a minor issue not worth institutionalizing. With their end effect—

<sup>41</sup> See OVID, *METAMORPHOSES*, PART VIII (8 AD) (This book is telling the story of Jove and Mercury searching for hospitality as people in need. Baucis and Philemon, an elderly couple of no particular fame, with no wealth to speak of, welcome them, as a stranger and his son seeking help. Baucis and Philemon lay out all the food they have.).

<sup>42</sup> See generally CHARLES LOYSEAU, *A TREATISE OF ORDERS AND PLAIN DIGNITIES* (1994) (on orders and dignities in monarchist France).

<sup>43</sup> See, e.g., JULES MICHELET, *HISTOIRE DE FRANCE* (1909) (for a discussion of the Napoleonic impact on the French democracy).

<sup>44</sup> See, e.g., DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, *supra* note 39.

<sup>45</sup> See, e.g., SOCIAL SECURITY ADMIN., *Historical Background and Development of Social Security*, <https://www.ssa.gov/history/briefhistory3.html>.

<sup>46</sup> See generally *Department of Veterans Affairs*, VA History in Brief, [https://www.va.gov/opa/publications/archives/docs/history\\_in\\_brief.pdf](https://www.va.gov/opa/publications/archives/docs/history_in_brief.pdf) (regarding the vulnerable members of the society, especially war veterans).

<sup>47</sup> See, e.g., DE TOCQUEVILLE, *DEMOCRACY IN AMERICA*, *supra* note 39.

rescuing the marginal elements, welfare services have never been an intrinsic part of the American democratic duty, whether at the federal or local level.<sup>48</sup> It is only to be expected that the earliest poor relief enacted by the American colonies and the states assisted the disabled, the widow, and the orphan.<sup>49</sup> The American Civil War occasioned an increased involvement with the federal government, which established the Freedmen’s Bureau and a significant expansion of voluntary effort.<sup>50</sup> In 1862, Congress enacted the *Pension Act*<sup>51</sup> to provide benefits to Union veterans disabled during the conflict and their dependents.<sup>52</sup> In 1890, the program covered all disabilities, except old age,<sup>53</sup> not only war-related injuries.<sup>54</sup>

The U.S. Congress created the first federal social welfare agency, the Bureau of Refugees, Freedmen, and Abandoned Lands, in 1865<sup>55</sup>, and periodically provided for its funding.<sup>56</sup> Though never adequately funded in its seven-year period of operation, the

<sup>48</sup> See, e.g., STEPHEN NATHAN HAYMES, MARIA VIDAL DE HAYMES, & REUBEN JONATHAN MILLER, *THE ROUTLEDGE HANDBOOK OF POVERTY IN THE UNITED STATES* (2015).

<sup>49</sup> William P. Quigley, *The Earliest Years of Federal Social Welfare Legislation: Federal Poor Relief Prior to the Civil War*, 79 U. DET. MERCY L. REV. 157–88 (2002).

<sup>50</sup> See, e.g., John K. Bardes, *Redefining Vagrancy: Policing Freedom and Disorder in Reconstruction New Orleans, 1862–1868*, 84 J. OF SOUTHERN HIST. 69–112 (Feb. 2018) (for concrete examples of volunteerism).

<sup>51</sup> AN ACT MAKING APPROPRIATIONS FOR THE PAYMENT OF INVALID AND OTHER PENSIONS OF THE UNITED STATES FOR THE YEAR ENDING THE THIRTIETH OF JUNE, EIGHTEEN HUNDRED AND SIXTY-THREE, 12 STAT. 331, Chap. VI (Jan. 8, 1862).

<sup>52</sup> J. W. Oliver, *History of Civil War Military Pensions, 1861–1885*, 4 BULLETIN OF U. OF WISCONSIN, HIST. SERIES 1 (1917).

<sup>53</sup> Congress included pensions for old age a half-a century later. SOCIAL SECURITY ACT Pub. L. 74-271; 49 STAT. 620 (Aug. 14, 1935).

<sup>54</sup> *Id.*; AN ACT GRANTING PENSIONS TO SOLDIERS AND SAILORS WHO ARE INCAPACITATED FOR THE PERFORMANCE OF MANUAL LABOR, AND PROVIDING FOR PENSIONS TO WIDOWS, MINOR CHILDREN, AND DEPENDENT PARENTS, 26 STAT. 182, Chap. 634 (June 27, 1890).

<sup>55</sup> FREEDMEN’S BUREAU ACT, 13 STAT. 507, Chap. 90 (Mar. 3, 1865).

<sup>56</sup> COMMAND OF THE ARMY ACT OF 1867, 14 STAT. 485, Chap. 170.

Bureau provided direct relief to former slaves in their transition to freedom.<sup>57</sup> It also provided educational, medical, and legal services to the destitute.<sup>58</sup> In the aftermath of the American Civil War, the need for social services was so acute that in addition to government-sponsored services and numerous voluntary social welfare programs, a new type of organization appeared, combining public and private money.<sup>59</sup> The nation's first major public health organization—the U.S. Sanitary Commission was a public-private agency created by federal legislation in 1861 to support sick and wounded soldiers during the American Civil War, which enlisted thousands of volunteers.<sup>60</sup> Subsequently, much of its work would be provided by the American Red Cross, a charity founded by Clara Barton in 1881.<sup>61</sup>

During the late nineteenth and early twentieth centuries, mutual aid thrived alongside social welfare, and millions of Americans received benefits from their fraternal or “sororal” societies. In the late nineteenth century, the three main fraternal types were secret societies, sick and funeral benefit societies, and life insurance societies.<sup>62</sup> By 1920, one in three adult males belonged to one of these societies. Furthermore, ethnic societies provided more assistance than other institutions, “public or private, [which] were only viewed as a last resort.”<sup>63</sup>

<sup>57</sup> For a history of the Bureau's activity, see generally ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877* (2014).

<sup>58</sup> M.E. Titzel, *Building A Child Welfare Program In Wartime*, 24 *AM. J. SOCIO.* 411–22 (1919).

<sup>59</sup> CLARA BARTON, *THE RED CROSS IN PEACE AND WAR* (American Historical Press ed. 1906).

<sup>60</sup> See, e.g., *U.S. Sanitary Commission: 1861*, VCU LIBRARIES: SOCIAL WELFARE HIST. PROJECT (2013), <https://socialwelfare.library.vcu.edu/programs/health-nutrition/u-s-sanitary-commission-1861/>.

<sup>61</sup> BARTON, *supra* note 59.

<sup>62</sup> DAVID T. BEITO, *FROM MUTUAL AID TO THE WELFARE STATE: FRATERNAL SOCIETIES AND SOCIAL SERVICES, 1890–1967* (2000).

<sup>63</sup> *Id.* at 2.

In this very complex environment of inadequate services, to exclusively rely on mutuality at first appears ideological rather than practical. Postcolonial neoliberal solutions seem to unite as government institutions collapse and private corporatist alternatives are encouraged to flourish.<sup>64</sup> These solutions appear to be the antidote to the, by now, puny welfare bureaucrats<sup>65</sup> and blindly promoted mutual aid enters as the savior.<sup>66</sup> Uncritically endorsed, it might provide the capital to normalize the most wrongs in the most insidious and injurious way. Low-income families are expected to provide necessary assistance for each other without institutional help.<sup>67</sup> Poor countries, with riches depleted by colonial exploitation, are now left to organize, resolve the damage and heal from the exploitation. There is little infrastructure in place to help fix the inherited wrongs, while the rich and the haves are further insulated within their kinship networks.<sup>68</sup>

Ideologically speaking, mutuality seems to fit our American society better. Whether liberal or neoliberal, our domestic policies have promoted a market-based economic development and growth strategy as the obvious solution to alleviating poverty, affecting approaches to the problem discursively, politically, economically, culturally, and experientially.<sup>69</sup> However, rather than alleviating poverty, this increased market-based approach has exacerbated poverty and pre-existing inequalities.<sup>70</sup> Deregulation and privatization of social welfare services align them closely to mutual aid funding and with the transformation of the liberal state from a benevolent one to a punitive police-watch state.<sup>71</sup> Criminalizing poor women, racial and ethnic

<sup>64</sup> See, e.g., HAYMES ET AL., *supra* note 48.

