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Private Debt and Public Violence [reviews]

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Private Debt and Public Violence

Author : Wendy Anne Bach

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Date : July 10, 2020

- Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 *Stan. L. Rev.* 2093 (2019).
- Tonya Brito, *The Child Support Debt Bubble*, 9 *UC Irvine L. Rev.* 953 (2019).

At the time that I am writing this Jot, in late May 2020, the unemployment rate has climbed above 14%; COVID-19 has once again exposed persistent racial health disparities, and in the wake of the murders of George Floyd, Ahmaud Arbery, and Breonna Taylor, communities across the U.S. are rising in protest. Real too is that our country's small (and largely regressive) provision of economic support, to those whose tentative hold on security was ripped out from under them this Spring, has all but dissolved. Given this searing new reality, one might think that counsel from scholars about the absurdity and cruelty of placing the burden of economic desperation on poor communities themselves would no longer be needed. Who would think, today, that the very communities of color reeling the most should shoulder the cost of their economic survival? Surely we are thinking more radically and more generously than that. But history does not counsel optimism. We know that neoliberal inequality functions through a pernicious combination of potent racialized myths and vigorous punitive and extractive legal systems.

So in this jot, written at this particular moment, and as one very small response to all that is unfolding around us, I want to highlight two pieces of scholarship that lay bare the viciousness of one aspect of those neoliberal systems: [Tonya Brito's *The Child Support Debt Bubble*](#) and [Abbye Atkinson's *Rethinking Credit as Social Provision*](#). Both pieces critique social welfare policy that puts the burden of economic security onto the shoulders of those least able to sustain it. Without question, both pieces are exquisitely well done, and if this were normal times, my jot would focus entirely on what these papers argue and their undeniable strengths. And certainly all that is in order, but what I want to focus on, after summary and praise, is the relationship between private debt and public violence.

Brito's *The Child Support Bubble* builds on years of qualitative research on the reality of child support collection from poor, predominantly Black men. Brito merges qualitative and quantitative evidence with rich legal knowledge and incisive analysis to easily convince her reader that our systems levy absurd amounts of debt onto the shoulders of poor Black men who will never be able to satisfy that debt. Policies that charge exorbitant interest rates and refuse to lower child support amounts, even when fathers are incarcerated, lead to an absurd and inescapable debt. This leads—much like criminal system debt—to constant involvement of punitive agencies in the lives of these men. It leads also to the further privatization of social welfare support in the form of rules that transfer child support payments not to the mothers of these men's children but to the government agencies that provide meager amounts of welfare support. In the final section Brito runs a simulation, marshalling the numbers and rules to convince us that the whole thing is rigged to make sure that these fathers will never, ever escape. Brito's melding of story, legal analysis, structural unpacking and quantitative data leaves her reader convinced that our child support system is nothing more than a trap—both for the poor fathers who will never escape the debt and for the poor mothers and children who will never get the economic support they need. And not only is it a trap, but it is a distraction, one that “obscure[s] the fact that our social welfare system does not sufficiently meet the needs of poor families.” (P. 987.)

Atkinson's *Rethinking Credit as Social Provision*, reveals another false and distracting trap. Like the very best of critical scholarship, Atkinson makes visible that which is somehow both totally obvious and somehow hidden. She delivers several of these insights. First for credit to work, a borrower has to borrow from her wealthier future self. Second, credit as social welfare policy assumes that the giving of credit will result in that richer future self. Third, the possibility of

higher future income depends not really on the mythic bootstrap-pulling capacity of the borrower but instead on the overall strength of the economic opportunities available to that particular borrower. Fourth, viewing credit as social welfare policy is unrealistic “for low-income Americans in light of wage stagnation and persistent insecurity with respect to employment, income and expenses.” (P. 1148.) And finally, when borrowers default the system acts extractively – pulling whatever wealth exists out of poor communities and into the hands of higher income lenders. Race, of course, has everything to do with this. Extractive debt systems target poor African American and Latinex communities. Despite all this, however, policy makers, both on the right and the left, have come to focus on credit as a significant tool in what Atkinson labels a privatized form of social welfare provision, but Atkinson ultimately views that as a harmful distraction. She urges that “it is time for credit to leave the conversation around social provision for low-income Americans . . . and [to] redirect our collective focus toward the fundamental, persistent, and underlying challenge of ever-increasing economic, and consequently social, inequality.” (P. 1162.)

Ultimately both Brito and Atkinson share a similar message. A social welfare policy that wields myths of individual rights and responsibilities to mask the ways in which structural racism limits opportunity; a social welfare policy that pulls families apart; a social welfare policy that has more to do with punishment than support, and a social welfare policy that maintains and strengthens inequality by pulling wealth out of those communities – is no social welfare policy at all. We need instead, as both counsel, social welfare policy that directly addresses economic inequality. But we need to remember this is not just about ineffective social welfare policy. It is about racial subordination, maintained by violence. How? Because when racialized myths and distraction fail to maintain inequality, neoliberalism turns to state violence. To see this link clearly we only need remember Walter Scott, an African American man killed by a white police officer in April of 2015 in South Carolina. Scott had been jailed multiple times for failure to pay child support. On that day, once again, there was an outstanding warrant for his arrest. We cannot know what was in Scott’s mind as he ran from the officer that day, but he no doubt knew that for him, the best-case scenario was jail and the worst was his death at the hands of the state. And that death can all too easily be traced back to debt.

Wendy Anne Bach, *Private Debt and Public Violence*, JOTWELL (July 10, 2020) (reviewing Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 *Stan. L. Rev.* 2093 (2019) and Tonya Brito, *The Child Support Debt Bubble*, 9 *UC Irvine L. Rev.* 953 (2019)), <https://lex.jotwell.com/private-debt-and-public-violence>.