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BOOK REVIEWS

POLICING “BAD” MOTHERS

THE SCHOOL FOR GOOD MOTHERS. By Jessamine Chan. New York, N.Y.: Simon & Schuster. 2022. Pp. 324. \$17.99.

TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD. By Dorothy Roberts. New York, N.Y.: Basic Books. 2022. Pp. vii, 375. \$18.99.

*Reviewed by I. Bennett Capers**

INTRODUCTION

Jessamine Chan’s *The School for Good Mothers* is not a great book. I don’t mean that in the sense the writer Judith Newman did when she wrote in the *New York Times Book Review* one Mother’s Day: “No subject offers a greater opportunity for terrible writing than motherhood.”¹ Rather, I simply mean *The School for Good Mothers* isn’t great literature. I doubt it aspires to be. What it aspires to be, I suspect, is a good yarn, a page-turner, a bestseller. On that front, it succeeds, including by making several best-books-of-the-year lists.² It is unsurprising that critics have compared it to Margaret Atwood’s *The Handmaid’s Tale*,³ a

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¹ Judith Newman, *The Consequences of Motherhood*, N.Y. TIMES (May 11, 2012), <https://www.nytimes.com/2012/05/13/books/review/making-babies-by-anne-enright.html> [<https://perma.cc/VNB7-6KY8>] (published in print on Mother’s Day, May 13, 2012).

² A listing can be found on the author’s website. See *News*, JESSAMINE CHAN, <https://www.jessaminechan.com/news> [<https://perma.cc/Y4AD-F9KC>].

³ See MARGARET ATWOOD, *THE HANDMAID’S TALE* (1986); Ilana Masad, *In “The School for Good Mothers,” Parental Mistakes Have Terrifying Consequences*, WASH. POST (Jan. 6, 2022, 8:00 AM), <https://www.washingtonpost.com/books/2022/01/06/school-for-good-mothers-book-review> [<https://perma.cc/PMX7-UGJB>]; Katie Knibbs, *Dystopia Is All Too Plausible in The*

book published in 1985 but enjoying a resurgence due to the Emmy-winning series starring Elisabeth Moss.⁴ Nor is it surprising that there is already a TV adaptation in the works.⁵ *The School for Good Mothers* is similarly dystopian, tapping into our anxiety and curiosity about artificial intelligence — think ChatGPT⁶ — and its ability to upend our lives, even making *us* superfluous.

However, because *The School for Good Mothers* is set in the near future, it manages to seem like a book of the moment, a frightening glimpse of what might be just around the corner. Indeed, the uncertainty about its temporal nearness only adds to the tension. A mother who abandons her child for a few hours and is required to successfully attend a school for good mothers to regain custody? It already seems very “now.” But as part of measuring her fitness to be a mother, she is assigned a robot doppelgänger of her child — one that is sentient, one that seems almost real, one that might even pass the Turing test, and one that she is required not only to care for but also to love. At the same time, the robot child is programmed to collect and record data from its assigned “mother,” including her heart rate, “her temperature and posture, how often she makes eye contact, the quality and authenticity of her emotions” (pp. 102–03). For those anxious about the policing of motherhood and the increasing role technology might play in that policing, for those worried about the end of privacy and Big Brother run amok, this book is for you.

But already I need to take a step back. In case it is not yet obvious, this is not a typical book review, at least not a typical book review for a law journal. For starters, *The School for Good Mothers* isn’t a law book, but rather a work of fiction, rarely the subject of reviews in law journals.⁷ Beyond that, *The School for Good Mothers* is not the kind of fiction that people probably think of when they think of “law and

School for Good Mothers, WIRED (Jan. 24, 2022, 7:00 AM), <https://www.wired.com/story/school-for-good-mothers-dystopian-reality> [<https://perma.cc/2ZWH-GY4E>]; Sharyn Vane, *What to Expect When You’re Expecting the Unexpected*, BOOK & FILM GLOBE (Jan. 12, 2022), <https://bookandfilmglobe.com/fiction/book-review-school-for-good-mothers> [<https://perma.cc/ML69-YDTS>].

⁴ See THE HANDMAID’S TALE (Hulu television series 2017); *The Handmaid’s Tale*, TELEVISION ACAD., <https://www.emmys.com/shows/handmaids-tale> [<https://perma.cc/J6Q3-6BAY>].

