A THEORY OF POVERTY: LEGAL IMMOBILITY

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ABSTRACT

The puzzle of why the cycle of poverty persists and upward socioeconomic mobility is so difficult has long captivated scholars and the public alike. Yet with all of the attention that has been paid to poverty, the crucial role of the law, particularly state and local law, in perpetuating poverty is largely ignored. This Article offers a new theory of poverty, one that introduces the concept of legal immobility. Legal immobility considers the cumulative effects of state and local laws as a mechanism through which poverty is perpetuated and upward socioeconomic mobility is stunted. The Article provides an initial description and normative account of this under-theorized aspect of our laws and argues that in order to fully understand poverty, a more complete understanding of the relationship between law and poverty is needed. After discussing several examples of laws that can contribute to legal immobility (everything from state and local tax laws to occupational licensing laws), the Article offers a three-prong theory to help understand the distinct pathways through which individual laws that contribute to legal immobility function: (1) calculated exploitation; (2) gratuitous management; and (3) routine neglect. This framework provides a guide for future work to build on legal immobility theory. By bringing to light the cumulative effects of local and state laws in perpetuating poverty, the goal is for legal immobility theory to ultimately help lawmakers develop new structural approaches to tackling poverty.

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INTRODUCTION

Nearly one-third of Americans are poor or near poor.[1] For these families, living wages, affordable housing, adequate food, and other basic needs are increasingly out of reach. For decades, scholars have worked to identify the mechanisms that contribute to the cycle of poverty and to the thwarting of upward socioeconomic class mobility for poor families.[2] Depending on the

1. Matt Bruenig, *One-Third of Americans Are In Or Near Poverty*, DEMOS: POLICYSHOP (Oct. 20, 2014), https://www.demos.org/blog/10/20/14/one-third-americans-are-or-near-poverty [http://perma.cc/U3W6-KWTA]. Forty-nine million Americans live below the poverty line, and fifty-three million Americans live just above the poverty line. *Id.*

2. In this Article, when I discuss poverty, I conceptualize poverty not only as a condition of living with a reduced or no income, but also in a sociological sense, referring to the condition of living with "low status, minimal political power, distinctive and sometimes fragile social networks, and . . . culture." Monica C. Bell, *Hidden Laws of the Time of Ferguson*, 1 HARV. L. REV. F. 1, 11 (2018).

era, stagnant wages,[3] the education system,[4] incarceration,[5] neighborhoods,[6] and most recently, eviction,[7] have each been identified as a potential holy grail answer—a key to unlocking poverty's hold. Yet with all of the attention that has been paid to poverty, the crucial role of the law, particularly state- and local-level law, in perpetuating, exacerbating, and creating poverty is largely ignored. In the 1970s a poverty lawyer once said: "Poverty creates an abrasive interface with society; poor people are always bumping into sharp legal things."[8] These sharp legal things, however, have rarely been systemically studied or theorized about.

Sociologists, economists, and political scientists have long grappled with the causes and consequences of poverty, yet the law is usually an afterthought, if it is mentioned at all. Legal scholars, of course, focus on the law, but they have been strikingly absent from the discourse on poverty. The central lines of inquiry for those legal scholars who do write about poverty law typically fall into two distinct camps: (1) Understanding how the law might be used to aid the poor;[9] or (2) Understanding how one particular

3. *See* Elise Gould, Alyssa Davis, & Will Kimball, *Broad-Based Wage Growth is a Key Tool in the Fight Against Poverty*, ECON. POL'Y INST. BRIEFING PAPER NO. 399, (May 20, 2015), https://www.epi.org/files/2015/broad-based-wage-growth-is-a-key-tool-in-the-fight-against-poverty.pdf [https://perma.cc/YNR8-SPJK]; *see also* Peter Gottschalk, *Inequality, Income Growth, and Mobility: The Basic Facts*, 11 J. ECON. PERSPS. 21 (1997).

4. *See* GARY ORFIELD & CHUNGMEI LEE, WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY (2005), https://cloudfront.escholarship.org/dist/prd/content/qt4xr8z4wb/qt4xr8z4wb.pdf [http://perma.cc/J5TQ-BVBS]; ABIGAIL THERNSTROM & STEPHAN THERNSTROM, NO EXCUSES: CLOSING THE RACIAL GAP IN LEARNING (2004).

5. *See* BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 4–6 (2006); DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION 29–32 (2007).

6. *See* WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 4–62 (1987) [hereinafter WILSON, THE TRULY DISADVANTAGED]; WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 3–50 (1996); ROBERT J SAMPSON, GREAT AMERICAN CITY: CHICAGO AND THE ENDURING NEIGHBORHOOD EFFECT (2012); Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, 133 Q. J. ECON. 1107 (2018); Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility II: County-Level Estimates*, 133 Q.J. ECON. 1163 (2018); Raj Chetty et al., *Where is the Land of Opportunity? The Geography of Intergenerational Mobility in the United States*, 129 Q. J. ECON. 1553 (2014).

7. *See* MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 296–99 (2016).

8. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1050 (1970).

9. *See, e.g.*, Goodwin Liu, *Rethinking Constitutional Welfare Rights*, 61 STAN. L. REV. 203 (2008) (arguing that should the Supreme Court find a fundamental right to education, housing, or medical care, it will be due to an interpretation and consolidation of the values society has gradually internalized, rather than to a moral or philosophical epiphany); Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2 (2016) (describing how to reinvent labor law in order to help solve contemporary inequalities); Bertrall L. Ross II & Su Li, *Measuring Political Power: Suspect Class Determinations and the Poor*, 104 CALIF. L. REV. 323 (2016) (arguing that the Supreme Court should rely on a more holistic and reliable measure of political power than it currently does in order to determine whether a class should receive suspect status for review); Henry Rose, *The Poor as a Suspect Class Under the Equal Protection Clause: An Open Constitutional Question*, 34 NOVA L. REV. 408 (2015) (arguing that

statute, case, or legal procedure may disadvantage the poor.[10]

This narrow conception of "poverty law," which focuses almost solely on individual silos of study within federal law,[11] is an analytical error and leaves us with a gaping hole in our understanding of poverty.[12] A much broader understanding of poverty law is needed, one that considers how the cumulative effect of laws—particularly state and local laws—may be a mechanism through which poverty is created, perpetuated, and exacerbated.[13] This critical examination means expanding the scope of poverty law well beyond the traditional areas of inquiry.

While many legal scholars are aware of laws in their own individual fields of study that may perpetuate poverty, the literature has not developed a vocabulary for describing how, in a broad sense, the law is a key driver in thwarting upward socioeconomic mobility.[14] Indeed, the literature has not

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the Supreme Court has not yet decided whether the poor are a quasi-suspect or suspect class under the Equal Protection Clause).

10. *See, e.g.*, Catherine K. Ruckelshaus, *Labor's Wage War*, 35 FORDHAM URB. L.J. 373 (2008); Karen Syma Czapanskiy, *Unemployment Insurance Reforms for Moms*, 44 SANTA CLARA L. REV. 1093 (2004); Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 LAW & CONTEMP. PROBS. 285 (2010); Erik J. Olson, *No Room at the Inn: A Snapshot of an American Emergency Room*, 46 STAN. L. REV. 449 (1994); Michael Heise, *The Unintended Legal and Policy Consequences of the No Child Left Behind Act*, 86 NEB. L. REV. 119 (2007); James E. Ryan, *Charter Schools and Public Education*, 4 STAN. J. C.R. & C.L. 393 (2008). There is also some legal scholarship that focuses on the history of laws related to poverty. This scholarship similarly focuses on federal law, individual statutes, and cases related to a single area of traditional black letter law. *See, e.g.*, THE POVERTY LAW CANON: EXPLORING THE MAJOR CASES (Marie A. Failinger & Ezra Rosser eds., 2016) (containing chapters written by legal scholars that explore the history of some of the significant poverty law cases that have come before the U.S. Supreme Court); Anne Fleming, *The Rise and Fall of Unconscionability as the "Law of the Poor"*, 102 GEO. L.J. 1383, 1383–1441 (2014) (describing the history of unconscionability law as a potential tool to aid poor consumers); Karen Tani, STATES OF DEPENDENCY: WELFARE, RIGHTS, AND AMERICAN GOVERNANCE, 1935–1972 (2016) (examining legal contests over welfare benefits and administration in the years 1935–1972 and discussing the implications of this history for modern American governance).

11. There are, of course, exceptions to this focus on federal law, as discussed further in Part I.

12. It is rare for legal scholars to consider what are categorized as separate bodies of law together. Indeed, Anne Alstott identifies this phenomenon (and the limitations of this separate-spheres thinking) in her article, *Neoliberalism in U.S. Family Law: Negative Liberty and Laissez-Faire Markets in the Minimal State*, 77 L. & CONTEMP. PROBS. 25, 41–42 (2014). Her article finds that "[t]aken together, constitutional law, subconstitutional family law, and the U.S. welfare state enact a distinctly neoliberal legal regime for the governance of family life." *Id.* at 41. She notes, however, that "[w]hat is striking is that these three bodies of law are so seldom analyzed together. . . . I am certainly as guilty as anyone of this separate-spheres thinking." *Id.* at 41. While Alstott's point is different from mine, her work shows that considering bodies of law that are generally considered separate spheres can lead to new theoretical and practical insights.

13. Legal scholars sometimes focus on specific areas of the law that may perpetuate poverty, but the focus is entirely on the individual sub-issue in question, rather than a larger examination of the cumulative effects of laws across a wide array of legal areas. For example, post-Ferguson, several scholars have discussed criminal justice debt as an impediment to mobility, but the discussion stops there. *See, e.g.*, PETER EDELMAN, NOT A CRIME TO BE POOR 3–19 (2017); Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtor's Prisons*, 75 MD. L. REV. 486 (2016); ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016).

14. It is important to note that the concept of legal immobility focuses on upward *socioeconomic class* mobility, and not on *residential* mobility. There are several scholars in conversation about how

conceptualized what I call *legal immobility*.[15] Undertaking this type of inquiry is a tall order, in part because the law often functions to perpetuate poverty through local processes that are largely hidden and difficult to uncover. While there are certainly federal laws that perpetuate poverty, on a day-to-day basis, it is often the subtleties of these state and local laws, cumulatively and invisibly, that are the driving forces for how the law works to perpetuate poverty. This invisible localism of law is rarely studied or even acknowledged.

While it may appear puzzling that legal scholars have not engaged more with the relationship between local and state laws and poverty, legal scholars may have shied away from this type of inquiry in part because it is difficult, from an empirical perspective, to capture how different states and localities handle the same problem. Indeed, invisible localism makes it difficult to make generalizations or claims beyond problems in just one state or just one locality.

The goal of this Article, however, is not empirical in nature, and I am not attempting to make causal claims. The purpose of this Article is to provide an initial description and normative account of this undertheorized aspect of our laws, with a focus on the role of the invisible localism of the law in contributing to legal immobility. As I explore the often-ignored role of local and state laws in perpetuating poverty, I hope to convince the reader that in order to fully understand poverty and mobility, a more complete account of the relationship between local and state law and poverty is needed. In recent

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and why state and local laws may inhibit *residential* mobility for poor residents. *See, e.g.*, Michelle Wilde Anderson, *Losing the War of Attrition: Mobility, Chronic Decline, and Infrastructure*, 127 YALE L.J.F. 522 (2017); David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78 (2017); Naomi Schoenbaum, *Stuck or Rooted? The Costs of Mobility and the Value of Place*, 127 YALE L.J.F. 458 (2017). The conversation is certainly relevant to legal immobility, but residential mobility is not the focus of legal immobility theory.

15. The concept of legal immobility is distinct from the now fairly mainstream argument that "it is expensive to be poor." The expensive to be poor line of reasoning focuses on how the conditions of poverty can lead the poor to having to opt for more expensive options in a variety of settings such as housing, lending, and food. *See* Barbara Ehrenreich, *It Is Expensive to Be Poor*, THE ATLANTIC (Jan. 13, 2014), https://www.theatlantic.com/business/archive/2014/01/it-is-expensive-to-be-poor/282979/ [https://perma.cc/E4DD-4P9L] ("I was also dismayed to find that in some ways, it is actually more expensive to be poor than not poor. If you can't afford the first month's rent and security deposit you need in order to rent an apartment, you may get stuck in an overpriced residential motel. If you don't have a kitchen or even a refrigerator and microwave, you will find yourself falling back on convenience store food, which . . . is alarmingly overpriced. If you need a loan, as most poor people eventually do, you will end up paying an interest rate many times more than what a more affluent borrower would be charged. To be poor—especially with children to support and care for—is a perpetual high-wire act."); BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001) (describing the author's experiment taking various low-wage jobs and explaining in great detail through her experiences how it can be more expensive to be poor than not poor).

The concept of legal immobility is also unique from the important criminalization of poverty argument that has recently surfaced. See *infra* Part I and *infra* notes 59 & 60 for an explanation of how the legal immobility concept differs from the criminalization of poverty argument.

years, some progress toward this end has been made. In 2015, the United States Department of Justice's report on the Ferguson Police Department and courts ("the Ferguson Report") brought a national spotlight to the use of fees, fines, and other monetary penalties as a means for generating revenue at the state and local level.[16] In this Article, I argue that the revelations exposed in the Ferguson Report are just a small piece of a much larger systemic phenomenon of local and state laws and systems stunting upward mobility and contributing to the perpetuation of poverty.[17] In the course of the Article, I discuss driving laws and fees (touched upon in the Ferguson Report), but I also explore state and local tax law, family law, nuisance law, and employment licensing law, among others. I argue that the cumulative effects of all of these laws (and others), working together to form a complex web of barriers, lead to legal immobility.

While I focus on the cumulative effects of all of these laws, I also articulate a three-prong theory to help understand the roots of the individual laws that contribute to legal immobility. I argue that there are three distinct pathways through which these individual laws function: (1) *calculated exploitation;* (2) *gratuitou*s *management*; and (3) *routine neglect.* In some cases, through calculated exploitation, states and localities are intentionally exploiting the poor in order to fund government activities and satisfy more powerful interest groups. In other cases, states and localities are engaging in gratuitous management, using the law as a means to control and regulate the poor. Finally, at times, states are engaging in routine neglect—the poor are an afterthought, essentially forgotten as the status quo reigns and systematically makes mobility a distant dream to the least powerful. My hope is that this framework for understanding the roots of the laws that together contribute to legal immobility will be helpful for future work that expands legal immobility research and focuses on normative goals and change.

One important caveat to note is that the theory of legal immobility is not meant to be the "holy grail" answer to why upward mobility is so difficult and poverty perpetuates. Instead, my argument is that to fully understand

16. EDELMAN, *supra* note 13; HARRIS, *supra* note 13; Danial Hummel, *Traffic Tickets: Public Safety Concerns or Budget Building Tools*, 47 ADMIN. & SOC. 298 (2014); Sobol, *supra* note 13.