<sup>65</sup> See, e.g., Neacsu, *supra* note 5, at 405–35.

<sup>66</sup> See, e.g., SPADE, *supra* note 30.

<sup>67</sup> See, e.g., *How the Poor Help Each Other*, 55 *N.Y. EVANGELIST* 6 (Jan. 17, 1884).

<sup>68</sup> See generally PRABHU KANDACHAR, *SUSTAINABILITY CHALLENGES AND SOLUTIONS AT THE BASE OF THE PYRAMID: BUSINESS, TECHNOLOGY AND THE POOR* (2008).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Neacsu, *supra* note 6, at 405–35.



minorities, and immigrants have been conducive to the increasing poverty levels.<sup>72</sup> On the contrary, Canadian welfare originated from a different ideology: welfare services are a governmental duty, not an individual option.<sup>73</sup> For instance, when remuneration from employment is inadequate, including old age and disability pensions, state-based welfare steps in with unemployment insurance, paid employment leave for new parents, state-funded health insurance, and publicly funded education and job training.<sup>74</sup>

Individualism extolled, it makes sense that people avoided government aid at all cost. Moreover, during the late nineteenth and early twentieth centuries, all the aid for the poor, whether it came from the government or organized charities, “was not only minimal but carried great a stigma.”<sup>75</sup> Americans seemed more comfortable relying first on fraternal societies.<sup>76</sup> These societies, smaller in scope, addressed their members’ cultural, psychological, and gender needs. They also addressed these needs holistically: “In contrast to the hierarchical methods of public and private charity, fraternal aid rested on an ethical principle of reciprocity. Donors and recipients often came from the same, or nearly the same, walks of life; today’s recipient could be tomorrow’s donor, and vice versa.”<sup>77</sup>

Though in demand, these services were highly unstable because they depended on membership dues, and with the increase in joblessness in the Depression era, their effectiveness ebbed as demand increased.<sup>78</sup> For instance, some three in four families had to let some or all insurance policies and other membership benefits lapse. A lapsed member of a Black society in Mississippi summarized a recurrent

<sup>72</sup> See, e.g., HAYMES, ET. AL., *supra* note 48.

<sup>73</sup> See generally PAUL H. STUART ET AL., *ENCYCLOPEDIA OF SOCIAL WELFARE HISTORY IN NORTH AMERICA* (2005).

<sup>74</sup> *Id.*

<sup>75</sup> Quigley, *supra* note 49, at 233.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

fraternal complaint: “People got no work. How are they [going to] pay dues when they [can’t] eat?”<sup>79</sup> Compounding on these issues, the U.S. Supreme Court also demonstrated its lack of empathy for the poor, by acknowledging only the “narrowest constitutional grounds for addressing their interests.”<sup>80</sup> While the nation was fighting the War on Poverty, the Supreme Court was making its 1970 contribution.<sup>81</sup> In *Dandridge v. Williams*, the Court held that 250 U.S. dollars per month was an absolute public assistance grant limit, regardless of the size of the family and its actual need, and it did not violate the Equal Protection Clause of the Fourteenth Amendment.<sup>82</sup> *Dandridge* is only one of many of these types of “corrective justice” cases.<sup>83</sup>

#### *B. A Brief Comparative View of Mutuality in the 20th Century*

Ironically, in the aftermath of World War II (WWII), Western liberal democracies relied on American help to build their welfare states.<sup>84</sup> The United States engaged in that endeavor at the expense of walling off their eastern, more vulnerable neighbors in one police state after another. Subsequently described as paternalistic, the liberal welfare state soon became disparaged as such.<sup>85</sup>

On June 5, 1947, Secretary of State George C. Marshall delivered a speech to the graduating class at Harvard University. In the speech, Marshall

<sup>79</sup> *Id.*

<sup>80</sup> Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 *GEO. L.J.* 1499, 1509 (1991).

<sup>81</sup> For various financial federal allocations for state administered projects, see, generally UNITED STATES. OFFICE OF ECONOMIC OPPORTUNITY, *WAR ON POVERTY PROJECTS* (1965).

<sup>82</sup> *Dandridge v. Williams*, 397 U.S. 471, 486 (1970).

<sup>83</sup> See, e.g., Neacsu, *supra* note 6, at 420 (discussing *Bowen v. Gilliard*, 483 U.S. 587 (1987)).

<sup>84</sup> Scott Parrish, *The Marshall Plan, Soviet-American Relations, and the Division of Europe*, in *THE ESTABLISHMENT OF COMMUNIST REGIMES IN EASTERN EUROPE, 1944-1949* 267 (Norman Naimark and Leonid Gibianskii ed., 2018).

<sup>85</sup> See, e.g., JULIAN LE GRAND & BILL NEW, *GOVERNMENT PATERNALISM: NANNY STATE OR HELPFUL FRIEND?* (2015) (for a history of welfare).

made a dramatic offer of large-scale American economic aid to help in the reconstruction of war-ravaged Europe. . . . Despite increasing tensions between the United States and the Soviet Union over the postwar European order, the offer of aid was not restricted to any particular set of countries; Marshall welcomed the participation of “any country that is willing to assist in the task of recovery.” After some initial hesitation, however, the Soviet Union rejected the American proposal, and coerced its Eastern European neighbors into following suit. [. . .] *The Marshall Plan thus seems to have been a watershed in the development of the Cold War.*<sup>86</sup>

The division of Europe into two competing blocs, each led by one of the emergent superpowers, was likely the result of aid distribution.<sup>87</sup> Western liberalism broadened the specter of individual rights, enlivening the discourse about the haves and the have-nots and working on social safety-net structures.<sup>88</sup> The liberal welfare state made its first appearance, too.<sup>89</sup>

In order to avoid being crushed by Soviet tanks and following the demands of the post-war

<sup>86</sup> *Id.* (emphasis added).

<sup>87</sup> See, e.g., Donald Sassoon, *The Rise and Fall of West European Communism 1939-48*, 1 CONTEMP. EUROPEAN HIST. 139 (1992) (for more on the role of foreign aid in the history of Western Europe).

<sup>88</sup> See, e.g., Michael Davis & Dana Neacsu, *Legitimacy, Globally: The Incoherence of Free Trade Practice, Global Economics and Their Governing Principles of Political Economy*, 69 U. MO.—KANSAS CITY L. REV. 733-90 (2001) (for an in-depth discussion about the impact of international liberalism on haves and have nots).