⁵ Peter White, *Jessica Chastain’s Freckle Films to Adapt Jessamine Chan’s “The School for Good Mothers” as Series with Jude Weng and Endeavor Content*, DEADLINE (Jan. 3, 2022, 11:00 AM), <https://deadline.com/2022/01/jessica-chastain-adapt-jessamine-chans-the-school-for-good-mothers-tv-jude-weng-1234903726> [<https://perma.cc/G2TK-7NFR>]. Indeed, it has even been said that “bad mothers” are having their “moment.” Emma Knight, *Why It’s Good News that Bad Mothers Are All the Rage on the Page and the Screen*, LITERARY HUB (May 6, 2022), <https://lithub.com/why-its-good-news-that-bad-mothers-are-all-the-rage-on-the-page-and-the-screen> [<https://perma.cc/55C2-LDDV>].

⁶ See Alex Millson, *Everything You Need to Know About ChatGPT-4*, TIME (Mar. 15, 2023, 8:55 AM), <https://time.com/6263022/what-to-know-about-chatgpt-4> [<https://perma.cc/C2LV-DYWE>].

⁷ For a listing of book reviews in this journal from the last several years, see *Book Reviews*, HARV. L. REV., <https://harvardlawreview.org/category/book-reviews> [<https://perma.cc/Q9JL-6CEU>]. None of the reviews is of a work of fiction.

literature.” There is no courtroom scene or admirable lawyer, as in *To Kill a Mockingbird*⁸ or *Native Son*.⁹ There are no weighty questions about justice or natural law, as in *Billy Budd*¹⁰ or *The Trial*.¹¹ Nor are there questions of legal interpretation, as in *The Merchant of Venice*,¹² or about what it means to judge, as in *The Children Act*¹³ or *A Jury of Her Peers*.¹⁴

More typical of the type of book one might find reviewed in the pages of a law journal is Professor Dorothy Roberts’s most recent book, *Torn Apart*. Roberts teaches law at the University of Pennsylvania — coincidentally, the very university where the protagonist of *The School for Good Mothers* works (p. 4) — and for years has been writing about the regulation of families and its impact in particular on Black families.¹⁵ In doing so, Roberts has influenced an entire generation of younger scholars.¹⁶ She also adds context to the narrative at the heart of *The School for Good Mothers*. As such, one of the goals of this Review is to put these two books — a work of fiction and a work of nonfiction — in conversation with one another. Doing so points to where each book could have gone further and to questions left unanswered.

There is another reason to pair a book about the law with a work of fiction. Doing so reminds us that even works of fiction are, in a way, legal texts, existing inside the law. An analogy to the epiphany Toni Morrison had while reading literature might be useful:

It is as if I had been looking at a fishbowl — the glide and flick of the golden scales, the green tip, the bolt of white careening back from the gills; the castles at the bottom, surrounded by pebbles and tiny, intricate fronds of green; the barely disturbed water, the flecks of waste and food, the tranquil bubbles traveling to the surface — and suddenly I saw the bowl, the structure that transparently (and invisibly) permits the ordered life it contains to exist in the larger world.¹⁷

⁸ See HARPER LEE, *TO KILL A MOCKINGBIRD* 231–35 (HarperCollins Publishers 2010) (1960) (Atticus Finch delivers closing arguments).

⁹ See RICHARD WRIGHT, *NATIVE SON* 353–70 (Harper & Row 1969) (1940) (attorney delivers plea argument in the trial of Bigger Thomas).

¹⁰ See generally XIII HERMAN MELVILLE, *Billy Budd, Foretopman*, in *THE WORKS OF HERMAN MELVILLE* 1, 1 (Raymond W. Weaver ed., 1924).

¹¹ See generally FRANZ KAFKA, *THE TRIAL* (Willa Muir et al. trans., The Mod. Libr. 1964) (1925).

¹² See generally WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE*.

¹³ See generally IAN MCEWAN, *THE CHILDREN ACT* (2014).

¹⁴ See generally SUSAN GLASPELL, *A Jury of Her Peers* (1917), reprinted in *HER AMERICA* 81 (Patricia L. Bryan & Martha C. Carpentier eds., 2010).