17. The Ferguson Report details how many of the operations of the Ferguson police department and courts disproportionately affect African American residents, beyond their effects on poor residents. *See* U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 62–80 (March 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/K9J5-JK6F]. Likewise, many of the ways in which legal immobility functions in cities and states are even more damaging to African American citizens due to racial discrimination and increased enforcement of laws in neighborhoods with large African American populations. The problem is so severe and complex that I have left this discussion for a second paper on legal immobility, poverty, and race. Thus, in this paper, I do not specially address race as an added dynamic to the legal immobility argument.

why poverty is so persistent, we need to consider the role of local and state law as a whole, bridging the silos of various legal disciplines. And when we do, a useful and thus far neglected perspective on poverty emerges, one that shows how the structures of state and local laws, cumulatively, function to inhibit upward mobility for the poor.

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This Article proceeds as follows: In Part I, I consider legal immobility theory and discuss why we need such a theory. As part of this discussion, I explore the current state of theory related to law and poverty. In Part II, I discuss legal immobility and invisible localism in practice, showing how a confluence of rules and laws across a range of legal areas work together to stunt mobility. In Part III, I expand on the concepts of calculated exploitation, gratuitous management, and routine neglect, considering examples of laws that contribute to legal immobility I discussed in Part II. In Part IV, I broadly consider some of the implications of legal immobility theory, and finally, I conclude.

I. WHAT IS LEGAL IMMOBILITY THEORY AND WHY DO WE NEED IT?

In the United States, the study of poverty has long captivated both scholars and the public.[18] Over a half a century ago, in 1962, Michael Harrington published *The Other America*,[19] drawing wide attention to the millions of people living in poverty in inner-city housing projects, Appalachia, and rural America.[20] Not long after, in the 1960s and 1970s, America launched a war on poverty that helped move millions of people out of poverty and into the middle class.[21] Yet, poverty persists, and today some 43.1 million Americans, or 13.5% of the population, live in poverty.[22]

One of the questions that has intrigued generations of scholars is why poverty is so "sticky," particularly for those who have lived in poverty for many years.[23] Indeed, the more time one has spent in poverty, the lower the

18. John Edwards, *Foreword* to KATHERINE S. NEWMAN & VICTOR TAN CHEN, THE MISSING CLASS: PORTRAITS OF THE NEAR POOR IN AMERICA ix (2007) (discussing the interest in the study of poverty law over time in the United States).

19. MICHAEL HARRINGTON, THE OTHER AMERICA (1962).

20. NEWMAN & CHEN, *supra* note 18 (discussing the influence of Harrington's book in drawing attention to poverty in the United States and more generally the role of scholarship in promoting social and political change).

21. *Id.*

22. U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES 2015: HIGHLIGHTS 12 (2016), https://www.census.gov/content/dam/Census/library/publications/2016/demo/p60-256.pdf [https://perma.cc/V8QK-MJ5L].

23. In addition to looking at the mobility potential of an individual over his life course, poverty researchers also study intergenerational mobility, or the chances that a child living in poverty will exit

chances the individual will exit poverty.[24] For those who have lived in poverty for seven or more years, the chances of exiting poverty are only thirteen percent.[25] Further, even for those who do exit poverty, half will return to poverty within five years of ending a spell.[26] These statistics show how difficult upward class mobility can be.

Sociologists, economists, political scientists, and even psychologists have, for many years, contributed to the theoretical and empirical discussions about the causes and consequences of the difficultly of long-term upward socioeconomic class mobility for the poor.[27] Debates rage about the role of culture in perpetuating poverty,[28] and particularly in the 1980s, theorists renewed claims that there were cultural ills infecting those for whom poverty was persistent.[29] They argued that in order to jump-start upward class mobility for the poor, society had to focus on these cultural ills.[30] Soon William Julius Wilson entered the conversation and argued that while there may be cultural problems in poor communities, these problems

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poverty as an adult. Raj Chetty and others have recently made great strides in predicting various factors that contribute to upward mobility, including the importance of neighborhoods and even counties. *See* Chetty & Hendren, *Childhood Exposure Effects*, *supra* note 6; Chetty & Hendren, *County Level Estimates*, *supra* note 6; Chetty et al., *Where is the Land of Opportunity?*, *supra* note 6. In this Article, I focus on the mobility potential of individuals over their life course, rather than on intergenerational mobility. However, legal structures may have implications for intergenerational mobility, and may indeed help explain Chetty et al.'s finding that where children grow up, both regionally and by neighborhood, are predictors of whether children will exit poverty when they are adults. *See* Chetty & Hendren, *Childhood Exposure Effects*, *supra* note 6.

24. Ann Huff Stevens, CTR. FOR POVERTY RESEARCH, *Transitions into and out of Poverty in the United States* 1, https://poverty.ucdavis.edu/sites/main/files/file-attachments/policy_brief_stevens_poverty_transitions_1.pdf [https://perma.cc/SLG3-542F].

25. *Id.*

26. Singe-Mary McKernan, Caroline Ratcliffe & Stephanie R. Cellini, THE URBAN INST., *Transitioning In and Out of Poverty* (Sept. 2009), https://www.urban.org/sites/default/files/publication/30636/411956-Transitioning-In-and-Out-of-Poverty.PDF [https://perma.cc/L69X-T3MN].

27. For examples of researchers in each of these disciplines contributing to debates about poverty, *see supra* notes 3–7 & *infra* notes 28, 29, & 31.

28. *See, e.g.*, CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS (Lawrence E. Harrison & Samuel P. Huntington eds., 2000); MICHÉLE LAMONT, THE DIGNITY OF WORKING MEN: MORALITY AND THE BOUNDARIES OF RACE, CLASS, AND IMMIGRATION (2000); Maria Charles, *Culture and Inequality: Identity, Ideology, and Difference in "Postascriptive Society*," 619 ANNALS AM. ACAD. POL. & SOC. SCI. 41 (2008); Paul DiMaggio, *Culture and Cognition*, 23 ANN. REV. SOC. 263 (1997); Luigi Guiso, Paola Sapienza & Luigi Zingales, *Does Culture Affect Economic Outcomes?*, 20 J. ECON. PERSP. 23 (2006); Sendhil Mullainathan & Eldar Shafir, *Savings Policy and Decisionmaking in Low Income Households*, *in* INSUFFICIENT FUNDS 121 (Rebecca M. Blank & Michael S. Barr eds., 2009); Mario Luis Small, David J. Harding & Michèle Lamont, *Introduction: Reconsidering Culture and Poverty*, 629 ANNALS AM. ACAD. POL. & SOC. SCI. 6 (2010); Amy Wax & Larry Alexander, *Paying the Price for Breakdown of the Country's Bourgeois Culture*, THE INQUIRER (Aug. 9, 2017), http://www.philly.com/philly/opinion/commentary/paying-the-price-for-breakdown-of-the-countrys-bourgeois-culture-20170809.html [https://perma.cc/5J26-PLVN].

29. *See, e.g.*, LAWRENCE M. MEAD, BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP (1986); CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY 1950–1980 (1984).

30. *See supra* note 29.

can be attributed to long-standing structural conditions in society.[31] Wilson argued that a lack of upward socioeconomic class mobility, persistent poverty, and the accompanying social problems are substantially the result of structural forces, and thus require responses that are not predicated on the moral worthiness or reciprocity of those in need.[32] Ultimately, Wilson argued, in order to attack social problems, we need to understand the structural forces shaping them.[33]

While some theorists continue to focus on the role of culture in hindering mobility,[34] Wilson's insight has led to a prevailing view that structural forces are as a significant factor in persistent poverty and the difficulty of upward class mobility. Since Wilson's contribution, a robust literature has developed that focuses on the various structures in American society that contribute to persistent poverty. Through careful research, we have come to understand the centrality of the structural dynamics associated with families,[35] education,[36] jobs,[37] the minimum wage,[38] neighborhoods,[39] and cash-based welfare[40] to our understanding of poverty. Entire books have been devoted to the discussion of each of these areas.[41] Yet law is rarely central to the analysis of any given structural force that has been studied—even those institutions that are inherently legal in nature.[42]

For example, Matthew Desmond's recent work on eviction has received widespread acclaim,[43] with accolades from prominent poverty researchers

31. WILSON, THE TRULY DISADVANTAGED, *supra* note 6.

32. *Id.*

33. *Id.*

34. *See supra* note 28. There is also a new line of innovative poverty theory and research that focuses on the relationship between poverty and cognitive function. *See, e.g.*, Anandi Mani, Sendhil Mullainathan, Eldar Shafir & Jiaying Zhao, *Poverty Impedes Cognitive Function*, 341 SCI. 976 (2013).

35. *See, e.g.*, ANNETTE LAREAU, UNEQUAL CHILDHOODS: CLASS, RACE, AND FAMILY LIFE (2003); SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT (1994); Sara McLanahan & Isabel Sawhill, *Marriage and Child Wellbeing Revisited: Introducing the Issue*, 25 FUTURE CHILD. 3 (2015).

36. *See supra* note 4.

37. *See generally supra* note 4; KATHRYN J. EDIN & H. LUKE SHAEFER, $2.00 A DAY (2015); KATHERINE S. NEWMAN, NO SHAME IN MY GAME: THE WORKING POOR IN THE INNER CITY (1999).

38. *See, e.g.*, David Neumark & William Wascher, *Minimum Wages and Low-Wage Workers: How Well Does Reality Match the Rhetoric?*, 92 MINN. L. REV. 1296 (2008); T. William Lester et al., *The Facts on Raising the Minimum Wage When Unemployment Is High* (June 20, 2012), https://www.americanprogressaction.org/issues/economy/news/2012/06/20/11749/the-facts-on-raising-the-minimum-wage-when-unemployment-is-high-2/ [https://perma.cc/Q5EA-925D].

39. *See supra* note 6.

40. *See, e.g.*, JASON DEPARLE, AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE (2004); KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK (1997).

41. *See, e.g.*, *supra* notes 35–40.

42. *See supra* notes 35–40 for examples of in-depth discussions of each of these areas that do not focus on the law.

43. Desmond's book *Evicted* received a Pulitzer Prize. *See The 2017 Pulitzer Prize Winner in General Nonfiction*, THE PULITZER PRIZES, https://www.pulitzer.org/winners/matthew-desmond

suggesting that Desmond's work "refocus[es] our understanding of poverty in America"[44] and is "arguably the most important book about poverty in the United States in a generation."[45] Desmond is lauded for his ethnography and hard-won data, calling attention to an issue that William Julius Wilson notes is an "eye-opener, even to poverty researchers."[46] Indeed, eviction is a structure that has profound effects on stunting the potential for upward class mobility for the poor, yet has rarely been recognized as a key feature in the persistent poverty and lack of upward socioeconomic class mobility conversations.

What few have pointed out, however, is that part of what is so novel about Desmond's work is that at its core, the study of eviction is a study of a *local legal process.* While Desmond does not delve into the details of the laws governing eviction in Milwaukee, he does provide a detailed sociological view of how the process of eviction affects the poor and causes a cascade of negative events that can trap the poor in poverty and prevent upward mobility. Desmond's work is transformative, but part of what makes it transformative is the recognition that a local legal process can have a profound role in the reproduction of poverty. Eviction, I argue, should be understood and analyzed not just as a structure in and of itself, but as part of a much bigger legal structure, a system of laws and rules that perpetuates poverty.[47]

One might think that the legal academy would fill in the holes left by other disciplines in the study of the relationship between law and persistent poverty, but for the most part,[48] poverty is "an ever-present yet often-

[http://perma.cc/9TPS-32ZD]. For further praise and accolades, see *Praise for Evicted*, PENGUIN RANDOM HOUSE, http://evictedbook.com/praise [http://perma.cc/N842-BLZ4].

44. *Praise for Evicted*, *supra* note 43.

45. Ezra Rosser, *Exploiting the Poor: Housing, Markets, and Vulnerability*, 126 YALE L.J.F. 458, 458 (2017).

46. Jennifer Schuessler, *A Harvard Sociologist on Watching Families Lose their Homes*, N.Y. TIMES (Feb. 19, 2016), https://www.nytimes.com/2016/02/20/books/a-harvard-sociologist-on-watching-families-lose-their-homes.html.

47. Desmond and Monica Bell did write an important review article, *Housing, Poverty, and the Law*, 11 ANN. REV. LAW SOC. SCI. 15 (2015). This review article identifies areas at the intersection of housing, poverty, and the law at both the local and federal level that are ripe for further study. *See id.*

48. In 1988, for example, the Ford Foundation supplied funding to create the Interuniversity Consortium on Poverty Law. The idea originated from "a series of discussions" that took place at Harvard Law School in 1985–86, which centered on the "resistances that confronted legal academics in their attempts to transform legal scholarship or institutions." Gabrielle Lessard, *Introduction—INTERUNIVERSITY CONSORTIUM ON POVERTY LAW, TOWARD THE MOBILIZATION OF LAW SCHOOL FOR POVERTY LAW ADVOCACY*, 42 J. URB. & CONTEMP. L. 57, 58 (1992) (final report to the Ford Foundation on Two Years of Activity, under grant 890-0427-1). The group "envisioned the Consortium as a network enabling academics struggling against resistances at dispersed law schools to collectively support one another." *Id.* at 58. The two stated goals of the Consortium were to "increase law school scholarship, teaching, and understanding of poverty law and the relationship between law and poverty" and to "link this scholarship, teaching, and understanding with advocacy on behalf of poor, disadvantaged, and marginalized persons and organizations that promote their interests." *Id.* at 58. *See also* Howard S.

neglected aspect of the study of law."[49] Thus, we are left with a dearth of scholarship on the ways in which the structural forces of the law, specifically, perpetuate poverty and lead to socioeconomic class immobility.

There are, however, two key areas that are a significant exception to this dearth of law-related scholarship, particularly in the last several years. First, the structures related to criminal law and their effects on poverty have recently garnered significant scholarly attention. These structures have been analyzed at several different levels, as described below.

Research has revealed the striking role of incarceration in perpetuating and exacerbating poverty.[50] Incarceration rates have "more than quadrupled in the past four decades,"[51] and while more work still needs to be done, mass incarceration has received relatively extensive scholarly attention compared to other law-related structures that perpetuate poverty. One study used three different poverty indexes and in each case found that incarceration significantly increased poverty.[52] Further, the study found that but for mass incarceration, the official poverty rate would have significantly decreased during the time period studied.[53] Since those with criminal records have trouble finding housing and employment,[54] two key facets of economic independence, it should come as no surprise that mass incarceration contributes to persistent poverty.

A second area of criminal law that scholars have made recent innovations into understanding is that of mass misdemeanors. The scholars who first began studying mass misdemeanors noted that little attention had been paid to low-level misdemeanor arrests and citations despite their widespread prevalence.[55] The number of charges for misdemeanors such as possession

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Erlanger & Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199, 199 (1993).

49. JULIET M. BRODIE, CLARE PASTORE, EZRA ROSSER & JEFFREY SELBIN, POVERTY LAW: POLICY AND PRACTICE 1 (2014).

50. Robert H. DeFina & Lance Hannon, *The Impact of Mass Incarceration on Poverty*, 59 CRIME & DELINQUENCY 562 (2009); WESTERN, *supra* note 5, at 29–32.