<sup>89</sup> See, e.g., DAVID G. MAYES & ANNA MICHALSKI, *THE CHANGING WELFARE STATE IN EUROPE: THE IMPLICATIONS FOR DEMOCRACY* (2013) (for an in-depth discussion about the impact of international liberalism on haves and have nots); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (1974) (describing a brief history of welfare in America).

international order,<sup>90</sup> countries east of Berlin kneeled and kissed the hand of their Russian godfather.<sup>91</sup> By 1947, the Eastern European states—Poland, Czechoslovakia, Hungary, Bulgaria, and Romania—were fully Sovietized.<sup>92</sup> Their oligarchies were not monolithic, and neither were their identifiers: dictatorship of the proletariat, Socialist Republic, or People’s Republic.<sup>93</sup> In reality, as it turned out, both eastern and western democracies shared a similar prosperity goal: building a oligarchy<sup>94</sup> acceptable by their people. Both went too far—the Berlin Wall was toppled on November 9, 1989<sup>95</sup>—though in the West, the top one percent seem to continue to enjoy some popularity from their economic stratosphere.<sup>96</sup> Without a doubt, the upper echelon of eastern nomenclature—the height of the Soviet bureaucracy—enjoyed much less than their western counterparts.<sup>97</sup> Perhaps, in hindsight, that explains the implosion of that system and the

<sup>90</sup> See, e.g., ANTONY BEST, *INTERNATIONAL HISTORY OF THE TWENTIETH CENTURY* (2004).

<sup>91</sup> *Id.*

<sup>92</sup> Parrish, *supra* note 84.

<sup>93</sup> See Leonid Gibianskii, *The Soviet-Yugoslav Split and the Cominform*, in *THE ESTABLISHMENT OF COMMUNIST REGIMES IN EASTERN EUROPE, 1944-1949* 291 (Norman Naimark and Leonid Gibianskii ed., 2018) (There were clear differences of subordination and freedom in the Eastern Bloc, with Tito’s Yugoslavia occupying one of the highest ranks.).

<sup>94</sup> See generally ANDERS ÅSLUND, *HOW CAPITALISM WAS BUILT: THE TRANSFORMATION OF CENTRAL AND EASTERN EUROPE, RUSSIA, AND CENTRAL ASIA* (2007) (on Soviet and post-Soviet capitalism); THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014) (arguing that rising inequality has been the historical nor in each society).

<sup>95</sup> LIBRARY OF CONGRESS, *THE RISE AND FALL OF THE BERLIN WALL* (Nov. 1, 2019) <https://blogs.loc.gov/international-collections/2019/11/the-rise-and-fall-of-the-berlin-wall/>.

<sup>96</sup> Kerry A. Dolan et al., *Forbes World’s Billionaires List: The Richest in 2021*, FORBES, <https://www.forbes.com/billionaires/#549ef44e251c> (“Jeff Bezos and Elon Musk have reached the stratosphere—with each rocket man amassing more than \$150 billion. Here, a timeline of their journey to the top.”)

<sup>97</sup> See, e.g., Dana Neacsu, *Romania, Bulgaria, The United States and the European Union: The Rules of Empowerment at the Outskirts of Europe*, 30 BROOKLYN J. INT’L L. 185, 188 (2004).

willingness of their oligarchs to join the liberal, market-based system.<sup>98</sup>

Behind the Iron Curtain, through time and tremendous individual sacrifice,<sup>99</sup> Soviet Russia and its acolytes (more accurately, hostages),<sup>100</sup> improved the level of collective socio-economic well-being. Through nationalization, planification, and cooperativization, all Soviet countries achieved various levels of socio-economic accomplishments.<sup>101</sup> By the time of Stalin's death in 1953, the horrors of WWII had been contained, and every Russian enjoyed a minimum amount of consumer goods.<sup>102</sup> The 1970s produced unparalleled social and economic progress in all developing (socialist) countries.<sup>103</sup> In parallel with this process, perhaps recognizing the minimal level of success of these policies, all these systems based on surveillance, falsehood, and propaganda encouraged a type of mutual aid patronage.<sup>104</sup> This proto-networking was based on loyalty, nepotism,<sup>105</sup> or strong connections akin to kinship.<sup>106</sup> Each social-economic stratum created its own ad-hoc cultural clubs, from neighbors sharing movies, books, or music tapes purchased

on the black market to the nomenclature's close-knit kinship networks.<sup>107</sup>

Thirty years after the fall of the Iron Curtain, all of these horizontal networks and associations continue.<sup>108</sup> Some might say that the practice of clientelism—a type of mutual aid—encouraged corruption and constituted a major cause in the fall of the soviet system.<sup>109</sup> Consequently, this legacy of kinship-based corruption was seen as a major obstacle to the development of viable democratic and market institutions<sup>110</sup> because systemic corruption undermines the rule of law, which is crucial for democracy and a market economy.<sup>111</sup> One might even speculate that the Iron Curtain had to fall to allow the rich of the West and East to enjoy the other's company openly.<sup>112</sup> For instance, the current dictator of the former Soviet Republic of Kazakhstan, is Nursultan Nazarbayev, a former high-level member of the politburo.<sup>113</sup> Today, he is a billionaire.<sup>114</sup> His privileges as a high level politician in a Soviet system could never compare with the opportunities presented by the free market.

Despite coups and televised revolutions, social networks have proven unshakeable in the former Soviet states.<sup>115</sup> The poor have survived with family

<sup>98</sup> *Id.*

<sup>99</sup> See, e.g., Dana Neacsu, *History as Advocacy? That Takes the Prize (Gulag: A History)*, 54 SANTA CLARA L. REV. 213-31 (2004).

<sup>100</sup> See generally NORMAN NAIMARK & LEONID GIBIANSKII, *THE ESTABLISHMENT OF COMMUNIST REGIMES IN EASTERN EUROPE, 1944-1949* (2018).

<sup>101</sup> *Id.*

<sup>102</sup> Ernest Block, *The Soviet Welfare State*, 186 CONTEMP. REV. 44, 45 (Jul. 1, 1954).

<sup>103</sup> UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT, *THE HISTORY OF UNCTAD 1964-1984* 7 (1985), [https://unctad.org/system/files/official-document/osg286\\_en.pdf](https://unctad.org/system/files/official-document/osg286_en.pdf)

<sup>104</sup> See generally DAVID L. HOFFMANN, *CULTIVATING THE MASSES: MODERN STATE PRACTICES AND SOVIET SOCIALISM, 1914-1939* (2011).

<sup>105</sup> TIMOTHY K. BLAUVELT, *CLIENTELISM AND NATIONALITY IN AN EARLY SOVIET FIEFDOM* (2011).

<sup>106</sup> *Id.*

<sup>107</sup> See, e.g., Geoffrey Pridham, *STABILISING FRAGILE DEMOCRACIES: COMPARING NEW PARTY SYSTEMS IN SOUTHERN AND EASTERN EUROPE* 58-82 (1996) (for a review of how nomenclature became the upper class).

<sup>108</sup> See, e.g., CHRISTOPH H. STEFES, *UNDERSTANDING POST-SOVIET TRANSITIONS: CORRUPTION, COLLUSION AND CLIENTELISM* (2006).

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See, e.g., Dana Neacsu, *Romania, Bulgaria, The United States and the European Union: The Rules of Empowerment at the Outskirts of Europe*, 30 BROOKLYN J. INT'L L. 185, 188 (2004).

<sup>113</sup> Nursultan-Nazarbayev, *BRITANNICA*, <https://www.britannica.com/biography/Nursultan-Nazarbayev>.

<sup>114</sup> *Id.*

<sup>115</sup> Dana Mustata, *The Revolution Has Been Televised... Television as Historical Agent in the Romanian Revolution*, 10 J. MODERN EUROPEAN HIST. 76 (2012).

help: the young emigrate, work abroad, and send financial support to family members left behind.<sup>116</sup> Also, those at the top of the social ladder have preserved and consolidated their positions, in part because of the built-in system of trust,<sup>117</sup> but also because the European Union (EU) has recognized and promoted those soviet oligarchic structures of privilege.<sup>118</sup> Thus, the top one percent of the ideologically despised dictatorships have successfully metamorphosized into the top one percent of the ideologically correct new EU state members' representatives. Internationally, we can talk about successful mutual aid among the equally situated.<sup>119</sup>

Mutuality is not a pandemic invention. As discussed here, it has existed across geopolitical borders, societies, and also throughout history, both as an expedient way to deal with social wrongs for those affected by them, and those supposed to manage them. Athens knew it.<sup>120</sup> Medieval Europe knew it as trade guilds, churches, and the kings' courts.<sup>121</sup> In every historical period, mutual aid among kinship of sorts thrived.<sup>122</sup> But, when successful, they seem to have encouraged

<sup>116</sup> See, e.g., Anca Alexe, *Romania's emigrant population is the fifth largest in the world and growing*, OECD report finds, BUS. REV. (July 16, 2019), <https://business-review.eu/news/romania-emigrant-population-is-the-fifth-largest-in-the-world-and-growing-oecd-report-finds-203223>.