¹⁵ Dorothy E. Roberts, *PENN CAREY LAW*, <https://www.law.upenn.edu/faculty/roberts1> [<https://perma.cc/MWQ2-3JG5>].

¹⁶ For a discussion of Roberts’s influence, see Professor Jessica Dixon Weaver’s tribute to Roberts in J. Thomas Oldham & Paul M. Kurtz, *Tributes to Family Law Scholars Who Helped Us Find Our Path*, 55 *FAM. L.Q.* 341, 381–86 (2021–2022).

¹⁷ TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 17 (1992).

Morrison was referring to race,¹⁸ but the same can be said about law. And *The School for Good Mothers*, much like almost any work of fiction, is surrounded by law, whether it realizes it or not. In many respects, law *is* the fishbowl. It is the structure that permits “the ordered life it contains to exist in the larger world.”¹⁹

This Review begins with *The School for Good Mothers*. Part I provides a précis of the novel and surfaces some of the law that structures *The School for Good Mothers*, and that polices so much of motherhood today. Part II turns to surveillance, since surveillance is at the heart of *The School for Good Mothers*. Part II argues that the novel also reveals a layer of the debate about surveillance and technology that too often goes unnoticed. Specifically, the novel exposes the many ways in which surveillance, even without technology, but with the imprimatur of the law, already permeates our lives. Indeed, given the Supreme Court’s recent evisceration of *Roe v. Wade*²⁰ and the right of women to be free from compulsory birth,²¹ it is difficult to read the novel without thinking about what *Dobbs v. Jackson Women’s Health Organization*²² portends for the further surveillance of motherhood and reproductive freedom. Finally, Part III turns to yet another narrative that runs just below the surface of the novel: the role race plays in the policing of motherhood. In particular, Part III puts Roberts’s *Torn Apart* in conversation with Chan’s *The School for Good Mothers*. In this conversation, they each have much to say.

I. “BAD” MOTHERS

The premise seems like something from recent headlines. Consider just a few that occurred as I was writing this Review. *Suburban Mom Handcuffed, Jailed for Making 8-Year-Old Son Walk Half a Mile Home*.²³ *A 10-Year-Old Got a Tattoo. His Mother Was Arrested*.²⁴ *Louisiana Mother Charged After Child Was Arrested 3 Times in a Week*.²⁵ *Mother Leaves 4-Year-Old Child Alone for Hours*,

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

²¹ See *id.* at 153.

²² 142 S. Ct. 2228.

²³ Lenore Skenazy, *Suburban Mom Handcuffed, Jailed for Making 8-Year-Old Son Walk Half a Mile Home*, REASON (Nov. 16, 2022, 10:01 AM), <https://reason.com/2022/11/16/suburban-mom-jailed-handcuffed-cps-son-walk-home> [<https://perma.cc/P83S-U7BM>].

²⁴ Sarah Maslin Nir & Kristi Berner, *A 10-Year-Old Got a Tattoo. His Mother Was Arrested.*, N.Y. TIMES (Nov. 22, 2022), <https://www.nytimes.com/2022/11/13/nyregion/tattoos-children.html> [<https://perma.cc/ABZ4-ERCE>].

²⁵ Christa Swanson & Carolyn Roy, *Louisiana Mother Charged After Child Was Arrested 3 Times in a Week*, CBS 42 (Nov. 21, 2022, 10:43 AM), <https://www.cbs42.com/regional/louisiana-news/louisiana-mother-charged-after-child-was-arrested-3-times-in-a-week> [<https://perma.cc/EXS5-CADM>].

*Charged with Child Abandonment.*²⁶ And this: *Alabama Woman Jailed for Using Drugs During Pregnancy Wasn't Even Pregnant.*²⁷

The School for Good Mothers begins in a similar way. The novel opens with police contacting Frida Liu to say that they have her daughter (p. 1), that a neighbor heard crying and called the police (p. 3). Frida readily admits to her mistake (p. 3). She doesn't add that she'd slept only an hour the night before, and barely more than that the previous night (p. 4). That her daughter had been crying incessantly as a result of an ear infection (pp. 2–3). That she'd tried. “She sang lullabies, rubbed Harriet's chest, gave her extra milk. She laid on the floor next to Harriet's crib, held her impossibly perfect hand through the bars, kissed her knuckles, her fingernails, feeling for the ones that needed to be trimmed, praying for Harriet's eyes to close” (p. 2). And finally, needing just a break, she went out for a coffee (p. 3). And then decided to quickly run to her office at the University of Pennsylvania — she does public relations — just to pick up a file, but then got caught up answering emails (p. 4). “It was a mistake,” she repeats several times (pp. 3, 5). But it doesn't matter. The state knows that she left her child unattended, and now the state will decide whether Frida sees her child again.