51. NATIONAL RESEARCH COUNCIL, THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSE AND CONSEQUENCES 1 (2014), https://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf [https://perma.cc/3NH9-KWQK].

52. DeFina & Hannon, *supra* note 50, at 566.

53. *Id.*

54. PAGER, *supra* note 5; *see also* JAMES B. JACOBS, THE ETERNAL CRIMINAL RECORD 43 (2015).

55. Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611, 612–13 (2014) ("This Article explores another recent expansion of penal operations that has received remarkably little attention: the rise of mass misdemeanors."); Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 101, 102–03 (2012) ("An estimated ten million misdemeanor cases are filed annually . . . . While these individuals are largely ignored by the criminal literature and policy makers, they are nevertheless punished, stigmatized, and burdened by their convictions in many of the same ways as their felony counterparts.").

of marijuana, trespass, and public urination, for example, have significantly increased in the past decade.[56] Scholars of mass misdemeanors have rightly pointed out that it is not just incarceration and what is thought of as traditional criminal law that can serve to inhibit mobility—less severe criminal charges can too.[57] They argue that while many misdemeanor charges are dismissed, the collateral consequences of having a criminal record, even for a misdemeanor or dismissed charge, can exacerbate poverty and already difficult conditions.[58]

Finally, legal scholars have made some important headway in understanding the relationship between criminalization and poverty—what scholars refer to as the criminalization of poverty.[59] Particularly since the important work of the Department of Justice in the Ferguson Report, scholars have expanded the work of the Ferguson Report to draw attention to the idea that, as Peter Edelman has said, "Ferguson is Everywhere."[60] Edelman and others have noted many ways in which the poor face criminal consequences such as incarceration due almost entirely to the fact that they are poor.[61] For example, this can happen when they cannot afford to pay child support,[62] when they are stuck in jail awaiting a trial because they cannot afford bail,[63] when they are confused about public benefits but end up being charged with fraud,[64] and when they cannot pay probation fees.[65]

The other key area of scholarly innovation concerning the law's relationship to poverty is the study of struggling cities and regions. Michelle Wilde Anderson's path-breaking work focuses on cities that in the post-industrial era have suffered extreme financial problems, sometimes ultimately dissolving into regions or filing for municipal bankruptcy.[66] Anderson's work highlights the specific challenges for poor residents living in these areas and the ways in which the laws, policies, and decisions about services and resources in these struggling cities can mean that these areas "are unable to provide the basic cornerstones of American upward social mobility—personal safety and education opportunity."[67]

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56. *See* Issa Kohler-Hausmann, *supra* note 55, at 629–33.
57. *See* Natapoff, *supra* note 55, at 104–05.
58. *See id.*
59. For example, Part I of Peter Edelman's book, *NOT A CRIME TO BE POOR: THE CRIMINALIZATION OF POVERTY IN AMERICA* is called "The Criminalization of Poverty." EDELMAN, *supra* note 13, at 3–156.
60. *See id.* at 3.
61. *See generally, id.*
62. *See id.* at 83–90.
63. *See id.* at 45–62.
64. *See id.* at 93–115.
65. *See id.* at 11–15.
66. *See* Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118 (2014); Michelle Wilde Anderson, *Dissolving Cities*, 121 YALE L.J. 1364 (2012).
67. Anderson, *The New Minimal Cities*, *supra* note 66, at 1184.

Considering these struggling regions, David Schleicher has argued that members of disadvantaged groups who live in these areas would likely be better off moving to other regions of the country that offer more opportunities for upward socioeconomic mobility.[68] However, he argues, people are stuck in these failing regions in part because of specific state and local laws that make interstate mobility difficult.[69] In other words, Schleicher suggests that there should be more interstate mobility in order to improve the economic outlooks of disadvantaged groups, but that formal legal structures have created barriers to such residential mobility.[70] Thus, the goal should be to alleviate these legal barriers.[71] Michelle Wilde Anderson, Naomi Schoenbaum, and others have raised important questions about whether the policy of easing interstate mobility alone will actually make a meaningful difference in promoting mobility (both interstate mobility and socioeconomic mobility).[72]

For the purposes of legal immobility theory, the contribution of this discussion is that in considering the laws and policies leading to legal immobility, we must consider the fiscal health of cities and regions and thus the underlying reasons for the laws and policies. Indeed, there is little doubt that these conversations about the financial health of cities and regions are an important part of the concept of legal immobility, and the calculated exploitation prong of legal immobility theory takes into account these concerns.

However, legal immobility theory takes a broader view, beyond struggling cities and regions. The theory considers the many laws and policies that are not unique to struggling cities, yet damper economic opportunity for the poor. We need to consider these avenues of suppression in conjunction with laws and policies that stem from the fiscal problems of struggling cities. This will allow us to better understand how the law functions as a mechanism through which poverty is perpetuated and upward socioeconomic mobility is stunted.

Indeed, legal immobility theory draws on Wilson's original argument that persistent poverty and immobility is substantially the result of structural forces. However, I argue that while we have been focusing on many

68. Schleicher, *supra* note 14, at 82–83.
69. *Id.* at 84.
70. *Id.* at 82–84.
71. *Id.* at 149–154.
72. *See* Anderson, *supra* note 14, at 522 (arguing that in order to make meaningful improvement to mobility, a "new antipoverty agenda" for declining regions is needed, as is "fiscal and environmental responsibility for the existing infrastructure debts of our prior regional and interstate mobility."); Schoenbaum, *supra* note 14, at 464–70 (arguing that there are important costs to interstate mobility Schleicher does not take into account and that there are also values of place that Schleicher fails to consider).

different types of structures, we have been, in a sense, missing the scaffolding: the cumulative effects of state and local laws that may, at first glance, seem to have little to do specifically with the lives of the poor. In some cases, scholars like Desmond have identified structures that are inherently legal in nature (i.e. eviction), but their relationship to the law has been mostly forgotten.[73] The first piece of legal immobility theory is the recognition that *legal* structures need to be considered as a mechanism that thwarts upward mobility. Legal structures have thus far been largely missing from the conversation, even though persistent poverty and immobility is as much of a legal phenomenon as it is anything else.

Second, legal immobility theory postulates that many of the legal structures we have been missing in relationship to persistent poverty are local in nature. Because they are local in nature, they can vary from state to state and even from town to town, making them more difficult to recognize and categorize. But we must look for patterns in local and state law and compare varying localities in order to more fully understand how these invisible and seemingly minor laws can lead to socioeconomic immobility.

Finally, a key feature of legal immobility theory is the recognition that the disadvantages local and state laws may bring to the poor are cumulative in nature. Just one law that disproportionately burdens the poor might not have dramatic effects on the ultimate life trajectory of the person affected by it. But it is the processes of each individual law, cumulatively combined with the processes of so many other areas of law that are underexplored or even unexplored, that make sustained upward mobility so difficult for the poor. Criminal law, tax law, zoning law, family law and others, interacting together, create a legal structure that contributes to legal immobility. We need more deep engagement by legal scholars with the relationship between poverty and the law on a cumulative basis, calling attention to the role of law across a wide range of areas in perpetuating poverty. Scholars need to further explore the potential that the cumulative nature of these laws, experienced in conjunction with one another, is a significant factor in making the climb out of poverty so difficult.

It is important to again acknowledge that this Article is not empirical in nature and is not and cannot make any causal claims about the role of state and local laws in perpetuating poverty or stunting upward class mobility. The Article instead argues that we need to *consider* the potential cumulative effects of state and local laws that disproportionately disadvantage the poor in perpetuating poverty and stunting upward class mobility. While this Article is informed by my over ten years of qualitative interviews with poor and near poor residents in several different cities, it is not based specifically

73. *See e.g.*, Desmond, *supra* note 7.

on these data.

Ultimately legal immobility theory recognizes that law is in fact the infrastructure of daily life, the mesh of enablement or impediment that adds up over a life course, often in ways that are undramatic and hard to see. We need a vocabulary for discussing the role of this legal structure in affecting poverty—thus, legal immobility. Indeed, the purpose of legal immobility theory is to give scholars a language and umbrella under which to undertake this type of inquiry.

II. LEGAL IMMOBILITY IN PRACTICE

How does legal immobility work in practice? One potentially useful thought process is to imagine the health of a human being and the various ailments and diseases that can affect the human body. Just one disease, depending on the nature of it, can certainly work alone to wreak havoc on the human body and one's health. But there are many health conditions that alone can be overcome. It is only when these conditions interact, cumulatively, with other conditions, that their negative impact is magnified and potentially devastating.

Imagine, for example, a woman named Joanne. Joanne is in good health but for arthritis in her hands. The arthritis is painful, and it is difficult for Joanne to grip objects and type on a computer, but overall she functions fairly normally. Now, imagine Joanne develops type two diabetes. The diabetes has a variety of symptoms, and in order to help control it, Joanne must give herself a shot of insulin each day. However, her arthritis makes it so painful to grip the insulin injector that Joanne sometimes skips a dose of insulin. This, in turn, results in her diabetes causing other symptoms—Joanne's eyesight declines rapidly, and her feet and ankles are often painfully swollen. This swelling results in a reduction of exercise because walking becomes painful.

One day when Joanne is cutting fruit, she cuts her finger badly, partially due to her blurred vision. After getting the cut attended to in the emergency room, she goes home, now with even further limits to her hand mobility. The cut gets infected, possibly due to her diabetes, which makes healing more difficult, and she has to again be attended to at the doctor's office and take strong antibiotics.

The story could continue, with more and more ailments interacting with one another and cumulatively making Joanne unable to function. Individually, some of the ailments are minor, but taken together, they can make it almost impossible for Joanne to be employed and generally be a productive citizen. In the same vain, each legal obstacle that someone living in poverty encounters as part of legal immobility can function in the same

way as any one of Joanne's ailments: individually, not necessarily demobilizing, but collectively almost impossible to overcome. Below, I detail just some of the many local and state legal rules and systems that contribute to legal immobility. While it is unlikely any one person would be affected by all of the areas detailed below, the idea is to consider just how pervasive these immobilizing laws are and to recognize that there are many more such laws I am unable to touch upon in this Article.

A. State and Local Taxes

Generally, when scholars consider and debate the relative progressive verses regressive nature of tax, they are consumed with the federal tax code.[74] There is an ongoing debate in the United States about the fairness of the federal income tax, but an enduring principle in the United States concerning federal taxes is that those who make more should pay more. Indeed, the federal income tax system is progressive, with higher-income households paying a larger percentage of their income than lower-income households.[75] In general, tax is often left out of the poverty discussion altogether.[76]

When scholars do focus on the connection between poverty and taxation, they usually focus on the Earned Income Tax Credit (EITC),[77] a tax program implemented during the Nixon administration that made the federal tax system even more progressive.[78] The EITC is designed to incentivize work by providing families with an increased tax return/credit based on their income.[79] Scholars have written about (and debated) the utility and design of the EITC,[80] as well as the concern about EITC fraud (those who file for

74. *See* KATHERINE S. NEWMAN & ROURKE L. O'BRIEN, TAXING THE POOR xxxix (2011) ("Economists interested in public finance and law professors who dwell on the intricacies of taxation are generally preoccupied with federal statutes.").

75. *Are Federal Taxes Progressive?*, TAX POLICY CENTER BRIEFING BOOK, https://www.taxpolicycenter.org/briefing-book/are-federal-taxes-progressive [http://perma.cc/HHH3-8GUX].

76. NEWMAN & O'BRIEN, *supra* note 74, at xxxviii.

77. *Id.* However, a few scholars have gone beyond the EITC in considering the relationship between tax and poverty. For example, in her article *Taxing the Poor: Income Averaging Reconsidered*, Lily Batchelder argues that taxation of annual income disproportionately burdens low-income families. She proposes two ways to address this problem, one involving the EITC (averaging the EITC over a two-year period) but also one that would carry back the standard deduction and personal and dependent exemptions. *See* Lily L. Batchelder, *Taxing the Poor, Income Averaging Reconsidered*, 40 HARV. J. ON LEG. 395 (2003). Further, David Kamin has written about the potential utility of the tax system overall in decreasing poverty. *See* David Kamin, *Reducing Poverty, Not Inequality: What Changes in the Tax System Can Achieve*, 66 TAX L. REV. 593 (2013).

78. *See* Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 530–32 (2013).

79. *See id.* at 533–36.

80. *See, e.g.*, Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533 (1995); Anne L. Alstott, *Why the EITC Doesn't Make Work Pay*, 73 L. & CONTEMP. PROBS. 285 (2010); Greene, *supra* note 78; Lawrence Zelenak, *Redesigning the*

and receive the EITC but do not actually qualify),[81] and EITC take-up rates.[82]

Few scholars, however, have focused on the intricacies of state and local level taxation, even though state and local taxes can have significant effects on the lives of the poor. Tax laws concerning sales taxes, renter's credits, state level refundable earned income and child tax credits, utility bill deductions, deductions and subsidies for public transit commuter expenses, and more are all important in determining the net take-home pay of poor families.[83] Indeed, a 2015 study by the nonprofit Institute on Taxation and Economic Policy ("ITEP Study"), a nonpartisan research firm that studies tax issues, found that state and local tax burdens on the poor, as compared to higher income groups, are profound.[84] The poorest twenty percent of Americans pay an average effective state and local tax rate of 10.9%, whereas the top one percent of Americans have an effective state and local tax burden of just 5.4%.[85] While there are some states with particularly regressive tax systems, "[v]irtually every state tax system is fundamentally unfair, taking a much greater share of income from low- and middle-income families than from wealthy families."[86] Even states like California, which was identified as one of the fairer states, places a 10.5% effective tax rate on the bottom twenty percent of its residents, but only a 8.7% burden on the top one percent.[87] Meanwhile, however, California is indeed fairer than many states, including the ten states with the most regressive tax structures.[88] In these states, which include Washington, Florida, Texas, South Dakota, Illinois, Pennsylvania, Tennessee, Arizona, Kansas and Indiana, "the bottom 20 percent pay up to seven times as much of their income in taxes as their wealthy counterparts."[89] Some of the most regressive state tax systems rely to a large degree on sales and excise taxes,[90] and most states that are considered "low tax" (usually because they do not

Earned Income Tax Credit As a Family-Size Adjustment to the Minimum Wage, 57 TAX L. REV. 301 (2004).

81. *See, e.g.*, Joel Barker & Chadrick Frederick, *Billions Lost Yearly to Earned Income Tax Credit: Errors or Fraud*?, 14 J. BUS. & ECON. RES. 145 (2016); Janet McCubbin, *EITC Noncompliance: The Determinants of the Misreporting of Children*, 53 NAT'L TAX J. 1135 (2000).

82. *See, e.g.*, John Karl Scholz, *The Earned Income Tax Credit: Participation, Compliance, and Antipoverty Effectiveness*, 47 NAT'L TAX J. 63 (1994); Oleg Urminsky & Indranil Goswami, *Designing Effective Choice Architectures*, 40 ADVANCES CONSUMER RES. 298 (2012).