<sup>117</sup> See generally Yuliy Nisnevich, *Regeneration of the nomenclature as a ruling social stratum in the post-soviet Russia*, 8 SOTSIOLOGICHESKIE ISSLEDOVANIYA 143 (2018).

<sup>118</sup> See, e.g., Denica Yotova, *Bulgaria's anti-corruption protests explained – and why they matter for the EU*, EUR. COUNCIL ON FOREIGN REL. (July 28, 2020), [https://www.ecfr.eu/article/commentary\\_bulgarias\\_anti\\_corruption\\_protests\\_explained\\_and\\_why\\_they\\_matter](https://www.ecfr.eu/article/commentary_bulgarias_anti_corruption_protests_explained_and_why_they_matter) (For instance, European leaders have stood by as Bulgarians demand real reform on corruption. Such silence will only harm the EU in the long run.).

<sup>119</sup> *Id.*

<sup>120</sup> See, e.g., T. D. ROBINSON, *ANCIENT POOR LAWS: AN INQUIRY AS TO THE PROVISIONS FOR THE POOR OF JUDEA, ATHENS, AND ROME* (1836).

<sup>121</sup> See, e.g., Elmo Borges Koch et al., *The Guild Concept: From Feudalism to Community Ecology*, ACTA BIOLÓGICA COLOMBIANA 38 (2019).

<sup>122</sup> *Id.*

some form of clientelism.<sup>123</sup> Far from a sign of progress, kinship, mutuality, and mutual aid are not signs of a vibrant liberal economy.<sup>124</sup> They often start as a genuine form of horizontal help at the very bottom of the social ladder, signaling a lack or failure of any institutional support. The higher we go, mutuality either resemble a quid-pro-quo network of like-minded, equally situated, individuals or a form of hierarchically organized patronage. Globally, indicative of a society in trouble and lacking leadership, these networks seem to create its new social stratification.<sup>125</sup>

Mutuality, as a socio-economic and political phenomenon, has both preceded and co-existed with democratic governments.<sup>126</sup> That is because democracy, an imperfect political tool for Aristotle,<sup>127</sup> and often questioned by the American voter at the voting booth every two and four years, stands on many interests and struggles to represent them.<sup>128</sup> However, its main characteristic is its aim for a type of plurality, uniformity and normalcy, a minimum of decency for all. To that end, the welfare state has been its more reliable source. To the contrary, mutual aid signals a shift away from state-sponsorship, from bureaucratic to decentralized help, and given the raging inequality COVID-19 has produced, its result is far from predictable.<sup>129</sup> Such a societal retreat might further threaten the American liberal democracy, whose seeds were planted during the American Civil War

<sup>123</sup> See Luke, *supra* note 21.

<sup>124</sup> See, e.g., KELLY M. McMANN, *CORRUPTION AS A LAST RESORT: ADAPTING TO THE MARKET IN CENTRAL ASIA* (2014).

<sup>125</sup> See generally STEFES, *supra* note 81.

<sup>126</sup> See generally BENITO LI VIGNI *COSA NOSTRA, COSA DI STATO: STORIA DELLE COLLUSIONI TRA MAFIA E ISTITUZIONI DALLE ORIGINI AI GIORNI NOSTRI* (2015) (for a history of one of the most successful mutuality aid societies resulting from the democratic Italian government's catastrophic failure to deal with the systemic poverty of the South).

<sup>127</sup> Fred Miller, *Aristotle's Political Theory*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (1998), <https://plato.stanford.edu/entries/aristotle-politics/> (noting that "Aristotle classifies democracy as a deviant constitution").

<sup>128</sup> See *id.* (Aristotle preferring polity to democracy).

<sup>129</sup> See, e.g., Dolan et. al., *supra* note 96.

and blossomed only after implementing the expanded Bill of Rights. That expansion was aided by FDR's welfare state<sup>130</sup>, Johnson's War on Poverty<sup>131</sup>, and a liberal democracy whose scope created a minimum, uniform standard of living, equal rights, and equal opportunities.<sup>132</sup> Of course, crises happen, and their magnitude seems to be on the rise due to climate change and now COVID-19. One may say that crises are now periodical, which only further strengthens my argument that we need to rely on systemic solutions, rather than on ad-hoc, improvisations. Our democracy cannot regard poverty and vulnerable populations as if we were talking about New York City restaurants building sheds in the street to cope with inside restrictions.<sup>133</sup> Liberal democracies have created some expectation of individual well-being where the community's well-being supports individuality. Democracies demand stability, not temporary, band-aid solutions.

<sup>130</sup> See generally PAUL KEITH CONKIN, *FDR AND THE ORIGINS OF THE WELFARE STATE* (1967).

<sup>131</sup> See generally DAVID ZAREFSKY, *PRESIDENT JOHNSON'S WAR ON POVERTY: RHETORIC AND HISTORY* (1986).

<sup>132</sup> See generally PAUL K. CONKIN, *FDR AND THE ORIGINS OF THE WELFARE STATE* (1967); DAVID ZAREFSKY, *PRESIDENT JOHNSON'S WAR ON POVERTY: RHETORIC AND HISTORY* (1986) (for more on welfare policies).

<sup>133</sup> See, e.g., Kate Krader et al., *NYC Restaurants Rush Toward Reopening With Grim 25% Math in Mind*, BLOOMBERG (Feb. 11, 2021), <https://www.bloomberg.com/news/articles/2021-02-11/nyc-restaurants-scramble-to-reopen-cope-with-economic-hardship>; see also Valeria Ricciulli, *Streeteries. Is It Really an Open-Air Restaurant If It Has Walls and a Roof?* N.Y. MAG. (Nov. 2, 2020), <https://www.curbed.com/2020/11/nyc-outdoor-dining-winter-open-restaurants-cabins.html> (describing their inadequate, temporary nature).

Liberal capitalism incorporates public and private services<sup>134</sup> and, despite its flaws, the liberal welfare democracy has the best record of protecting those in need.<sup>135</sup> Critiques aside, privatizing welfare services might bolster our dedication to capitalism and its blind belief in the market and private property.<sup>136</sup> It might temporarily improve their quality and delivery, but the record is inconsistent at best: here we are arguing to improve government services because volunteerism has not solved any systemic ills.<sup>137</sup> Additionally, mutual aid networks did not save the Soviet system either. True, the Soviet approach to individualism and racial inequality proved catastrophic,<sup>138</sup> but the neoliberal welfare state proves equally oblivious to cultural and racial intersectionality.<sup>139</sup> More to the point, the liberal welfare state is differently conceived from the soviet state. The latter doled out wages and pensions like the monopolist in charge it was. On the contrary, the liberal welfare system relies on the Rule of Law limiting the impact of monopolies and governmental duty to provide for its most vulnerable, to the extent

<sup>134</sup> BENJAMIN HOLTZMAN, *THE LONG CRISIS: NEW YORK CITY AND THE PATH TO NEOLIBERALISM* (2021). (The Long Crisis explores the origins and implications of one of the most significant developments across the globe over the last fifty years: the diminished faith in government as capable of solving public problems. Conventional accounts of the shift toward market and private sector governing solutions have focused on the rising influence of conservatives, libertarians, and the business sector. To the contrary this book locates the origins of this transformation in the postwar efforts to preserve liberalism. When the city government could not provide services, rather than revolt, New Yorkers, organized. Through block associations, nonprofits, and professional organizations, they embraced an ethos of private volunteerism and, eventually, of partnership with private business in order to save their communities from neglect.)