At this point in the novel, the wheels of justice that begin to turn seem familiar. The social worker explains what will come next “as she's rattling off a grocery list” (p. 13). Frida will be separated from her child for sixty days, during which she'll be permitted only three state-supervised visits (p. 13). The state will conduct psychological evaluations of both Frida and her daughter and will provide reparative therapy for the daughter (p. 13). And this: “The state will collect data. CPS is rolling out a new program” (p. 13).

It's only the last item that hints at something different, and even then this difference is introduced gradually, a type of “surveillance creep.”²⁸ Within a few weeks, employees from Child Protective Services (CPS) arrive at her house to set up a camera in each room, explaining that “the state will collect footage from a live video feed” (pp. 19–20). They add that they'll “track calls and texts and voice mails and Internet and app use” (p. 20). They advise her that when they have enough footage, they'll use it to “analyze her feelings” (p. 20). And this is just the beginning of the new surveillance. Later, when Frida meets with the court-appointed psychologist, the meeting is video recorded (pp. 41–43). Later

²⁶ Ronnie Marley, *Mother Leaves 4-Year-Old Child Alone for Hours, Charged with Child Abandonment*, FOX 26 HOUS. (Sept. 14, 2022), <https://www.fox26houston.com/news/mother-leaves-4-year-old-child-alone-for-6-hours-charged-with-child-abandonment> [<https://perma.cc/6M4Q-B2LG>].

²⁷ Kylie Cheung, *Alabama Woman Jailed for Using Drugs During Pregnancy Wasn't Even Pregnant*, YAHOO! NEWS (Nov. 21, 2022), <https://news.yahoo.com/alabama-woman-jailed-using-drugs-220500094.html> [<https://perma.cc/MQ7Z-KYN3>].

²⁸ For more on surveillance creep, see Sarah Swan, *Home Rules*, 64 DUKE L.J. 823, 853 (2015); and Matthew Tokson & Ari Ezra Waldman, *Social Norms in Fourth Amendment Law*, 120 MICH. L. REV. 265, 301–04 (2021).

still, when she meets with the social worker, Frida notices “a camera embedded into the wall behind the social worker’s desk. Someone had painted yellow petals around the lens, placing it into a mural of sunflowers, as if a child wouldn’t notice” (p. 49). The new surveillance is so ubiquitous that her advocate warns she shouldn’t try to evade it, because that in itself might count as suspicious.²⁹ She “shouldn’t buy a burner phone. She shouldn’t set up new email accounts” (p. 60).

There is much more that could be said about the use of surveillance by CPS,³⁰ and indeed how normalized it has become.³¹ This is especially the case when it comes to poor women and women of color, as Professor Khiara M. Bridges has documented.³² (Frida is Asian American (p. 19). In addition, while she isn’t exactly poor, she “can’t lose [her] job” (p. 6). She gets \$500 a month in child support from her ex, “not nearly enough to support her and Harriet” (p. 6).) Beyond this, the Supreme Court long ago, in *Wyman v. James*,³³ gave its blessing to warrantless home inspections for recipients of public aid, concluding that such surveillance was a “reasonable administrative tool” that did not violate the Fourth Amendment right to be free from unreasonable searches or seizures.³⁴

There is also much more that could be said about visual interpretation, which is anything but nonpartisan.³⁵ After the cameras are installed in her home, Frida does everything she can to model the behavior of a good parent, albeit one without a child in the house. But even this works against her. The CPS surveillance report notes that she had no visitors in sixty days, that there was a decrease in her non-work-related emails, phone calls, and texts (pp. 75–76). It concludes: “The original claim of being overwhelmed was inconsistent with her conduct after the incident, when her house became spotless overnight. . . . Her emotional orientation was directed inward, rather than toward her child and the community” (p. 76).