83. NEWMAN & O'BRIEN, *supra* note 74, at xxxix.

84. CARL DAVIS ET AL., INSTIT. ON TAXATION & ECON. POLICY, WHO PAYS: A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES 1 (Jan. 2015), https://itep.org/wp-content/uploads/whopaysreport.pdf [https://perma.cc/T453-GYKA].

85. *Id.*

86. *Id.*

87. *Id.* at 38.

88. *See id.* at 7.

89. *Id.* at 1.

90. *Id.*

have a state income tax), are actually high tax states for low- and middle-income families.[91]

These findings of the ITEP Study are consistent with those of scholars Katherine Newman and Rourke O'Brien, who completed a comprehensive study that found that there are profound regional differences in the way the poor are taxed.[92] The study found that tax policy is particularly regressive in the South and the West—in the last thirty years, Southern states have systematically increased the tax burden on their poorest citizens by "shifting the support of the public sector to sales taxes and fees for public services."[93] And beginning in 1978, when California voters passed Proposition 13, a cap on property-tax increases, Western states too began increasing sales taxes at the relative expense of the poor in order to make up for the revenue they were losing due to the property tax caps.[94]

Further, consistent with the ITEP Study, Newman and Chen found that though taxes, particularly taxes as seemingly minor as the sales tax, may not appear to connect with poverty and mobility outcomes, they do.[95] For those living on very limited incomes, taxes on food, clothing, school supplies, car registration, bus fares, when combined, are a much greater percentage of a low-income household's budget than such expenses are for wealthier households. For example, a working mother in Vermont would end up with $2,300 more than a working mother in Mississippi, if the two mothers both had two dependent children, poverty-level wages, and the same spending patterns.[96] This means that due to the differences in tax rates for the poor in each of these states, including various refunds and regressive sales taxes, essentially the same poor mother living in Mississippi would have $2,300 less per year in disposable income than she would if she lived in Vermont. If this mother was making $23,000 per year, the additional $2,300 it costs to live in Mississippi due to taxes is ten percent of her income—a significant amount.

Newman and O'Brien analyzed data from forty-nine states between 1982 and 2009. They examined the "combined burden of the sales tax and state and local income taxes on poor households."[97] They considered the "relationship between the total tax burden on a poor family of three and

91. *Id.* at 2.

92. NEWMAN & O'BRIEN, *supra* note 74, at 128–31.

93. Katherine S. Newman, *In the South and West, a Tax on Being Poor*, N.Y. TIMES (March 9, 2013), https://opinionator.blogs.nytimes.com/2013/03/09/in-the-south-and-west-a-tax-on-being-poor/ [https://perma.cc/DGE2-BRVV].

94. *Id.*

95. *Id.* ("It turns out that after factoring out all other explanations . . . the relationship between taxing the poor and negative outcomes like premature death persisted."

96. *Id.*

97. *Id.*

state-level figures for mortality, morbidity, teenage childbearing, dropping out of high school, property crime, and violent crime."[98] They then controlled for many other explanations, such as racial composition, poverty rates, the amount spent on education or health care, the size of the state's economy, existing inequality levels, and differences in the cost of living. Even when controlling for all of these factors, there was a significant relationship between taxing the poor and several negative outcomes. They found that "for every $100 increase on taxes at the poverty line, there were an additional seven deaths and seventy-eight property crimes per 100,000 people and a quarter of a percentage point decrease in high school completion."[99]

Newman and O'Brien's work shows that independently, state and local tax policies matter for determining outcomes for poor families. As legal immobility theory would suggest, when these policies are combined with other legal policies that disproportionately burden the poor, the effect is likely even more profound.

B. Nuisance Laws

Public nuisance laws have existed in the United States since the time of the Pilgrims, having come via the English common law.[100] The definition of a public nuisance varies by locality, but broadly a public nuisance is defined as a crime that is an act or omission that obstructs, damages, or inconveniences the public community. This can include things ranging from bright lights, disturbing the peace, loitering, vagrancy, major health hazards, and a wide range of other actions and situations. Now, every state has some form of public nuisance laws in their statutes, and beginning in the 1980s, local municipalities began enacting chronic nuisance ordinances and disorderly housing ordinances.[101] In the early 1990s, a new version of the concept was conceived—crime-free housing ordinances.[102] It is estimated that about 2,000 municipalities in forty-four states have enacted some kind of nuisance/crime free ordinance, with Illinois leading the way—more than 130 municipalities in Illinois have enacted such ordinances.[103]

As part of these crime-free ordinances, municipalities started focusing on 911 calls and established a nuisance of 911-abuse[104]—the law in several

98. *Id.*
99. *Id.*
100. EDELMAN, *supra* note 13, at 137.
101. *Id.* at 137–38.
102. *Id.*
103. *Id.* at 138.
104. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117, 131 (2012).

localities is that calling 911 three times in a certain period of time constitutes a chronic nuisance.[105] These 911-abuse ordinances of course vary, but they tend to have three common characteristics. First, properties are designated as a nuisance based on a certain number of calls, deemed to be excessive, made during a specified timeframe.[106] Second, they contain a broad list of defined "nuisance activities" for which the calls are made.[107] Finally, they require that property owners either abate the nuisance or face fines, property forfeiture, and in some cases, incarceration.[108] In localities that have them, 911-abuse nuisances are widely enforced. For example, a study of nuisance activities in Milwaukee, Wisconsin found that 911-abuse was the fourth most common type of nuisance citation (out of fifteen possible categories) in the city, constituting 13.1% of all recorded nuisances.[109]

Consider how a nuisance-911 ordinance in a locality where simply calling 911, no matter the reason, three times or more in a set period of time is deemed 911-abuse, might play out for someone who lives in a high-crime area. Generally, the role of 911 is thought to be in part a safe number for someone to call when they witness a drug deal or a domestic violence situation, perhaps suffer a robbery in their own apartment building, and the like. But for people living in municipalities with a nuisance ordinance that considers calling 911 too many times 911-abuse and thus a nuisance, calling 911 to report such crimes can lead to significant negative consequences for the good citizen simply reporting crimes.

And these 911-abuse nuisance laws disproportionately disadvantage the poor since high-crime neighborhoods are disproportionately low-income.[110] In some cases, people who report crime might feel vulnerable while they are witnessing a crime, and it punishes them for simply seeking help from the police, even though responding to a crime scene is generally considered a fundamental duty of the police. If people cannot call the police to report a crime and seek help, it is not clear who they can call.

In many cases a property is cited for a nuisance due to "excessive" 911 calling without the tenant even being warned beforehand that she is close to a citation.[111] But once a landlord's property is cited and the landlord is told by the police to abate the nuisance, the landlord often turns to evicting the

105. EDELMAN, *supra* note 13, at 139.

106. Desmond & Valdez, *supra* note 104, at 120.

107. *Id.*

108. *Id.*; Cari Fais, Note, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1188 (2008).

109. Desmond & Valdez, *supra* note 104, at 131.

110. U.S. DEP'T HOUSING & URB. DEV., EVIDENCE MATTERS (2016), https://www.huduser.gov/portal/periodicals/em/summer16/highlight2.html [http://perma.cc/D6CP-UHH2] ("Neighborhoods with more concentrated disadvantage tend to experience higher levels of violent crime.").

111. EDELMAN, *supra* note 13, at 139.

tenant as the way to abate the nuisance.[112] In the study of Milwaukee discussed above, out of the 243 property owners included in the sample, 118 (or forty-nine percent) initiated or executed a formal eviction.[113] Further, 190 (or seventy-eight percent), invoked a landlord-initiated forced move, which meant formal evictions, informal evictions, and threats to evict if the nuisance continued.[114]

As Peter Edelman writes, the landlord generally turns to eviction or a forced move because he can otherwise be "fined, jailed, lose his license [to rent properties], have a lien placed on the property, or even see his building condemned or shuttered."[115] Landlords cannot easily protest ordinance citations—they would have to allow themselves to be arrested and then roll the dice of contesting the charges in jail. Thus, landlords generally turn to the easier solution of evicting their tenants.[116] As one of the Milwaukee landlords said, "I evict them . . . Look, you're rolling the dice if you don't evict the tenant. Because [the police] want the problem eliminated. Not gradually fixed, but totally *eliminated.* A five-day [eviction] notice is exactly what the police want."[117]

The consequences of evictions can be devastating for poor tenants. "[L]andlords often turn away applicants with recent evictions on their records," and thus, people who have been evicted regularly experience both "prolonged periods of homelessness and increased residential mobility."[118] Researchers have found that even when evicted people do find housing, they often end up in substandard conditions in disadvantaged neighborhoods because that is the only housing they can find available to them.[119] Not only is it difficult for families who have faced an eviction to find market-rate rental housing, but eviction can also disqualify families for housing subsidy programs.[120]

The impact of eviction goes beyond material-deprivation problems. Studies have found a relationship between eviction and mental health issues. For example, one study found that having experienced an eviction is a risk factor for suicide.[121] Another study found mothers who had experienced

112. *Id.*
113. Desmond & Valdez, *supra* note 104, at 131.
114. *Id.*
115. EDELMAN, *supra* note 13, at 139.
116. *Id.*
117. Desmond & Valdez, *supra* note 104, at 131–32.
118. Matthew Desmond, Weihua An, Richelle Winkler & Thomas Ferriss, *Evicting Children*, 92 SOC. FORCES 303, 303 (2013) (citing Martha Burt, *Homeless Families, Singles, and Others: Findings from the 1996 National Survey of Homeless Assistance Providers and Clients*, 12 HOUSING POL'Y DEBATE 737 (2001); Maureen Crane & Anthony Warnes, *Evictions and Prolonged Homelessness*, 15 HOUSING STUD. 757 (2000)).
119. Desmond, An, Winkler, & Ferriss, *supra* note 118, at 303.
120. *Id.*
121. Michael Serby, David Brody, Shetal Amin & Philip Yanowitch, *Eviction as a Risk Factor*

eviction in the previous year were more likely to suffer from depression, material hardship, and parenting stress than those who had avoided eviction.[122] They were also more likely to report poor health for themselves and their children than those who had avoided eviction.[123]

Taken alone, these studies show how devastating nuisance laws can be for poor people who happen to fall victim to them. For people who are evicted due to nuisance laws, it is the law itself that is causing their decline in mobility—without such nuisance laws, they would have otherwise been able to stay in their homes. In their case, it was not failure to pay rent (which can be associated with a complex web of poverty policies and issues such as job loss, medical insurance, etc.) that caused the eviction, but rather the law itself. This is legal immobility at work, and when we consider the cumulative effects of nuisance laws and other laws that disproportionately burden the poor, we see how state and local laws can play a significant role in leading to immobility and perpetuating poverty.

Finally, there is another type of nuisance ordinance enforcement that contributes to legal immobility—one in which the landlord is entirely at fault, but the tenant bears the burden of the landlord's mistake(s). These are cases where the law requires landlords to be licensed in order to operate rental housing and also call for the revocation of the landlord's license due to non-compliance with any number of local building and/or property maintenance codes.[124] Minor violations such as high grass, for example, can result in a landlord losing his license.[125] In many cases these minor violations do not affect "the habitability of the property."[126] However, the law can then require that the landlord immediately vacate his propert(ies), meaning that innocent tenants are forced to bear the burden of moving out of their rental housing, essentially being evicted through absolutely no fault of their own.[127] While not a formal eviction, for a poor family, the burden of having to move can mean financial ruin. The cost of moving possessions alone is significant, not to mention coming up with a new security deposit and first month's rent, buying goods needed for a new property, and finding the time needed to secure a new rental property can all be difficult and contribute to significant financial and emotional burdens on poor families.

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for Suicide, 57 PSYCHIATRIC SERVS. 273, 273 (2006).

122. Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, & Health*, 94 SOC. FORCES 295, 312 (2015).

123. *Id.*

124. EMILY WERTH, SHRIVER NAT'L CENT. ON POVERTY LAW, THE COST OF BEING "CRIME FREE": LEGAL AND PRACTICAL CONSEQUENCES OF CRIME FREE RENTAL HOUSING AND NUISANCE PROPERTY ORDINANCES 17 (2013), http://www.povertylaw.org/files/docs/cost-of-being-crime-free.pdf [http://perma.cc/3NVZ-A5FY].

125. *See id.*

126. *Id.*

127. *See id.*

C. Occupational Licensing Laws

Occupational licensing laws vary by state and locality, but generally, they are laws requiring government permission to work and get paid in a specified field.[128] There are various hoops these licenses require applicants to jump through, often including residency and citizenship requirements, general education benchmarks, benchmarks as to the amount of education/training in the field, specific passing scores on an exam in the field, letters from current field practitioners attesting to factors such as moral character, and ultimately paying fees for an operating license after these hurdles are passed.[129]

The number of workers who are required to have occupational licenses has increased significantly since the 1950s.[130] Indeed, at that time only one in twenty workers, or about 4.5%,[131] needed such licenses; today almost one in three workers, or about twenty-nine percent, are required to have an occupational license.[132] Most (at least two-thirds) of this rise comes from an increase in the number of professions that require a license, rather than a growth in the number of positions available within already licensed professions.[133]

The main public policy justifications for requiring occupational licenses focus on the role such regulation plays in "protect[ing] the health and safety of consumers and ensuring a sufficiently high level" of service or product offered.[134] However, particularly in low-wage jobs, there is wide variation among states both in terms of whether an occupation must be licensed at all and what the requirements for any given occupational license are.[135]

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128. *See* DICK M. CARPENTER II, LISA KNEPPER, ANGELA C. ERICKSON & JOHN K. ROSS, INST. FOR JUSTICE, LICENSE TO WORK: A NATIONAL STUDY OF BURDENS FROM OCCUPATIONAL LICENSING 4 (2012), http://ij.org/wp-content/uploads/2015/04/licensetowork1.pdf [http://perma.cc/TJL2-MTPZ]; MORRIS M. KLEINER, THE BROOKINGS INST., REFORMING OCCUPATIONAL LICENSING POLICIES 5 (2015) http://ij.org/wp-content/uploads/2015/04/licensetowork1.pdf [http://perma.cc/27VH-K2BQ] [hereinafter KLEINER, REFORMING OCCUPATIONAL LICENSING].

129. CARPENTER, KNEPPER, ERICKSON & ROSS, *supra* note 128, at 7; MORRIS M. KLEINER, LICENSING OCCUPATIONS: ENSURING QUALITY OR RESTRICTING COMPETITION? 8 (2006) [hereinafter KLEINER, LICENSING OCCUPATIONS]. In a poll that asked workers what requirements were required to achieve their license or certification, over three-quarters said that a high school diploma was necessary, almost half said a college degree was required, and almost ninety percent said they needed to pass an exam. Several also reported that it was necessary to keep up with continuing education and internships. KLEINER, REFORMING OCCUPATIONAL LICENSING, *supra* note 128, at 8.