<sup>135</sup> See generally J.F. SLEEMAN, *THE WELFARE STATE. ITS AIMS, BENEFITS AND COSTS* (1973) (for a survey of the British welfare state).

<sup>136</sup> HOLTZMAN, *supra* note 134.

<sup>137</sup> *Id.*

<sup>138</sup> Joshua Yaffa, *Letter from Moscow: Exiled. The Vanishing of an American Radical*. THE NEW YORKER 26–31 (Oct. 25, 2021).

<sup>139</sup> SPADE, *supra* note 30.

possible, while also promoting capitalist individualism.<sup>140</sup> So far, it has delivered basic services for all with various degrees of success, especially abroad.<sup>141</sup>

For decades, my writing has focused on rethinking and reimagining the role of law and legal scholarship in terms of social dignity. While vocally critical of the welfare services, mutual aid has never seemed a viable democratic solution to systemic problems.<sup>142</sup> As such, my steadfast support for state-based services for the liberal welfare state has only increased during our social, moral, and healthcare pandemics. This essay argues that a choice between public and private services, while ideologically quaint for the supporters of privatization, is a catastrophic choice for any democratic state built on steep economic inequality, such as our American democracy. That we can even imagine this contentious choice only means that the ideology<sup>143</sup> behind them is meaningfully divisive: one considers the government as the potential solution, while the other ignores the government altogether.

The position that welfare resonates with socialism, and socialism resonates with the Soviet paternalistic state should be put to rest by the above analysis.<sup>144</sup> If this is the reason for attacking

<sup>140</sup> See generally JOHN VICKERS & VINCENT WRIGHT, *THE POLITICS OF PRIVATISATION IN WESTERN EUROPE* (1989) (Western European countries are very much aware of the dangers of privatizing public services in public sectors, and thus mindful of what is open to privatization and its dangers.).

<sup>141</sup> See ABA, *supra* note 4.

<sup>142</sup> See, e.g., Mark Weiner, *Toward a Critical Theory of Emergency Medical Services: Solidarity, Sovereignty, Temporality* (Telos, forthcoming 2021) (Of course, I am aware of exceptional services communities provide for their members on a voluntary basis, such as emergency services, but all seem limited in scope and geography.)

<sup>143</sup> See, e.g., DANA NEACSU, *THE BOURGEOIS CHARM OF KARL MARX & THE IDEOLOGICAL IRONY OF AMERICAN JURISPRUDENCE* 72–117 (2020) (using ideology as the subjectivity defining the self within the public sphere, within their encounter with the public organization of power); PISTOR, *supra* note 25, at 113–17 (describing liberalism as an ideology).

<sup>144</sup> See *supra* text and footnotes.

the liberal welfare state, then mutuality should be distrusted because, as shown here, it thrived in soviet times, too, as it thrives in any non-capitalist society: the poor help each other.<sup>145</sup> More interestingly, the rich stick together, too. In the United States, the rich drive the Congressional agenda, so taxing the rich is invariably turned into tax exemptions for the rich.<sup>146</sup> Also, internationally, the top one percent stay connected in ideologically supportive, mutual support networks.<sup>147</sup> Given such a potential confusion and ambiguity, this article will complement the comparative germination and the historical intersection of welfare services and mutuality with a brief review of their most recent past in the United States, in hopes to better guide future decision-making.

### III. U.S. WELFARE AND MUTUAL AID—THE LAST THREE DECADES

With all its inherent limitations mentioned earlier, U.S. federal welfare programs continued to grow through the latter part of the twentieth century until the Clinton presidency, notably 1996.<sup>148</sup> After which, the official narrative embraced the Republican view of poverty as an individual choice. It took Republicans decades of hard work and indoctrination of both the academe and governmental employees, who attended either the Chicago University and absorbed Nobel Prize laureate Milton Friedman's ideas about the government being the problem as inefficient,<sup>149</sup> or who absorbed the more pernicious libertarian

<sup>145</sup> See, e.g., C.M. HANN, *SOCIALISM IDEALS, IDEOLOGIES, AND LOCAL PRACTICE* 1–18 (1994) (for an in-depth explanation of how “sharing” works in the Bushmen society in Africa, as well as in any non-capitalist society).

<sup>146</sup> See generally MARK ZEPEZAUER, *TAKE THE RICH OFF WELFARE* (1996); JAMES T. BENNETT, *CORPORATE WELFARE: CRONY CAPITALISM THAT ENRICHES THE RICH* (2015).

<sup>147</sup> See, e.g., Kerry A. Dolan et al., *Forbes World's Billionaires List: The Richest in 2021*, FORBES, <https://www.forbes.com/billionaires/#549ef44e251c> (Chinese and Russian billionaires top the list of the world's richest.).

<sup>148</sup> See generally R. KENT WEAVER, *ENDING WELFARE AS WE KNOW IT* (2000) (analyzing the Clinton administration welfare policy).

<sup>149</sup> See generally MILTON FRIEDMAN, *TAX LIMITATION, INFLATION AND THE ROLE OF GOVERNMENT* (1978).

ideas of another Nobel Prize laureate James McGill Buchanan about reshaping the government's role into a night watch state to protect the rich.<sup>150</sup> Buchanan's language was aimed at the Right-wing elites; it is cryptic in its reliance on changing personal behavior, but the goal is the same: the state has no role when it comes to personal choice, and poverty is such a choice, ergo, welfare should be limited or eliminated. Buchanan notes that:

We must acknowledge that the bloated welfare transfer state that we now live with was allowed to grow in the shadow of the Cold War over the half century and without attention to its own external diseconomies. Belatedly, in the 1990s, reforms everywhere have been initiated that are aimed at reducing the relative weight of the public sector overall, or at least reducing its rate of growth.<sup>151</sup>

Ironically, welfare was to blame for creating a particular type of behavior, dependency, rather than the opposite: respite to recollect and strategize. Buchanan viewed morality in eliminating financial support.<sup>152</sup>

These reforms proceed under varying names—privatization, devolution, subsidiarity, decentralization—some of which have been discussed in earlier sessions. At this point, I must shift the focus of my argument. I have suggested variously that the fundamental issues facing modern societies are moral, and that institutional reforms have an

influence in changing attitudes and patterns of behavior.<sup>153</sup>

So did the Republican Congress the Clinton Administration.<sup>154</sup> Then, the academic, and mediatic description of welfare as “government clientelism”—disparaging Democrats supporting welfare services as a way to obtain votes from those on welfare<sup>155</sup>—reached its peak. The Republican-dominated Congress passed legislation to replace cash support for those in need as long they were in need, with temporary assistance for those who, misguided, took a wrong turn in life.<sup>156</sup> Republicans in Congress successfully painted their governing failure as a person's choice incorporating Buchanan's personal choice views.<sup>157</sup> By joyfully employing racial slurs and racializing

<sup>153</sup> *Id.*

<sup>154</sup> See discussion in this section.

<sup>155</sup> See generally Susan C. Stokes, *Political Clientelism*, OXFORD HANDBOOK OF POLITICAL SCIENCE (2011) (for more on clientelism).

<sup>156</sup> See CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, <https://www.cbpp.org/research/family-income-support/temporary-assistance-for-needy-families> (In 1996, the Temporary Assistance for Needy Families (TANF) replaced Aid to Families with Dependent Children (AFDC), which provided cash assistance to families with children experiencing poverty. Due to the type of assistance, “the caseloads have fallen.”).

<sup>157</sup> See generally NANCY MACLEAN, *DEMOCRACY IN CHAINS: THE DEEP HISTORY OF THE RADICAL RIGHT'S STEALTH PLAN FOR AMERICA* (2017); Lynn Paramore, *Meet the Hidden Architect Behind America's Racist Economics*, INST. FOR NEW ECON. THINKING (May 30, 2018) (“Buchanan's ideas began to have huge impact, especially in America and in Britain. In his home country, the economist was deeply involved in efforts to cut taxes on the wealthy in 1970s and 1980s and he advised proponents of Reagan Revolution in their quest to unleash markets and posit government as the “problem” rather than the “solution.” The Koch-funded Virginia school coached scholars, lawyers, politicians, and business people to apply stark right-wing perspectives on everything from deficits to taxes to school privatization. In Britain, Buchanan's work helped to inspire the public sector reforms of Margaret Thatcher and her political progeny.”).

<sup>150</sup> JAMES M. BUCHANAN & GORDON TULLOCK, *THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY* (2004).

<sup>151</sup> JAMES M. BUCHANAN, & RICHARD A. MUSGRAVE, *PUBLIC FINANCE AND PUBLIC CHOICE: TWO CONTRASTING VISIONS OF THE STATE* 217 (1999) (Buchanan's address).

<sup>152</sup> *Id.*

of poverty, Republican legislators ended welfare as Americans knew it.<sup>158</sup> The public imagination was suffused with “the myth of the welfare mother with a Cadillac.”<sup>159</sup> Its prevalence was so pervasive that then-U.S. Democratic President Bill Clinton became a mere pawn in the destruction of the welfare system.<sup>160</sup> Gilman notes that:

The “welfare queen” was shorthand for a lazy woman of color, with numerous children she cannot support, who is cheating taxpayers by abusing the system to collect government assistance. For years, this long-standing racist and gendered stereotype was used to attack the poor and the cash assistance programs that support them. In 1996, Temporary Assistance for Needy Families (TANF) capped welfare receipt to five years and required work as a condition of eligibility, thus stripping the welfare queen of her throne of dependency.<sup>161</sup>

Ironically, earlier I hailed legislation for its role in the creation of welfare, only to note now that less than a century later, legislation curtailed it. Like magic, the lack of welfare produced a drop in the number of people on welfare. America’s poverty problem seemed solved! Once the Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>162</sup> was passed, the nation’s welfare caseload dropped by fifteen percent within the first few years. Public funding

<sup>158</sup> See generally R. KENT WEAVER, *ENDING WELFARE AS WE KNOW IT* (2000) (analyzing the Clinton administration welfare policy).

<sup>159</sup> Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 *AM. U. J. GENDER, SOC., POL. & L.* 247, 247 (2014).

<sup>160</sup> See generally Neacsu, *supra* note 6.

<sup>161</sup> Gilman, *supra* note 159; see also Camille Gear Rich, *Reclaiming the Welfare Queen: Feminist and Critical Race Theory Alternatives to Existing Anti-Poverty Discourse*, 25 *S. CAL. INTERDISCIPLINARY L.J.*, 257, 258 (2016).

<sup>162</sup> Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 *STAT.* 2105.

was cut by \$54 billion U.S. dollars within the first six years of the program.<sup>163</sup> But unlike Johnson’s War on Poverty, which reduced the nation’s poverty rate from eighteen percent to nine percent in 1972, poor people became worse off under President Clinton’s Act.<sup>164</sup>

But perhaps the worse social engineering of the 1996 welfare reform was the Charitable Choice provision, which authorized faith-based organizations to compete with secular organizations to provide federally funded welfare, health, and social services.<sup>165</sup> This provision, which the next administration—that of then-U.S. President George W. Bush—quickly embraced, allowed faith-based organizations to retain their religious character while providing social services so long as it did not diminish the recipients’ religious freedom.<sup>166</sup> Thus, we started the twenty-first century tolerating welfare services. When the government cut short its direct public assistance programs, choosing instead to subsidize religious organizations’ social activities, the shift from poverty as a societal ailment to poverty as an individual choice was complete. The poor were now “undeserving.” Once that happens, University of Pittsburgh Law Professor Thomas Ross reminds us, society easily stops funding services for the disadvantaged.<sup>167</sup> Once the label of undeserving poor creeps into popular belief, it becomes very difficult to perceive poverty accurately, as originating in “the structure of America’s political economy”—not in the behavior of the poor, who are often described as deviant, criminal, and “beyond hope and [without] any sense of initiative.”<sup>168</sup> Undeserving and having chosen to be poor, society loses interest in finding a systemic cure for poverty.<sup>169</sup> When this occurs,

<sup>163</sup> See Neacsu, *supra* note 6, at 419.

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Ross, *supra* note 79, at 1509; *Dandridge v. Williams*, 397 U.S. 471, 486 (1970).

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*



public assistance programs become secondary, and private charities receive first billing.<sup>170</sup>

Charities, organizations described in Section 501(c)(3) of the Internal Revenue Code, comprise of both public charities and private foundations.<sup>171</sup> They mimic corporations, and historically, have engaged in grant-making activities, as well as direct service activities.<sup>172</sup> The donors are encouraged to give through various tax schemes, and some give.<sup>173</sup> However, it does not seem democratically wise to make the poor depend on the generosity of some.<sup>174</sup> Such a scheme rather than welfare might be perceived as disparaging and dispirited or even encouraging feudalism and its power structure. Charities, sometimes better organized than mutual aid networks, are not meant to replace public assistance.<sup>175</sup> Their natural commitments are not to provide for the poor to resolve a systemic problem but to provide specifically for the poor whose stories resonate with the charities' mission.<sup>176</sup> So, what is left for the poor? Absent a welfare-building Left, then, volunteerism, charities, mutual aid societies, and religious organizations are their only options.<sup>177</sup> As shown here, mutuality is a temporary successful solution in a society whose services for the vulnerable are missing,<sup>178</sup> but it can perennially complement well organized institutional services.<sup>179</sup> Most of the time, it is an academically flimsy, ideological expedient.

<sup>170</sup> *Id.*

<sup>171</sup> 26 U.S.C. § 501 (2019).

<sup>172</sup> See generally Neacsu, *supra* note 6.

<sup>173</sup> See, e.g., CHARLES KOCH FOUNDATION, <https://charleskoch-foundation.org/>; OPEN SOCIETY FOUNDATIONS, <https://www.opensocietyfoundations.org/george-soros>.

<sup>174</sup> Harvey P. Dale & Jill S. Manny, *Social Welfare Organizations: Better Alternatives to Charities?*, 21 N.Y.U. J. LEGIS. & PUB. POL'Y 337, 340 (2018).

<sup>175</sup> See generally Neacsu, *supra* note 6.

<sup>176</sup> *Id.*

<sup>177</sup> See generally THE DR. HUEY P. NEWTON FOUNDATION, THE BLACK PANTHER PARTY: SERVICE TO THE PEOPLE PROGRAMS (2008).

<sup>178</sup> *Id.*

<sup>179</sup> See generally LAWRENCE M. MEAD & CHRISTOPHER BEEM, WELFARE REFORM AND POLITICAL THEORY (2005).