130. KLEINER, LICENSING OCCUPATIONS, *supra* note 129, at 1 (2006).

131. *Id.*

132. KLEINER, LICENSING OCCUPATIONS, *supra* note 128, at 5.

133. U.S. DEP'T OF TREASURY OFFICE OF ECON. POL'Y, COUNCIL OF ECON. ADVISERS & U.S. DEP'T OF LABOR, OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS 20 (2015) [hereinafter OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS].

134. KLEINER, LICENSING OCCUPATIONS, *supra* note 129, at 8; KLEINER, REFORMING OCCUPATIONAL LICENSING, *supra* note 128, at 5.

135. KLEINER, LICENSING OCCUPATIONS, *supra* note 128, at 11.

Indeed, one key study that examined the scope of occupational licensing laws for low- and moderate-income occupations among all fifty states found that of the 102 occupations studied, only fifteen require a license in forty states or more.[136] Further, on average, the 102 occupations are licensed in fewer than half the states—just twenty–two states. [137] And there were five occupations that required licenses in only one state ("florist, forest worker, fire sprinkler system tester, conveyor operator, and non-contractor pipelayer").[138] Some occupations require a license in very few states, but in the states where a license is required, it is very difficult to obtain. For example, in the states that require interior designers to become licensed, the hurdles required in order to obtain the license were found to be some of the most difficult of all occupations using a systematic ranking formula. A national exam must be passed, an average of $364 in fees must be paid, and an average of 2,200 days, or six years, must be devoted to a combination of education and apprenticeship.[139] Yet a license to be an interior designer is only required in three states and Washington, DC.[140]

This wide variation points to the questionable need for such licensing in certain occupations.[141] As the authors of the study point out, "it is rather implausible that interior design poses a health and safety risk in these four jurisdictions that is absent everywhere else (let alone a risk severe enough to warrant requiring would-be-designers to complete six years of education and training)."[142] The authors further note that several state commissions that have studied the issue have concluded that there is no need to license interior designers, and have thus recommended against proposed licensing schemes for them.[143]

Some states, like Louisiana, require occupational licenses for seventy–one of the 102 occupations studied, while Wyoming only required licenses for twenty–four of the occupations, and Vermont and Kentucky only twenty–seven.[144] As the authors of the study note, "[e]ven allowing for variation in states that may change the nature or popularity of some occupations across borders, this lack of consistency is suspect. For the vast majority of these licensed occupations, many people are practicing elsewhere without government permission and apparently without

136. CARPENTER, KNEPPER, ERICKSON & ROSS, *supra* note 128, at 15.
137. *Id.* at 4–5.
138. *Id.* at 9.
139. *Id.* at 14.
140. *Id.* at 14.
141. *Id.* at 26.
142. *Id.* at 25.
143. *Id.*
144. *Id.* at 18.

widespread harm."[145]

Not only is there a question about the need for some occupations to be licensed at all, but data also show that there are sometimes fairly arbitrary burdens on applicants for occupations that are licensed in many states, depending on where they live.[146] Indeed, not only is there wide variation among states in what occupations and how many require licensing, there is also wide variation among states in what the burden of a license for a specific occupation is.[147] In Iowa, for example, 490 days of education and training are required in order to become a licensed cosmetologist, even though the national average is 372 days, and Massachusetts and New York require only 233 days.[148]

Finally, variations in how much training is required for certain professions within the same state seem arbitrary: in Michigan, one must train for 1,460 days in order to become a licensed athletic trainer, but only twenty–six days to become an emergency medical technician (EMT).[149] It is hard to argue that these licensing requirements are directly related to the health and safety of consumers, since EMTs are often dealing with life and death situations.

Commentators have suggested that occupational licensing can be particularly costly to low-income individuals in two key ways. First, studies have found that licensing reduces employment growth and limits job opportunities, particularly for low-income people.[150] The commentators found that the additional hurdles licensing requires may drive lower-income people "into lower-paying but more accessible jobs."[151] This is not surprising because not only are there actual licensing fees to be paid, but time and money are necessary in order to attend the trade-school courses required for licensing.[152] Many low-income people do not have access to money to fund such courses. Further, they usually must work full-time (and sometimes more) in order to pay their bills, so finding time to take such training courses may also be unrealistic. Ultimately, these restrictions on the types of jobs poor people are able to obtain contribute to legal immobility; the poor are stuck in jobs with less opportunity for growth and less opportunity to move into more lucrative positions, which in turn of course

145. *Id.* at 25.
146. *Id.* at 26.
147. KLEINER, REFORMING OCCUPATIONAL LICENSING, *supra* note 128, at 11.
148. *Id.*
149. *Id.*
150. *Id.* at 6.
151. *Id.*; *see also* CARPENTER, KNEPPER, ERICKSON & ROSS, *supra* note 128, at 25.
152. Edward Rodrigue & Richard V. Reeves, *Four Ways Occupational Licensing Damages Social Mobility*, BROOKINGS INST. (Feb. 24, 2016), https://www.brookings.edu/blog/social-mobility-memos/2016/02/24/four-ways-occupational-licensing-damages-social-mobility/ [https://perma.cc/YNQ3-VPCL].

makes upward socioeconomic mobility much more difficult.

Finally, occupational licensing can be particularly costly for low-income people because the requirements can lead to "fewer practitioners in a given area, especially in lower-income occupations, and higher prices paid . . . [for] services."[153] Thus, this can mean reduced access to the services, resulting in a net regressive result because lower-income consumers have to both pay more for the services and have less access to them.[154]

D. Child Welfare Laws

It is well-documented that the child welfare system disproportionately involves families living in poverty.[155] One study found that of the parent neglect cases handled by child protection services, more than eighty percent involve unmarried mothers living in poverty.[156] Further, studies have shown that "children in families with incomes less than $15,000 per year are forty–five times more likely to be victims of substantiated neglect than children in families with incomes greater than $30,000 per year."[157] This disproportionate involvement of poor families is due in part to a system that

153. KLEINER, LICENSING OCCUPATIONS, *supra* note 128, at 16; see also KLEINER, REFORMING OCCUPATIONAL LICENSING, *supra* note 128, at 16.

154. *Id.*

155. Annette R. Appell, *Protecting Children or Punishing Mothers: Gender, Race, and Class in the Child Protection System*, 48 S.C. L. REV. 577, 578 (1997) ("Nationwide, juvenile courts and child protection agencies target hundreds of thousands of mothers who are disproportionately poor and of color, even though child abuse and neglect is not confined to any social class or race."); Naomi R. Cahn, *Placing Children in Context: Parents, Foster Care and Poverty*, *in* WHAT IS RIGHT FOR CHILDREN?: THE COMPETING PARADIGMS OF RELIGION AND HUMAN RIGHTS 145, 150 (Martha Albertson Fineman & Karen Worthington eds., 2009) ("Poor and African American families are disproportionately more likely to be charged with child neglect."); Dorothy E. Roberts, *Poverty, Race, and New Directions in Child Welfare Policy*, 1 WASH. U. J.L. & POL'Y 63, 64 (1999) ("[T]he public child welfare system in America is populated almost exclusively by poor children.").

156. Jennifer Sykes, *Negotiating Stigma: Understanding Mothers' Responses to Accusations of Child Neglect*, 33 CHILD. & YOUTH SERVS. REV. 448, 448 (2011). It is important to note that the child welfare system also disproportionately involves black families. Indeed, black children make up more than two-fifths of the children in foster care nationally, but less than one-fifth of the nation's children. Dorothy Roberts, *Child Welfare and Civil Rights*, 2003 U. ILL. L. REV. 171, 172 (2003). Further, white children who are abused or neglected were twice as likely as black children to receive services in their own home (when the type and severity of alleged abuse or neglect were the same), rather than be placed in foster care. *Id.* at 173. *See also* U.S. DEP'T OF HEALTH & HUMAN SERVS. CHILDREN'S BUREAU, RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE (2016), https://www.childwelfare.gov/pubPDFs/racial_disproportionality.pdf [http://perma.cc/NB33-YHYY]. I do not directly address race in this Article, but race and poverty certainly interact in the context of the child welfare system, and as Dorothy Roberts notes, stereotypes about black family dysfunction likely play a role in black children's disproportionate involvement in the child welfare system. *Child Welfare and Civil Rights*, *supra*, at 176. *See also* Appell, *supra* note 155, at 584. Documenting the interaction of poverty and race in the child welfare system is beyond the scope of this Article, but an important undertaking, and one Dorothy Roberts has done tremendously well. *See Welfare and Civil Rights*, *supra*; DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002).

157. *See* Cahn, *supra* note 155, at 150.

penalizes poverty conditions—children may be removed from their homes (and their parent(s) charged with neglect) for poverty alone. For example, one study in Illinois found that almost ten percent of children were removed because of "environmental neglect," which was defined as a lack of adequate food, shelter, or clothing, rather than any kind of deliberate action on the part of the parent involved.[158] These are resource problems more than neglect problems, and a clear example of the criminalization of poverty.

But resource problems alone do not fully explain the disproportionate involvement of poor families in the child welfare system. Broad discretion of social workers and bias against poor mothers are also likely contributing factors.[159] As Martin Guggenheim, a nationally recognized child welfare law expert, New York University law professor, and co-director of New York University Law School's Family Defense Clinic has articulated, child neglect statutes tend to be extremely vague, thus giving extraordinary discretion to the social workers involved. He said, "The reason we've tolerated the level of impreciseness in these law for decades . . . is that they tend to be employed almost exclusively in poor communities—communities that are already highly regulated and overseen by low-level bureaucrats like the police."[160] Commentators have noted that an "offense" committed by a poor parent in an area of high concentrated poverty is likely to have a very different outcome than the same "offense" committed by a parent in a high-income suburban neighborhood where child protective services rarely frequent. As Scott Hechinger, a lawyer at the Brooklyn Defender Services said, "[t]here's this judgment that these mothers don't have the ability to make decisions about their kids, and in that, society both infantilizes them and holds them to superhuman standards. In another community, your kid's found outside looking for you because you're in the bathtub, it's 'Oh, my God . . . .'"[161] But, he went on to say, "in a poor community, it's called endangering the welfare of your child."[162]

The contrast can be striking. In one case that received national attention, a mother who lived in Illinois, Natasha Felix, let her three sons, ages eleven, nine, and five, play outside with a visiting young cousin in a fenced park directly next to her apartment building.[163] The oldest son was charged with

158. *See id.*

159. *See* Michelle Goldberg, *Has Child Protective Services Gone Too Far?*, THE NATION (Sept. 30, 2015), https://www.thenation.com/article/has-child-protective-services-gone-too-far/ [https://perma.cc/LQ4W-TV4L].

160. *Id.*

161. Stephanie Clifford & Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of 'Jane Crow'*, N.Y. TIMES (July 21, 2017), https://www.nytimes.com/2017/07/21/nyregion/foster-care-nyc-jane-crow.html [https://perma.cc/A53S-F2YY].

162. *Id.*

163. Goldberg, *supra* note 160.

watching the younger children, and Felix was watching out the window. At one point the five-year-old got into an argument with his cousin over a scooter and ended up running into the street. A preschool teacher who was at the park saw this and called a child-abuse hotline, leading to a worker from the Department of Children and Family Services visiting Felix and her children. The investigator found that Felix's children were "clothed appropriately, appeared clean [and] well groomed," and further that Felix "appeared to be a good mother."[164] The worker also found that Felix's oldest son seemed to be a "mature boy" who "certainly could be allowed to go outside by himself to the park next door."[165]

Ultimately, however, when the investigator found out that the eleven-year-old and nine-year-old had been diagnosed with ADHD, she recommended that Felix be cited for "inadequate supervision" under the Illinois Abused and Neglected Child Reporting Act. Felix was placed on the state's child-abuse registry, and placement on the registry led to Felix losing her job as a home healthcare aide.[166] Inclusion on this registry also meant that Felix's goal to become a licensed practicing nurse would not be achieved.[167]

A similar case involved a woman Maisha Joefield and her five-year-old daughter Deja. Ms. Joefield's mother lived across the street, and Deja was always told she could go to her grandmother's house in an emergency. One night, after putting Deja to sleep, Ms. Joefield took a bath and put on headphones. When Ms. Joefield got out of the bath, she could not find Deja, who had woken up and headed to her grandmother's house. Ms. Joefield started frantically searching for Deja, first in her apartment building, then outside, and the police were called. Ms. Joefield was charged with endangering the welfare of a child, and the Administration for Children's Services in New York City put Deja in foster care. Ms. Joefield was arrested, and after she was released from jail, Deja was returned to her four days later. But her case stayed open for a year, and she had to take parenting classes and subject herself to caseworkers regularly stopping by her house to check her cupboards for adequate food, bruises on Deja's body, and more.[168]

Note that the Felix and Joefield cases both involved poor mothers. In

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* After over two years the charges were eventually dropped against Felix, but the damage had already been done. Her job prospects during the two years the case was making its way through the courts were extremely limited. Bonnie Miller Rubin, *Child Neglect Citation Dropped Against Mother Who Let Kids Play Outside*, CHI. TRIB. (Dec. 16, 2015), http://www.chicagotribune.com/news/local/breaking/ct-child-neglect-citation-reversed-met-20151215-story.html.

168. Clifford & Silver-Goldberg, *supra* note 162, at 3.

contrast, another case that was covered in international news was that of a Maryland family, Alexander and Danielle Meitiv and their children. The Meitivs were unusual in their involvement in the child welfare system because Alexander was a theoretical physicist and Danielle was a science writer and consultant—relatively prestigious and high-paid jobs. They also lived in Silver Spring, Maryland, a wealthy suburb of Washington, DC.

The Meitivs described themselves as "free-range" parents, and they allowed their two children, ages ten and six, to walk to a park by themselves. The Meitivs were first warned by Child Protective Services, then, after a second incident, a social worker said that they must sign a "temporary safety plan" stating that their children would be supervised at all times, until Child Protective Services could do a follow-up investigation.[169] Alexander Meitiv refused to sign the plan, and as the Child Protective Services worker said she would do, she called the police and had the children removed from their parents. The Meitivs were originally found guilty of unsubstantiated child neglect,[170] but after hiring a lawyer to appeal these charges, they were cleared of all child neglect after the agency "ruled out neglect."[171] Even before the Meitivs hired a lawyer to appeal, however, note that they were given several opportunities to avoid having their children removed from their care, an option never given to Felix or Joefield.[172]

Not only do child welfare laws seem to be enforced at higher rates and more aggressively in poor communities, but the realities of involvement in the child welfare system disproportionately burden the poor, thus contributing to legal immobility. Parents are often required to attend classes such as parenting classes, anger management classes, nutrition classes, and the like, and of course many of these classes are only held during the workday. Since many low-wage jobs have unpredictable hours and do not allow for consistent time off for these kinds of classes, poor parents are put in a very tough spot. If they do not attend the classes, they risk either extending the time their children are away from them or having their children taken away. But if they do attend the class and ask for time off or skip work, they risk losing their job. In some cases, taking the parenting class is offered as an alternative to avoiding a criminal penalty for the child neglect charge, and lack of attendance can mean a warrant and eventual arrest for the parent. In turn, of course, time spent in jail or an arrest on one's record can result in job loss, difficulty obtaining a job in the future, and

169. Goldberg, *supra* note 160.

170. *Id.*

171. Jessica Chasmar, *Free-range Meitiv Family Cleared of All Child-Neglect Allegations*, WASH. TIMES (June 22, 2015), https://www.washingtontimes.com/news/2015/jun/22/free-range-meitiv-family-cleared-of-all-child-negl/ [https://perma.cc/45KP-BX7Q].