For instance, mutuality thrives on the premise that people have commitments and responsibilities toward each other.<sup>180</sup> But those commitments reach only a flimsy layer; they are not contingent on what the government is or is not doing to redistribute resources and lessen material inequalities. Philip Selznick, Sociology Professor at the University of California at Berkeley supports individual responsibilities arising from social involvements and commitments.<sup>181</sup> Simultaneously, he clarifies that the responsibilities that people have as parents, neighbors, and citizens are not equal, because they stem from different sources.<sup>182</sup> As a result, Selznick imposes meager societal duties on the affluent members.<sup>183</sup> The responsibilities of the affluent are limited to establishing baseline equality of condition. Mutuality implies an affluent society that does not leave its masses unaccounted for.<sup>184</sup> In another view of mutualism, that of the British school of mutualism, it is contingent on group behavior.<sup>185</sup> "More broadly, establishing social relations based on mutual regard is at best more difficult and at worst impossible in the context of gross disparities on income and wealth."<sup>186</sup> Nevertheless, even when conditional, the British mutualist case recognizes its minimal chances of success if made in isolation from the broader questions of social and economic justice. Without a minimum level of nurture, there is no opportunity for the poor. Moreover, their caregivers will fail if the need to balance work and care makes impossible demands upon their resources, however committed they may be.<sup>187</sup> Finally, to succeed, as the British scholarship clarifies, mutualism needs a society built on social responsibility, so it is not a crutch for a limping person, but a bouquet of flowers for someone well cared for:

<sup>180</sup> *Id.*, at 136–37.

<sup>181</sup> PHILIP SELZNICK, THE MORAL COMMONWEALTH: SOCIAL THEORY AND THE PROMISE OF COMMUNITY (1992).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> MEAD & BEEM, *supra* note 179.

<sup>186</sup> *Id.*

<sup>187</sup> See Neacsu, *supra* note 6.

The most compelling statement of why equality matters for community is still one the British Christian Socialist Richard Tawney made. As a Christian, Tawney started from the premise that all are entitled to equality of respect by virtue of their common relationship with the Creator. Such equality of respect, Tawney argued, was “incompatible with the existence of sharp contrasts between economic standards and educational opportunities of different classes.” For Tawney, the “fact of human fellowship [should not be] obscured by economic contrasts,” and a good society is one that uses its “material resources to promote the dignity and refinement of the individual human beings who compose it.” Thus, because mutualism starts with a deeper concept of social responsibility, it also sets higher demands on both the recipients of aid, and the society that offers it.<sup>188</sup>

Mutual aid exerts a certain ideological attraction in societies with a strong welfare system, beyond the dislike of government. It is connected to the nature of duty, responsibility, and mutual obligation.<sup>189</sup> For instance, Janet Finch (mentioned in the forward) and renowned British feminist scholar Gillian Dalley focused on the morality of care.<sup>190</sup> Their main question is the search for “Where does the responsibility for providing care [. . .] lie?”<sup>191</sup> Their Holy Grail is that “society as a whole should take responsibility for its weaker members.”<sup>192</sup> For them, this principle of collective responsibility can naturally lead to different and more collective forms of services provided

<sup>188</sup> MEAD & BEEM, *supra* note 179.

<sup>189</sup> See generally GILLIAN DALLEY, *IDEOLOGIES OF CARING: RE-THINKING COMMUNITY AND COLLECTIVISM* (1988).

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at ix.

<sup>192</sup> *Id.*

in such a manner that it preserves the agency of the people who need care.<sup>193</sup>

Dalley’s book incorporates studies on hybrid services using horizontal and vertical structures.<sup>194</sup> The nature of duty is Dalley’s explanation, but Dalley fails to prove that mutual aid breeds social empathy and ethical behavior beyond its horizontal reach.<sup>195</sup> Vertically, as history has shown, it is much more likely to breed clientelism or patronage, and from a moral point of view, hypocrisy.<sup>196</sup>

Thus, when the “Newer” and leaner left is engaged in dismissing the welfare state as some sort of dinosaur and passionately promoting mutuality, the two services shine in their striking difference. By asking the academe or the public to make a choice, this “Newer” and leaner left is actually losing currency because it appears unfocused, unprepared, and not ready to help the poor. And then, the real question becomes: is any American government interested in assuring compliance with international human rights standards?

#### IV. CONCLUDING REMARKS: DARE TO THINK PRAGMATICALLY, REALISTICALLY

Today’s choice cannot be either welfare or mutuality, but compliance with the international standards established by international instruments for human rights.<sup>197</sup> Enlarging the scope of social services’ deliverance would conceptually help scholars and politicians acknowledge that welfare services and voluntarism have worked side by side for most of the world’s history, including our republic’s. There is a place for innovation. Public and private social services are needed because our American liberal democracy condones deep socio-economic inequality and vulnerability remains a human condition. From the brief examination of these services, it is apparent that a makeover would improve both their scope and delivery.

<sup>193</sup> *Id.*

<sup>194</sup> DALLEY, *supra* note 189.

<sup>195</sup> *Id.*

<sup>196</sup> See *supra* discussion and footnotes.

<sup>197</sup> See *supra* discussion and footnotes.

Finding solutions to systemic problems caused by endemic racism, socio-economic inequality, and various forms of societal discrimination requires as many informed participants as possible. This requires reliable channels of information and means to neutralize disinformation. Voters have enjoyed infotainment for too long, and have traveled considerably from late-night comedy shows satirizing the news cycle through the prism of “fake news”—real in its premise, “fake” in its outcome—as a scathing criticism of our political complacency,<sup>198</sup> to alternative facts.<sup>199</sup> Voters still need reliable sources of information.<sup>200</sup> One of the silver linings of COVID-19 has been the time to produce scholarship to provide further insight, both collectively and individually.<sup>201</sup> This is a moment to reframe the questions and explore our anxieties about engaging the state to work for the benefit of the people.

As the trifecta pandemic—poverty, racism, and COVID-19-health crisis—in the United States has shown, many Americans function on long-held biases. So, when explaining societal problems, these biases, at a minimum, ought to be consistently applied. For instance, if market performance is key for judging the poor’s moral behavior (using Buchanan’s jargon), then it should be key for the rich’s appraisal. Do poor mothers really need immediate participation in the job market to ensure that they have sufficient skills to lift themselves and their children out of poverty? I do not know the answer. But if our liberal society expects poor single mothers to participate in the

<sup>198</sup> See, e.g., DANA NEACSU, POLITICAL SATIRE AND POLITICAL NEWS: ENTERTAINING, ACCIDENTALLY REPORTING OR BOTH? THE CASE OF THE DAILY SHOW WITH JON STEWART (TDS) (Oct. 3, 2011) (unpublished Ph.D. thesis, Rutgers University) (<https://academiccommons.columbia.edu/doi/10.7916/D8959RJ7>).

<sup>199</sup> See generally KIMIZ DALKIR, REBECCA KATZ (EDS.) NAVIGATING FAKE NEWS, ALTERNATIVE FACTS, AND MISINFORMATION IN A POST-TRUTH WORLD (2020).

<sup>200</sup> *Id.*

<sup>201</sup> See generally DANA NEACSU, THE BOURGEOIS CHARM OF KARL MARX & THE IDEOLOGICAL IRONY OF AMERICAN JURISPRUDENCE (2020) (for a meaning making theory focused on jurisprudence and legal scholarship).

labor market, then it should request the same of the affluent, who should engage in some form of activity in addition to being “born” into the corporate, affluent class?<sup>202</sup> Otherwise, if the affluent reap the benefits of their status, so ought poor mothers reap the same benefits by the fact of their motherhood. Cammett notes that:

Scholars have long recognized that family support programs in the United States are premised on the idea that family dependency is a private matter. Moreover, the current approach seems to recognize no role for the state in honoring poor women’s agency—outside of their right to find employment—or giving them meaningful choices.<sup>203</sup>

Politically, after decades of failing the vulnerable, understandably, people cannot imagine the state in a role of positive, proactive engagement in addressing family financial problems. But advocating to rid liberal capitalism of such welfare services would come at costs hard to imagine for democracy. If it survives, it would be reduced to an empty label, reminiscent of all the labels Soviet Russia used to cover up its political travesty. For instance, in a recent work on the Rule of Law of the Soviet empire, a Telos scholar explained its “nominal constitutionalism.” He noted that it:

consists [of] a rare combination of secular ideology, law, and social reconstruction policy. In this sense, nominal constitutionalism, as opposed to a real one, has three principle characteristic features: (1) the absence of realizable human rights norms; (2) the rejection of the judicial control of constitutionality (only political or ideological control); and (3) great

<sup>202</sup> See Rich, *supra* note 161, at 271–72.

<sup>203</sup> Ann Cammett, *Welfare Queens Redux: Criminalizing Black Mothers in the Age of Neoliberalism*, 25 S. CAL. INTERDISCIPLINARY L.J. 363, 364 (2016).

flexibility (the substance of each norm or constitutional provision can be profoundly transformed via logical, semantic, and teleological interpretations and thus used in the interest of political power).<sup>204</sup>

This nominal constitutionalism is not so foreign from our American shores, either. It started under the former-President Ronald Reagan's administration, with scholarly help from James M. Buchanan and Milton Friedman.<sup>205</sup> It focuses on diminishing the services of the welfare state built by previous democratic administrations.<sup>206</sup> It continued under the Trump administration, when "nominal democracy" became our governmental mantra and Buchanan's influence reached its apex.<sup>207</sup> For four years, we succumbed to Trump's rambling<sup>208</sup> *in lieu of* John Stuart Mills's liberal free-market of ideas.<sup>209</sup> However, former President Trump's authoritarianism<sup>210</sup> had no soviet roots: he unabashedly threatened the electorate that if he was re-elected, he would continue to defy the powers of his office. He bragged about defunding

both Social Security and Medicare, two of the pillars of the liberal welfare state.<sup>211</sup> And there were no checks and balances insight. For the first time since the Civil War, the Rule of Law could not protect the current version of the American democracy. The abandonment of due process and even of the much-admired checks and balances did not happen overnight.<sup>212</sup> It came after decades of decentralized government services and privatization when no one seemed in charge or cared about stewarding the American democratic experiment.

And then, COVID-19 happened. Only in one quarter, during the pandemic, when the American economy fell to post-World War II levels,<sup>213</sup> the top one percent saw their worth increase.<sup>214</sup> Voters could continue to ignore reality, and legal scholars could continue to embrace the Nobel Prize-winning theory of the day. But reality catches up with myths, and the difference between a vibrant democracy and a nominal democracy is that we, the people, do not have to accept it.<sup>215</sup> The American people still have the voting booth, and

<sup>204</sup> Andrey N. Medushevsky, *Law and Revolution: The Impact of Soviet Legitimacy on Post-Soviet Constitutional Transformation*, 189 TELOS 121, 125–26 (2019).

<sup>205</sup> See *supra* text and footnotes.

<sup>206</sup> See, e.g., *Social Welfare Under Reagan*, CQ RESEARCHER (Mar. 9, 1984), <https://library.cqpress.com/cqresearcher/document.php?id=cqresrre1984030900>.

<sup>207</sup> MACLEAN, *supra* note 157.

<sup>208</sup> Tom McCarthy, *Is Donald Trump an Authoritarian? Experts Examine Telltale Signs*, GUARDIAN (Nov. 18, 2018), <https://www.theguardian.com/us-news/2018/nov/18/is-donald-trump-an-authoritarian-experts-examine-telltale-signs>.

<sup>209</sup> For more on this democratic creed, see, e.g., DANA NEACSU, *THE BOURGEOIS CHARM OF KARL MARX & THE IDEOLOGICAL IRONY OF AMERICAN JURISPRUDENCE* 48 (2020).

<sup>210</sup> McCarthy, *supra* note 208.

<sup>211</sup> Camille Caldera, *Fact Check: President Trump Has Not Said He Will Terminate Social Security*, USA TODAY (Aug. 15, 2020), <https://www.usatoday.com/story/news/factcheck/2020/08/15/fact-check-donald-trump-hasnt-said-he-terminate-social-security/3343439001/> ("Trump deferred the tax that funds Social Security, and vowed to 'terminate' the tax in the future. The vast majority of Social Security is financed through the payroll tax, according to the Social Security Administration.").

<sup>212</sup> *Id.*

<sup>213</sup> See, e.g., *Gross Domestic Product*, U.S. BUREAU OF ECONOMIC ANALYSIS, <https://www.bea.gov/data/gdp/gross-domestic-product#gdp>; Dominic Rushe, *US Economy Suffers Worst Quarter since the Second World War as GDP shrinks by 32.9%*, THE GUARDIAN (Jul. 30, 2020), <https://www.theguardian.com/business/2020/jul/30/us-gdp-economy-worst-quarter-covid-19-unemployment>.

<sup>214</sup> Matthew Rozsa, *The Richest Billionaires Became Vastly Richer during Pandemic, Even as Stocks Tumbled*, SALON (May 28, 2020), <https://www.salon.com/2020/05/28/the-richest-billionaires-became-vastly-richer-during-pandemic-even-as-markets-tumbled/>.

<sup>215</sup> Devan Cole & Tara Subramaniam, *Trump on Covid Death Toll: 'It Is What It Is'*, CNN (Aug. 4, 2020), <https://www.cnn.com/2020/08/04/politics/trump-covid-death-toll-is-what-it-is/index.html>.

on November 20, 2020, they rejected this nominal democracy. The ravages of COVID-19 magnified our democratic ills. As of June 2020,<sup>216</sup> the United States, with only four percent of the world's population, represented twenty-five percent of the world's coronavirus cases.<sup>217</sup> Any plan to address that impact at any level could have only (and luckily did) come from the federal government,<sup>218</sup> not a mutual aid society.

With the new Biden administration in the United States and the recent \$1.9 trillion U.S. dollars rescue package bill, there is hope that our most vulnerable Americans will receive the much-needed help.<sup>219</sup> The bill is not charity; it is a mere attempt to ensure compliance with human rights international access standards. It is not mutual aid. It is what Americans deserve from a democratic government. It is needed for basic socio-economic human rights.

Fifteen years ago, I argued that the American welfare system needed a makeover.<sup>220</sup> That call remains actual today. The American societal ailments are dynamic, which means we need to build on the democratic welfare state's social services, including health, employment, senior care, and policies establishing a minimum wage, the length of the working day, retirement, and accident insurance. These programs are the backbone of the United States' liberal democracy. The United States needs to improve their scope and delivery, and scholars ought not to collaborate in their demise because Americans might discover

that as flexible as we believe liberal democracy is, it is only as flexible as a Rubik's Cube.

<sup>216</sup> Scottie Andrew, *The US has 4% of the world's population but 25% of its coronavirus cases*, CNN (June 30, 2020), <https://www.cnn.com/2020/06/30/health/us-coronavirus-toll-in-fd-june-trnd/index.html>.

<sup>217</sup> See *Weekly Updates by Select Demographic and Geographic Characteristics*, CDC, [https://www.cdc.gov/nchs/nvss/vsrr/covid\\_weekly/index.htm](https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm) (for up to date data).

<sup>218</sup> See, e.g., *Coronavirus (COVID-19)*, U.S. GOVERNMENT PUBLISHING OFFICE, <https://www.govinfo.gov/features/coronavirus> (last accessed Jan. 9, 2021).

<sup>219</sup> American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021).

<sup>220</sup> See Neacsu, *supra* note 1.