172. Goldberg, *supra* note 160.

difficulty finding housing, among other things.

Classes are not the only time burden associated with involvement in the child welfare system. Family court is notoriously slow, and simply going to a hearing can take the entire day, often with the issue being extended because someone is not in court, a service plan was not fully carried out by a social worker, or because some other procedural complication arose.[173] More time in court means more time off from one's job, and more time off can ultimately put a parent at risk of losing his or her job.

Finally, the disproportionate removal of poor children from their families can have long-term negative effects for those children (and ultimately their families). In several court cases in New York during the 1990s, biological parents testified that when their children were returned from foster care, they had to go directly to the hospital because they were so sick with problems like skin rashes and black eyes.[174] Seeming to confirm this testimony, a study conducted by the New York City's Administration for Children's Services found that the rate of physical abuse in foster care was four times higher than abuse by parents in the city's toughest neighborhoods.[175] Another study on the effect of foster care placement in marginal cases (defined as cases where one investigator might put a child in foster care but another might not) found that children tended to have better outcomes if they remained at home.[176] Children involved in these marginal cases who were sent to foster care had, over time, higher delinquency rates, higher teen birthrates, lower earnings, and a higher likelihood of going to prison as an adult.[177]

E. Non-Driving Related License Suspensions

As highlighted in recent media accounts and in the Department of Justice Ferguson report,[178] across the country people are having their drivers'

173. Martin Guggenheim, *Parental Rights in Child Welfare Cases in New York City Family Courts*, 40 COLUM. J.L. & SOC. PROBS. 507, 508 (2007) [hereinafter Guggenheim, *Parental Rights in Child Welfare Cases*].

174. Helen Epstein, *New York: The Besieged Children*, N.Y. REV. BOOKS (July 12, 2012), https://www.nybooks.com/articles/2012/07/12/new-york-besieged-children/ [https://perma.cc/Z5NX-K86Q].

175. DAVID TOBIS, FROM PARIAHS TO PARTNERS: HOW PARENTS AND THEIR ALLIES CHANGED NEW YORK CITY'S CHILD WELFARE SYSTEM 185 (2013).

176. Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, 97 AM. ECON. REV. 1583, 1599–1607 (2007).

177. *Id.*

178. *See, e.g.*, Radley Balko, *The Criminalization of Poverty*, WASH. POST (May 23, 2014), https://www.washingtonpost.com/news/the-watch/wp/2014/05/23/the-criminalization-of-poverty/ [https://perma.cc/8B3V-KW5F]; Editorial, *Locked Up for Being Poor*, N.Y. TIMES (May 5, 2017), https://www.nytimes.com/2017/05/05/opinion/locked-up-for-being-poor.html [https://perma.cc/M8R7-RU7W]; U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 62–80 (March 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [https://perma.cc/V74K-DPCR].

licenses suspended as punishment for infractions that are unrelated to driving, and often tied to poverty. This problem is a significant contributor to legal immobility for those affected. Like many problems that contribute to legal immobility through invisible localism, there is only limited national-level data available to help us understand how widespread the problem is. A study by the Government Accountability Office found that while states collect data on license suspensions generally, they often do not categorize suspensions by the type of offense or even as driving or non-driving related offenses.[179] Further, even for states that do collect and categorize such data, they do so in different ways so that it is hard to compare the data. Finally, "states generally do not collect suspension data for drivers by income level."[180]

However, the data that is available is enough to provide a sense of how varying and widespread this practice is. The Brookings Institution recently compiled information on fourteen different local communities and found that "failure to pay a fine or appear in court [on charges unrelated to driving] is almost always the number one cause of license suspension or revocation."[181] Non-driving conditions that lead to license revocation are widespread and variable: In Indianapolis, for example, they include failure to pay child support, writing a bad check to the Bureau of Motor Vehicles, and failure to attend school ("Indiana law requires school principals to notify the DMV if a student under the age of eighteen is under an expulsion or second suspension from school, has withdrawn from school . . . , or is a habitual truant").[182] In Iowa, public drunkenness with no car involved can lead to a driver's license suspension; in Montana, drivers' licenses are suspended for unpaid student loans, and in eight states (of fifteen studied by the Brennan Center), drivers' license suspension is used to punish missed criminal court debt payments.[183]

In New Jersey, non-driving-related license suspensions account for eighty-three percent of drivers' license suspensions, child support issues for three percent, and driving-related offenses for only eight percent of all license suspensions.[184] Another study of New Jersey license suspensions

179. U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT TO CONG. REQUESTERS, LICENSE SUSPENSIONS FOR NONDRIVING OFFENSES 19 (2010), https://www.gao.gov/assets/310/300910.pdf [http://perma.cc/EQ74-7G37].

180. *Id.*

181. MARGY WALLER, JENNIFER DOLEAC & ILSA FLANAGAN, BROOKINGS INST., DRIVER'S LICENSE SUSPENSION POLICIES 2 (2005), https://www.aecf.org/m/resourcedoc/AECF-driverslicensesuspensionpolicies-2005.pdf [https://perma.cc/VT65-WDK5].

182. *Id.* at 46.

183. EDELMAN, *supra* note 13, at 17.

184. SANDRA GUSTITUS, MELODY SIMMONS & MARGY WALLER, THE MOBILITY AGENDA, ACCESS TO DRIVING AND LICENSE SUSPENSION POLICIES FOR THE TWENTY-FIRST CENTURY ECONOMY 8 (2008), http://www.kidscount.org/news/fes/sep2008/driverslicense.pdf [https://perma.cc/L69G-L4

found that "[t]he suspension rate was more than four times higher for drivers residing in extremely low-income ZIP codes when compared to the rate statewide," indicating that the problem might disproportionately affect poor people.[185]

It is not hard to see how these varying laws all contribute to legal immobility. In many communities, driving is often the only way people can get to work, pick up their children in a timely fashion from daycare, purchase affordable (or any) food for their families, and generally function. If someone's license is suspended, a quick downward spiral of job loss (for not showing up to work or not showing up on time) and all of the negative externalities of job loss can quickly occur. Cars are also what allow many parents to adequately care for their children, and a lack of access to a car can mean missed doctors' appointments, inability to purchase necessities, inability to pick up and drop off to child care settings, and the like. Indeed, some of these problems can trigger involvement from the child welfare system—the scenarios can continue, and more and more aspects of invisible, local, legal immobility can cumulatively affect the person in question.

F. Driving-Related Laws

A recent study that tracked American drivers with a cellular phone app found that thirty-six percent of all drives those in the study undertook involved speeding.[186] Since drivers knew they were being tracked, the incidence of speeding is probably even higher for the average American. Yet the consequences for driving above the speed limit can vary widely state by state. In some states, if one cannot afford to hire a lawyer or does not know to do so, the consequences of a speeding ticket can be profound.

In North Carolina, for example, the relevant section of the North Carolina Code is Section 20-16.1, entitled: Mandatory suspension of driver's license upon conviction of excessive speeding; limited driving permits for first offenders.[187] This law has the potential to be a significant factor in limiting upward mobility for unsuspecting poor drivers. The North Carolina Code dictates that if a driver is caught speeding fifteen miles per hour over the posted speed limit (and is going over fifty-five miles per hour), his license will be suspended for thirty days. Or, if a driver is going over

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FG].

185. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 179, at 14. Because of a lack of income data collected, the researcher could not precisely match suspensions to suspended drivers, and thus examined the suspension rates by income levels of zip codes. *Id.*

186. EVERDRIVE SAFE DRIVING REPORT 2016-2017 (2017), https://www.everquote.com/everdrive/safe-driving-report-2016/ [https://perma.cc/BA9P-SXLD].

187. N.C. GEN. STAT. § 20-16.1 (2017).

eighty miles per hour (at any speed over), his license will be suspended for thirty days. A second offense within a calendar year means a sixty-day suspension.[188]

A simple Google search of "getting a speeding ticket in North Carolina" reveals dozens of lawyers advertising their services to help secure a reduction in offense for people caught speeding (usually to a non-moving violation or a Prayer for Judgment).[189] These lawyers' websites document the negative consequences on one's car insurance rate if no reduction is given and attempt to highlight why a lawyer is needed.[190] For those who either cannot afford a lawyer or do not know to hire one, however, accepting a speeding ticket without a reduction in offense can mean negative financial consequences. Not only might their license be suspended, as discussed above, but also their insurance rates may increase. And if the original offender decides to keep driving after his or her license is suspended (studies show that seventy-five percent of people whose licenses are suspended do indeed keep driving because they have to get to work, school, or a doctor's appointment), the potential consequences are even more severe, with incarceration a possibility.[191] For most people living paycheck to paycheck, simply hiring an Uber or taxi to get them where they want to go is not a financial option, so they are left making difficult choices.

Finally, in almost all states, not just those with particularly harsh license revocation laws for speeding, the consequence of not paying a speeding ticket by the due date or not appearing in court for a ticket can be severe, with a cascade of other consequences to follow. And, of course, for people who are poor, they simply may not have the money it takes to pay off a speeding ticket immediately.[192]

Similar to other components of legal immobility, the actual speeding ticket in and of itself appears to be a minor burden. But for the poor, the speeding ticket can trigger a cascade of negative events because they cannot afford to pay or fight it, reaching as far as job loss (if their license is suspended and they cannot get to work) and even jail, if they do not pay the fines and fees associated with the ticket. Jail of course can lead to job loss,

188. *Id.*

189. *See, e.g.*, Raleigh Traffic Ticket Attorney, http://www.nclawtalk.com [https://perma.cc/D9R4-24HK]; Traffic Attorneys in North Carolina, https://www.iticket.law/ [https://perma.cc/5SJM-XN7J]; 3 Things to Do After You Get a Speeding Ticket in North Carolina, http://www.helpingpeoplenc.com/3-things-to-do-after-you-get-a-speeding-ticket-in-north-carolina/ [https://perma.cc/GZ5E-HUV4].

190. *See, e.g.*, *id.*

191. EDELMAN, *supra* note 13, at 14–17.

192. *See, e.g.*, Sara Dorn, *Cleveland Mother's Unpaid Traffic Ticket Led to Suspended License, Jail, Court Fines*, CLEVELAND.COM (Mar. 31, 2017) (describing the cascade of consequences a mother experienced when she did not pay a traffic related ticket because she could not afford to do so), https://www.cleveland.com/metro/index.ssf/2017/03/indigent_cleveland_mothers_unp.html [https://perma.cc/ZW39-HCPY].

involvement of the child welfare system, and a host of other situations which make upward mobility a far-off dream.

G. Understanding Cumulative Effects and Legal Immobility: A Theoretical Case Study

Each of the laws and rules discussed above contributes to legal immobility, but the list is by no means comprehensive. The examples above, collectively, are meant to highlight how diverse the areas of law are that disproportionately burden the poor and how in many cases this burden can be mostly invisible. Often the laws that contribute to legal immobility are local and, on their face, they do not obviously disproportionately burden the poor. Indeed, some of the laws seem quite rational—it is only when one digs deeper that it becomes apparent that the laws are particularly burdensome to the poor. Further, taken alone the burden of some of the individual laws is tough, but may not on its own profoundly limit upward mobility. However, the cumulative nature of the laws, and the way they can build on each other, can make upward mobility for those living in poverty a distant dream—thus, the concept of legal immobility.

Take Joanne,[193] who I discussed above in the context of the cumulative effects of various health problems. Now, replace those health problems and instead consider how the cumulative effects of various local and state laws could work together to make it difficult for Joanne to achieve upward mobility. Imagine Joanne as a single mother of two young children. She is renting an apartment in a small city in the south and has recently started working as a manager at the fast food restaurant. Before becoming a manager, she had been a cash register attendant for the previous six months, but she worked her way up.

Joanne's upstairs neighbors are constantly involved in obvious drug deals, and Joanne fears for the safety of her children. Particularly since Joanne often arrives at home after dark, once her shift has ended and she has picked up her children from the local daycare (that accepts child care vouchers), she decides to take action. She starts calling the police to report these crimes, and she has decided that she will call every time she witnesses a suspicious looking transaction. The city in which Joanne lives has a strong nuisance ordinance, and the police get tired of responding to her calls by sending a trooper out to investigate, especially since the drug transaction is

193. Joanne is a fictional depiction of a poor mother. However, her story is an overall composite of stories told to me by poor mothers I interviewed for several other research studies. *See generally* Greene, *supra* note 78; Sara Sternberg Greene, *The Bootstrap Trap*, 67 DUKE L.J. 233 (2017); Kathryn Edin et al., U.S. DEP'T OF AGRIC., SNAP FOOD SECURITY IN-DEPTH INTERVIEW STUDY FINAL REPORT (2013), https://fns-prod.azureedge.net/sites/default/files/SNAPFoodSec.pdf [https://perma.cc/E9MC-F3XS].

usually long over by the time the trooper arrives at the apartment building. Joanne is not aware of the nuisance ordinance or how it works, and thus she does not know that she is at risk for her apartment being deemed a nuisance. The police do not warn her, but instead they issue a warning to her landlord. Her landlord does not want to risk a hefty fine, so he wants to get Joanne out and replace her with a less burdensome (in his eyes) tenant. So, he tells Joanne that once her lease is up in two months, her rent will increase by forty-five percent, something Joanne simply cannot afford. Thus, she has about sixty days to find a new apartment and move.

Joanne begs and pleads with her landlord to change his mind, but he will not budge. She looks for another affordable apartment, but on such a short timetable and with a very limited supply of affordable housing in her city, the only apartment she finds that is reasonable for herself and her children is another thirty minutes away from her job and beloved daycare. She signs the lease for the new apartment, but the move stretches her finances thin—she must put down a new security deposit before getting her old one back and also pay the first month's rent. In order to cover these expenses in cash, she must use the income she usually spends on food and other basics. So she then must turn to credit cards to cover these everyday expenses. Further, moving costs are burdensome even though she tries to do as much herself as she can, and she realizes that there are several goods she has to buy—a microwave, for example, since her old apartment had one built in, as well as a washer and dryer since there is no laundromat close to the new apartment. She spends $600 on these assorted goods (all using credit cards), and since she lives in a southern state, the sales tax is disproportionately high and adds even more to these already steep prices.

Perhaps most burdensome to Joanne in the long term is her new forty-minute commute to work and daycare—her old commute was roughly ten minutes. As Joanne attempted to get her children on a new sleeping schedule, in the beginning they were often running late in the morning. One day while speeding in order to drop off her children and make it to work on time, she was stopped by a police officer. She was going seventy-six in a sixty-miles-per-hour speed zone—in her state, this meant automatic license suspension since it was fifteen miles per hour over the speed limit and she was going over fifty-five miles per hour. Not only did Joanne face automatic suspension of her license, but she also faced hundreds of dollars in fees and fines—money that had to be paid if she ever hoped to reinstate her license.

At this point, the situation could go in different directions. In some scenarios, Joanne may decide to drive without a license in order to keep her job and childcare situation, but the risks would be significant. Or, Joanne could consider looking for a job closer to her new home in order to be able to walk to work. She would of course also have to find a new childcare

situation that was both affordable and nearby. Assume she pursued this path and learned that the only nearby businesses that seemed to be hiring were a few hair salons. Joanne does research about becoming a hair stylist. The more research she does, however, the more frustrated she becomes because she realizes that she cannot simply "become a hairstylist." She would have to invest money and time in schooling and apprenticeships—money and time she simply does not have. It would take her almost a year to become a licensed hair stylist, and meanwhile, her family would have no way of staying financially afloat.

Other laws could hit Joanne. A new neighbor who does not like the noise her children bring to the building could report Joanne to the child welfare department, a fairly common occurrence. But even without these added issues, the cumulative effects of the nuisance laws, driving laws, state and local tax laws, and occupational licensing laws, together, make Joanne's situation dire. Taken cumulatively, these seemingly trivial laws allowed us to see legal immobility at work. Joanne had been thriving: her children were in a quality daycare she was comfortable with, and she had recently been named a manager at the restaurant where she worked. But by simply doing what she believed a good citizen would do—reporting criminal activity in her building—one thing led to another and Joanne ended up in debt and unsure what her next move would be. She, having just received a promotion at work, had been on a path toward upward mobility. But the cumulative effects of state and local laws kept her immobile, even potentially leading to downward mobility.

III. TRIPARTITE THEORY OF LEGAL IMMOBILITY

The purpose of this three-prong theory of legal immobility is to explore the root causes of the components behind legal immobility. Such an analysis is important if the goal is to increase the chances of upward class mobility for the poor. If legal immobility is a significant mechanism through which mobility is prevented, and we want to develop a plan to overcome some of the obstacles it presents, then we first have to understand how and why the laws that contribute to legal immobility exist. It is only then that we can begin to develop a blueprint for overcoming the barriers that legal immobility present for the poor. As the tripartite theory suggests, there are three key pathways through which laws that combine to create legal immobility generally function. In this Part, I describe each pathway and provide an example, with historical context, of laws that fit into each prong of the theory.

A. Calculated Exploitation

Through calculated exploitation, localities and states are intentionally exploiting the poor in order to fund government activities and satisfy more powerful interest groups. This does not mean that there is a malicious intent in functioning this way; rather, localities find that the only politically viable way of raising revenue to support and improve public services is by enacting laws that disproportionately burden the poor. In analyzing the history of state and local taxation, Katherine Newman and Rourke O'Brien found that this is indeed what happened in southern regions of the country and increasingly in the Pacific Northwest.[194] They argued that regional disparities in state and local taxes in the southern states date back to Reconstruction. The needs of the poor skyrocketed after the Civil War ended, and newly formed state legislatures had to find a way to fund the needs of indigent blacks and whites.[195] The legislatures, consisting primarily of Southern Republicans, drastically increased property taxes on defeated white landowners and former slave owners in order to fund services aimed at addressing the needs of indigents—the first public services such as education, hospitals, and roads for black citizens.[196] Indeed, "property taxes increased four- to eight-fold in the Reconstruction period."[197] Few poor blacks or whites owned property, and rich landowners were furious.[198]

However, when Reconstruction ended in 1877, conservative Democrats (the "Redeemers") quickly worked to bring taxes back to their prewar levels.[199] As federal troops pulled out of the South and the Jim Crow regime ruled, the former power structures of the South reappeared, and with these changes came the end of progressive tax policies that had jump started social and structural change in the South.[200] White politicians dominated southern legislatures by the late 1870s, and state budgets were slashed as taxes were cut. Property taxes declined precipitously—the tax codes of most Southern states once again gave property preferential treatment, protecting white elites.[201] Historian C. Vann Woodward wrote, "redemption governments, often describing themselves as the 'rule of the taxpayer,' frankly constituted

194. NEWMAN & O'BRIEN, *supra* note 74, at 1–30. As Ezra Rosser has pointed out, the recognition that we need to frame poverty as a matter of exploitation was a significant contribution of Matthew Desmond's book *Evicted*, discussed in *supra* Part I. *See* Rosser, *supra* note 45, at 459 ("As Desmond rightly points out, we do not generally frame poverty as a matter of exploitation and doing so forces the reader to confront a series of uncomfortable questions.").

195. NEWMAN & O'BRIEN, *supra* note 74, at 8.

196. Newman, *supra* note 93.

197. NEWMAN & O'BRIEN, *supra* note 74, at 8.

198. *Id.*

199. *Id.* at 9–10.

200. *Id.*

201. *Id.* at 10.

themselves champions of the property owner against the property less and allegedly untaxed masses."[202] A Congressman wrote in a local newspaper, "Intelligence and property must rule over imbecility and pauperism [for this is the] law alike of nature and society."[203]

Redeemers wanted to make sure the changes they were making stuck, and so they sought to insert supermajority clauses into state constitutions to ensure that tax increases of the kind that happened during Reconstruction would not happen again.[204] "Property taxes were frozen, income taxes were held down, and corporate taxes were almost nonexistent."[205]

In states that had not created constitutional barriers to increased property taxation, racially inspired voting rights restrictions meant the people most likely to favor increases in property taxes could not vote.[206] These states found that sales taxes seemed like the ideal solution to solve budget problems they were having because sales taxes were a way to extract taxes out of poor whites and African Americans who paid little if any property taxes, and it did not hurt property owners, who did not want their tax burden to increase.[207]

Mississippi was the first state to adopt a general sales tax, of two percent, and when it was adopted in 1932 a headline in a local paper read, "House Passes Bill to Insure Relief for Property Tax Payers."[208] Several other Southern states followed suit, and bitter class (and race) commentary followed. One newspaper published an Op-Ed that read in part, "The rich man, the large real estate owner . . . now wants the average man to pay his (the rich man's) taxes when he buys his sugar and coffee and shoes and coal."[209]

Post-World War II, Southern states continued on this trajectory: corporate taxes were slashed, property taxes continued to be low, and sales taxes continued to grow.[210] During the Civil Rights era, the technique of the Redemption era of creating constitutional spending limits and supermajority rules resurfaced, and Florida, Louisiana, Virginia, North Carolina, and South Carolina all introduced constitutional limitations on property taxes and expenditures in the 1960s and 1970s.[211]

Because the supermajority clauses in the state Constitutions prevented

202. NEWMAN & O'BRIEN, *supra* note 74, at 10 (quoting C.V. WOODWARD, ORIGINS OF THE NEW SOUTH, 1877–1913 59 (1971)).
203. *Id.*
204. NEWMAN & O'BRIEN, *supra* note 74, at 13; Newman, *supra* note 93.
205. Newman, *supra* note 93.
206. NEWMAN & O'BRIEN, *supra* note 74, at 37.
207. *Id.*
208. *Id.* at 22.
209. *See id.*
210. *Id.* at 25–29.
211. *Id.* at 22.

any other increase in revenue, and states had to fund public services somehow—an increased sales tax became the answer.[212] The pattern repeated itself in other states outside of the South.[213] For example, after California passed Proposition 13 in 1978, an amendment to the California Constitution that capped property-tax increases, the state sales tax increased.[214] There are various explanations and arguments about the origins of Proposition 13;[215] one well-known theory fits squarely within the calculated exploitation theory, as discussed below.

In 1971, seven years before Proposition 13 was passed, the California Supreme Court issued a school finance equalization decision in *Serrano v. Priest*.[216] In the *Serrano* case, the key issue was California's reliance on the local property tax system as the primary source of funding local public schools. The plaintiffs in *Serrano* argued that interjurisdictional disparities in property wealth meant unconstitutional inequality in per pupil expenditure levels.[217] The California Supreme Court agreed with the plaintiffs and ordered the state legislature to change the system; the remedy was supposed to equalize per pupil expenditure levels and "recapture" a portion of high-spending districts' property wealth for redistribution to low-wealth jurisdictions.[218]

Scholars argue that before *Serrano*, wealthy local voters embraced the property tax. However, after the ruling, the incentives for wealthy homeowners were different.[219] They did not want their property taxes distributed to low-wealth districts in order to improve those schools (rather than going to the schools in their district to keep them "good"), and thus, voters in wealthy districts supported the Jarvis-Gann campaign for Proposition 13.[220] Related to this first argument, there was also pressure at the legislative level to relieve property tax rates as property values began to

212. Newman, *supra* note 93.

213. *Id.*

214. *Id.*

215. *See, e.g.*, Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did* Serrano *Really Cause Proposition 13?*, 50 UCLA L. REV. 801 (2003).

216. Serrano v. Priest, 487 P.2d 1241 (Cal. 1971).

217. *Id.* at 1242.

218. *See* WILLIAM A. FISCHEL, THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES 98–128 (2001); PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE 148–49 (1998); William A. Fischel, *Did* Serrano *Cause Proposition 13?*, 42 NAT'L TAX J. 465 (1989); William A. Fischel, *Homevoters, Municipal Corporate Governance, and the Benefit View of the Property Tax*, 54 NAT'L TAX J. 157, 168 (2001) ("I believe that Serrano caused Proposition 13."); William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607 (1996).

219. *See supra* note 218.

220. It is important to note that some more recent academic work argues that this line of reasoning is flawed. *See, e.g.*, Kirk Stark & Jonathan Zasloff, *supra* note 215, at 804, 853 ("Our analysis has shown, we believe, that there is little empirical foundation for Fischel's claim that *Serrano* caused Proposition 13.").

rise in the early 1970s (and thus taxes rose).[221] However, the argument goes, the expected costs of *Serrano* compliance made the state legislature effectively unable to respond to these political pressures.[222] Essentially, "by constitutionally mandating school finance equalization, the California Supreme Court prevented the political system from satisfying the tax relief preferences of wealthy (and thus influential) homeowners."[223]

So as the federal government pulled back funding for social services and public services starting in the Nixon era, continuing to the Gingrich Congress of the 1990s, state and local governments in California had to do something to raise revenue, both to provide social and public services and to meet federal matching requirements.[224] Increasing the sales tax was one of the most politically viable options, and this is what California did.[225] Other Western states followed in California's footsteps, constitutionally limiting property taxes and then increasing the state sales tax.[226]

Ultimately, throughout history, state legislatures found themselves in binds: they needed revenue, but powerful and wealthy landowner constituents did not want their property taxes used to fund social and public services. So, the legislatures did what was politically feasible and in the course of doing so engaged in calculated exploitation: they increased taxes that the wealthy did not have such a large stake in, at the expense of poor citizens who had little political power to protest.

B. Gratuitous Management

In other cases, states and localities are engaging in what I call gratuitous management, where they use the law as a means to regulate and manage the poor. The child welfare system is one such example. The power held by the state in child welfare cases is extraordinary: the government can remove children from their parents' custody and can even terminate parental rights completely and forever.[227] The threat of this extraordinary power has resulted in a system that is used as a means of social control. David Tobis, a child welfare expert, wrote:

> The pervasiveness of these investigations and the resultant child removals have created a widespread and profound fear in inner-city neighborhoods. As . . . impoverished parents repeatedly jump through

221. *Id.* at 804.
222. *Id.* at 804.
223. *Id.* at 809.
224. NEWMAN & O'BRIEN, *supra* note 74, at 49
225. *Id.* at 49–50.
226. *Id.*
227. MARTIN GUGGENHEIM, WHAT'S WRONG WITH CHILDREN'S RIGHTS 176 (2005).

> hoops to keep their children or to have their children returned to them, they become fearful, preoccupied, and compliant. This is exactly what a child welfare system focused on social control seeks to accomplish.[228]

The government, however, did not always play an active role in child welfare. For the most part, save for a few private associations, few entities, governmental or otherwise, were paying attention to children's well-being before the 1930s.[229] The period between the 1930s and the 1970s was one during which most of the focus on child-wellbeing focused on providing families with aid through cash benefits, such as Social Security and Aid to Dependent Children (ADC).[230] Child abuse and neglect were not issues thought to be a serious threat to children, and the principle of parental rights (freedom to raise children in the home free from government intervention) as well as a sense that children were generally safe in their homes were prevalent.[231]

However, in the 1960s, there was a transformation. Just as doctor groups began to draw attention to injuries they saw children sustain in their homes, and the children's rights movement grew, so too did President Johnson's War on Poverty, which by 1967 linked child welfare and poverty within the Aid to Families with Dependent Children (AFDC) program.[232] But when Richard Nixon took over as President in 1968, many of the poverty-centered programs of Johnson's War on Poverty and Great Society came under attack, and public perception was that money spent on liberal anti-poverty programs might actually have been making the problems of the poor worse.[233] Supporters of the War on Poverty thus had to try to find a way to secure bipartisan support for government spending on poor families.[234] Led by Senator Walter Mondale, the new strategy focused on child abuse, neglect, and protection, arguing that child abuse was a "national" problem rather than a "poverty problem" in order to gain support for his proposal.[235] In 1974 Congress passed The Child Abuse Prevention and Treatment Act (CAPTA),[236] with support from a bipartisan group of politicians based on

228. TOBIS, *supra* note 175, at xxv.

229. GUGGENHEIM, *supra* note 227, at 181–82; TOBIS, *supra* note 175, at 1–2 ("The contemporary child welfare system in the United States began in 1935 when the federal government began to fund and regulate child welfare through the Social Security Act."). One exception to this was child labor protection laws, which were enacted at the federal level before the 1930s. GUGGENHEIM, *supra* note 227, at 182–83.

230. GUGGENHEIM, *supra* note 227, at 182

231. *Id.* at 182–83.

232. *Id.* at 184.

233. *Id.*

234. *Id.*

235. *Id.* at 184–85.

236. Child Abuse and Prevention Treatment Act, Pub. L. No. 93-247, 88 Stat. 4 (1974).

the claim that child abuse and neglect is a problem for all children, not just poor children.[237]

This new orientation served to alter the child welfare system toward one of social control. Instead of a system that recognized the role poverty played in the need for child welfare services, child abuse and neglect came to be seen as a defect and failure of individual parents.[238] It was no longer considered a social problem related to poverty that required state help to alleviate the core of the problem: poverty.[239] Thus, as Martin Guggenheim said, "Any suggestion of broad systemic solutions that address poverty issues has been banned from the child welfare debate."[240]

The child welfare system transformed itself into a system that lawyers who work within the system suggest is used to surveil and "punish parents who have few resources."[241] Parents regard the system as one that controls their lives and sets needless obstacles in their path—it is perceived as a police power.[242] Mothers involved in the system often "go through the motions" of service plans instituted by child welfare services in order to keep their families together, but they do not view service plans as a useful tool to help improve behavior caseworkers see as problematic.[243] Indeed, as experts have argued, the child welfare system is often used as a means of socialization, social control, and a way to regulate the behavior of potentially disruptive poor families.[244]

Advocates who work within the child welfare system note that the system is particularly reactive to systemic failures—extreme cases, reported in the news media, where children were being monitored by the system, left with their parents, and then were killed or found severely abused or neglected.[245] In these extreme cases and others where parents are abusing (and in some cases neglecting) their children in dangerous ways, the state of course must intervene to protect the children. But often, these extreme

237. GUGGENHEIM, *supra* note 227, at 184–85.

238. *Id.* at 185.

239. *See id.*

240. *Id.*

241. *See* Clifford & Silver-Greenberg, *supra* note 162; Stassa Edwards, *How Foster Care Is Used To "Punish" Women of Color*, JEZEBEL, July 21, 2017, https://jezebel.com/how-foster-care-is-used-to-punish-women-of-color-1797129109 [http://perma.cc/SP6J-V7T9].

242. Guggenheim, *Parental Rights in Child Welfare Cases*, *supra* note 173, at 508 ("Child welfare practice is, instead, received commonly as a police power function, controlling poor parents' lives, settling needless obstacles in their path, and unnecessarily delaying or thwarting progress."). *See generally* Sykes, *supra* note 156.

243. Brenda D. Smith, *Child Welfare Service Plan Compliance: Perceptions of Parents and Caseworkers*, 89 FAMILIES IN SOCIETY 521, 521 (2008); Diane K. Yatchmenoff, *Measuring Client Engagement From the Client's Perspective in Nonvoluntary Child Protective Services*, 15 RESEARCH ON SOCIAL WORK PRACTICE 84, 93–94 (2005); Sykes, *supra* note 156, at 449.

244. TOBIS, *supra* note 228, at xxiv.

245. *See* Clifford & Silver-Greenberg, *supra* note 162.

cases result in a crackdown of all cases, particularly in poor neighborhoods with a disproportionate child protective services presence. Reorganization often takes place after such extreme incidents, new personnel take the lead, and the system becomes even more careful and risk-adverse, often to the detriment of involved parents and children.[246] Parents are asked to go through many hoops and answer to many state authorities in order to either get their children back from foster care or to keep their families together. They are entered into registries of child abusers, and they find themselves tracked, labeled, controlled, and managed.[247]

C. Routine Neglect

Finally, in some cases, states are engaging in routine neglect—the poor are an afterthought, essentially forgotten as the status quo reigns and systematically makes mobility a distant dream to the least powerful. Occupational licensing is such a case. As the number of occupations that require licensing has increased, the effects of these measures on the poor have, for the most part, been ignored. Generally, the discussion centers around how the licensing of a profession may affect consumers (as a whole), versus the occupation's practitioners.

There are several explanations for the increase in licensing. A White House study found that one explanation lies in industry representatives believing that professionalizing their industry has benefits, and licensing is part of this professionalization equation.[248] Generally, licensing is thought to benefit professions because it can help the profession gain greater legitimacy, cultural authority, and income.[249] Further, well-established practitioners of a certain trade or industry sometimes advocate for licensing in order to reduce the number of competitors in their industry/trade. This often allows existing practitioners to charge higher prices for their services and to ensure that they maintain their business.[250] Relatedly, licensing has also gained support from those within industries because of the idea that licensing can increase consumer confidence about the quality of a service, thus increasing demand.[251] Further, despite evidence to the contrary,[252] advocates for licensing generally argue that a specific licensing requirement

246. *Id.*

247. Sykes, *supra* note 156, at 449.

248. OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS, *supra* note 133, at 21–22.

249. Paul Starr, *Professionalization and Public Health: Historical Legacies, Continuing Dilemmas*, 15 J. PUB. HEALTH MGMT. PRACTICE S26 (2009); PAUL STARR, THE SOCIAL TRANSFORMATION OF AMERICAN MEDICINE (1982).

250. Simon Rottenberg, *The Economics of Occupational Licensing*, 13–19, *in* ASPECTS OF LABOR ECONOMICS (Nat'l Bureau of Econ. Research ed., 1962).

251. OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS, *supra* note 133, at 22.

252. *See supra* Section II.C.

would also benefit society at large because it would improve quality and public safety by regulating the field.[253] However, on the other side, consumer groups have argued that licensing reduces competition and thus increases prices for consumers.[254]

Producer/industry groups are also thought to be more politically influential than consumer groups.[255] Thus, strong advocacy groups for a given occupation are usually able to push through licensing legislation, even if there is some consumer group advocacy against the provision.[256] Some research evens "suggests that a licensed professions' degree of political influence is one of the most important factors in determining whether [s]tates regulate an occupation."[257] Ultimately, passing licensing legislation tends to be easy, especially with the help of advocacy groups, because licensing boards tend to be revenue neutral (and some are revenue generating).[258] The boards tend to be funded by the fees charged, and thus politicians do not have to consider the need for additional funding when they vote on the creation of a licensing requirement.[259]

In the case of occupational licenses, neither industry leaders nor legislatures seem to be targeting the poor when making rules about licensing. Instead, the interests of those in power dominate with little regard for the consequence of these actions on the poor, as discussed in Part II.C. Indeed, the poor are mostly forgotten. Here, governments are engaging in routine neglect.

IV. PRELIMINARY IMPLICATIONS FOR POVERTY POLICY

As noted above, the goal of this Article is not to argue that legal immobility is *the* cause of persistent poverty or to argue that the many other explanations of persistent poverty are incorrect. Indeed, much more work is needed to understand the relative role of legal immobility in perpetuating poverty and immobility. However, in this section I briefly sketch where legal and policy changes may be needed if we accept that the law is a significant factor in limiting upward mobility and trapping the poor in poverty. At present, few anti-poverty programs, if any, focus on changes in local and state law as a potential avenue for helping the poor. Instead, most programs are aimed at providing aid in the form of cash, shelter, and food.

But if we accept legal immobility as a reality, the implication is that we

253. OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS, *supra* note 133, at 21–22.
254. *See supra* Section II.C.
255. OCCUPATIONAL LICENSING: A FRAMEWORK FOR POLICYMAKERS, *supra* note 133, at 22.
256. *See id.*
257. *Id.*
258. *Id.*
259. *Id.* at 23.

will not be able to make significant headway in increasing long-term upward mobility without tackling the problems of legal immobility. And if we accept that legal immobility does not stem from one single policy or law, the problem becomes even more complicated. Legal immobility cannot simply be solved through one common legal or policy shift. This is part of what separates legal immobility from the problem of localities using their criminal justice system as for-profit enterprises at the expense of the poor. In the case of Ferguson, there was evidence from internal emails that the head of finance directed, explicitly, that when it came to policing, revenue maximization, rather than public safety, should be the goal.[260] Local judges imposed penalties such as $302 for jaywalking and $531 for allowing weeds to grow in one's yard.[261] The judge then issued warrants for the residents who did not make these payments on time.[262] These arrests then resulted in "new charges, more fees, and the suspension of drivers' licenses."[263]

There, the key was uncovering these practices. The Justice Department took swift action by relying on basic Constitutional principles that do not allow the government to imprison a person for nonpayment without considering whether the person can pay.[264] The Department released guidance to state and local governments clarifying rules about criminal justice court fees, and also created grant programs and provided other financial resources to drive change and reverse the trend of what amounted to debtor's prisons across the country.[265]

A similar technique might work in cases where local and state laws are contributing to legal immobility through calculated exploitation. In such cases, federal responses with legal direction might invoke change. But in the case of Ferguson, there were potential Constitutional violations that provoked guidance and change. In the case of disproportionate tax burdens on the poor, for example, even though rooted in calculated exploitation, there do not seem to be Constitutional violations in play that would provoke change.

In some cases of gratuitous management, legal challenges may be warranted, and like the case of debtors' prisons, uncovering the local and state practices where gratuitous management is present may be the first step

260. Chiraag Bains, *Sessions Says to Courts: Go Ahead, Jail People Because They're Poor*, N.Y. TIMES (Dec. 28, 2017), https://www.nytimes.com/2017/12/28/opinion/sessions-says-to-courts-go-ahead-jail-people-because-theyre-poor.html.

261. *Id.*

262. *Id.*

263. *Id.*

264. *Id.*

265. *Id.* Recently, the Department of Justice, under the direction of Attorney General Jeff Sessions, has rolled back this guidance. However, despite this rollback, advocates argue that the practice of debtors' prisons is unconstitutional and the guidance is needed. *Id.*

toward action. But in many cases of both gratuitous management and routine neglect, it is unlikely there are clear practices that warrant legal challenges, again making a debtors' prison type approach difficult.

So what might be done? If the goal is to create legal and policy changes that promote upward mobility, the first step may very well be bringing attention to the role that state and local law can play in thwarting mobility. The law is often thought of as a tool to potentially help the poor gain rights, but it is not generally conceptualized as something that in and of itself may be perpetuating poverty. Indeed, the goal of this Article is to draw attention to this phenomenon. But that is where the real work begins. Particularly in cases of routine neglect, simply drawing attention the legal structures that lead to barriers for upward mobility might begin to promote change. But even more could be done. The federal government might consider ways to incentivize states to consider how various laws and policies may unduly burden the poor, and states may too consider ways to incentivize localities to do the same. Anti-poverty programs are sometimes very expensive; those programs are needed. But reducing poverty by limiting or changing laws that promote legal immobility may be a relatively inexpensive way to make some headway in the fight against poverty. Recognizing this reality may promote change at the state and local level.

Another area of focus may be in the delivery of legal services to the poor. As it stands now, due to funding limitations, half of Americans who request help from Legal Aid Organizations will be turned away.[266] In cases where legal services might help limit legal immobility, the limited supply of lawyers available to the poor make the potential for legal intervention that much lower.

Further, legal service organizations that receive funding from the federally funded Legal Services Corporation (LSC) are restricted from a wide range of advocacy and litigation, including any attempt to influence rulemaking or lawmaking, participating in class actions, and requesting attorney's fees under applicable statutes, among several others.[267] But if there are laws contributing to legal immobility that deserve challenge, we need more capacity for such challenges by lawyers who are both focused on these issues and see the issues in their everyday work, as they provide services to the very clients affected by the laws that contribute to legal immobility.

Since most legal service organizations cannot do such advocacy, we need to consider other pathways for such identification and work. Certainly, the

266. LEGAL SERVICES CORPORATION, 2017 JUSTICE GAP REPORT, https://www.lsc.gov/media-center/publications/2017-justice-gap-report [https://perma.cc/8BDS-4KGY].

267. David Luban, *Taking Out the Adversary: The Assault on Progressive Public Interest Lawyers*, 91 CALIF. L. REV. 209, 221 (2003).

work of the Department of Justice was notable and fueled change in the case of Ferguson, but the pathways that led to the involvement of the Justice Department in the Ferguson investigation are a relative anomaly and more thought must be taken to develop ways of uncovering other violations without deep federal investigations. Perhaps informal partnerships could be formed between LSC funded organizations that cannot engage in advocacy work and other organizations that can. Legal aid organizations could work with these advocacy programs to identify issues and laws that lead to legal immobility, while not doing the advocacy and class action work themselves.

Ultimately, much more work is needed to understand the normative and policy claims that should be made in light of the legal immobility theory. As the concept of legal immobility is disseminated, discussed, and improved, I expect further and more detailed claims about how to integrate the details of legal immobility into poverty policy and law to follow.

CONCLUSION

The cumulative effects of state and local law can play an important role in perpetuating poverty. Conceptualizing state and local laws as cumulatively disadvantageous to the poor, however, is a surprisingly neglected topic among legal scholars and scholars of poverty. Some scholars of law or poverty have identified individual areas of state and local laws that disproportionately burden the poor,[268] but few have moved beyond the individual silos of one particular burden to consider how these often hidden burdens embedded within the law might, as a whole, systematically play a significant role in perpetuating poverty and thwarting upward mobility.

Thus, while we have accounts of how individual laws disadvantage the poor, little thought has been devoted to considering how these laws, considered together, might be a significant factor in limiting upward mobility. Indeed, we do not even have a vocabulary for describing the role of the law in this way, nor a robust account of the range of laws that disadvantage the poor, how it happens, and what the implications are for the study of law and poverty.

This Article reflects a first step in identifying the concept of legal immobility. It begins by pinpointing the types of laws that are often burdensome to the poor: they are often local in nature (and thus not easily tracked) and often seemingly invisible—on their face, these laws do not appear to have a disproportionately adverse impact on the poor. The Article then proceeds to take examples from several different fields of law and

268. *See supra* notes 10, 13.

describes how various state and local laws put a particular burden on the poor. After detailing these examples, the Article asks the reader to consider the following analogy: just as the cumulative effects of several ailments and diseases can wreak havoc on the human body, we can imagine the state and local laws that burden the poor in seemingly small ways as diseases and ailments that cumulatively take a toll. After leading the reader through this analogy, I identify a three-prong approach to understanding the historical roots of laws that have an invisible burden on the poor, and how these laws continue to function. Finally, I discuss the implications of legal immobility and this tripartite theory for poverty law more generally.

There is no doubt that the account of legal immobility offered in this Article is oversimplified in order to introduce the concept in a meaningful and clear way. There is work to be done on both an empirical and theoretical level in order to develop a more nuanced account of legal immobility. Further empirical work is needed to understand how exactly the cumulative nature of burdensome laws works; work could also be done to determine a scale measuring the relative burden of various laws as income declines. Additionally, empirical projects could seek to compare different localities by measuring laws across several fields and their relative burden on the poor, and then control for other factors while measuring outcomes for poor families living within these various localities. Ethnographic case studies focusing on specific localities or specific laws would also add a more nuanced perspective on the mechanisms through which legal immobility functions.

There is also more work to be done to better understand the breadth of legal immobility. We need to pinpoint as many areas of state and local law that might contribute to legal immobility as possible, and further analysis could also shed light on the role of federal law in contributing to legal immobility. For example, the federal bankruptcy laws might be one fruitful area for further study. Further, while I do not discuss the intersectionality of class, race, and gender in this Article, much more work must be done to understand how legal immobility may disproportionately affect women and racial and ethnic minorities living in poverty. Empirical studies could directly compare the varying effects of legal immobility on different demographic groups.

This Article also provokes important normative work on several questions that I only begin to tackle in this Article: (1) whether (and how) states and localities should consider legal immobility when they are invoking new laws and altering old ones; and (2) whether there should be any federal response to local and state laws that contribute to legal immobility, and what these responses might be (including any potential legal challenges).

Ultimately, this Article is meant to move the conversation about poverty law in the direction of better understanding how law functions to perpetuate and exacerbate poverty using the concept of legal immobility as a guide, providing a new direction for research and discourse. It highlights the need to view the law as a structure that is inhibiting upward class mobility for the poor. As the poor work toward upward mobility, they encounter barriers that cumulatively continue to pull them down, leading to immobility. While scholars have long been interested in the mechanisms that lead to this frustrating labyrinth, the role of state and local law has largely been ignored, and in doing so, dead ends continue to surface for the poor. Legal immobility theory seeks to bring to light the question of why there might be so many dead ends and also to begin to open up the conversation about what we might do to broaden the pathways to upward mobility.