There is also much one could say here about our obsession with motherhood and what it should mean. We are especially obsessed with “bad” mothers, although the line between “good” and “bad” is sometimes unclear. Think of the battle of mothers in *Aliens* (Sigourney Weaver’s

²⁹ Indeed, Professor Elizabeth Joh argues that the state often views evasion itself as indicative of criminality. See Elizabeth E. Joh, *Privacy Protests: Surveillance Evasion and Fourth Amendment Suspicion*, 55 ARIZ. L. REV. 997, 998 (2013).

³⁰ Although CPS is the acronym for Child Protective Services, one can’t help but notice that it sounds eerily close to GPS, used for surveillance.

³¹ See, e.g., Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AM. SOCIO. REV. 610, 614 (2020).

³² See generally KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017) (demonstrating how the government routinely denies poor women and women of color autonomy and privacy as a condition of receiving state support).

³³ 400 U.S. 309 (1971).

³⁴ *Id.* at 326.

³⁵ See, e.g., Bennett Capers, *Video as Text/Archive*, in *THE OXFORD HANDBOOK OF LAW AND HUMANITIES* 779, 793–94 (Simon Stern et al. eds., 2020).

character: “Get away from her, you bitch!”³⁶ or even the mother in the recent horror film *Barbarian*.³⁷ Or, for that matter, Grendel’s mother, who avenges her son’s murder.³⁸ Other times, literature makes the “badness” of the mothers patently clear. Consider a few examples: Medea, who murders her own sons when her husband abandons her.³⁹ The self-centered mother in the film *Precious*.⁴⁰ And, of course, the many mothers who make the unforgivable mistake of thinking of themselves first. The mother in Elena Ferrante’s *The Lost Daughter*⁴¹ comes to mind, but one could also include Anna Karenina⁴² and Madame Bovary⁴³ and Frida Liu,⁴⁴ and, well, the list is long. Just google “Bad Mothers in Literature.” Go ahead.

But what might not be obvious is that this policing of motherhood, this entanglement of motherhood with the law, has been with us all along, at least in our Judeo-Christian tradition. Think of motherhood in the Bible, and likely two stories come to mind. The first involves the Virgin Mary, the quintessential, and nonsexual, “good mother,” the archetype that still exists today.⁴⁵ The other explicitly involves law. I am

³⁶ ALIENS (Brandywine Productions 1986); see also Adam The Prowler, *Aliens — Get Away from Her, You Bitch!*, YOUTUBE (Oct. 28, 2015), <https://www.youtube.com/watch?v=j51DfrLHUEk> [<https://perma.cc/F7Q6-AU83>].

³⁷ See BARBARIAN (Regency Enterprises 2022).

³⁸ See BEOWULF chs. XIX–XXI, at 23–26 (Joseph F. Tuso ed., Ethelbert Talbot Donaldson trans., W.W. Norton & Co. 1975) (n.d.).

³⁹ See EURIPIDES, MEDEA 81–85 (Charles Martin trans., U.C. Press 2019) (431 B.C.E.).

⁴⁰ See PRECIOUS (Lee Daniels Entertainment 2009).

⁴¹ See generally ELENA FERRANTE, THE LOST DAUGHTER (Ann Goldstein trans., Europa Editions 2014) (2006).

⁴² See generally COUNT LYOF N. TOLSTOÏ, ANNA KARÉNINA (Nathan Haskell Dole trans., Thomas Y. Crowell Co. 1914) (1877).

⁴³ See generally GUSTAVE FLAUBERT, MADAME BOVARY (Margaret Mauldon trans., Oxford Univ. Press 2004) (1857).

⁴⁴ It is no accident that, in *The School for Good Mothers*, it is going to work that is most damning and results in Frida losing her child (pp. 4–5). One can also think of the writer Ayelet Waldman, who in an op-ed in the *New York Times* admitted that she loved her partner more than her children. Ayelet Waldman, *Truly, Madly, Guiltily*, N.Y. TIMES (Mar. 27, 2005), <https://www.nytimes.com/2005/03/27/fashion/truly-madly-guiltily.html> [<https://perma.cc/EQ2K-LKDB>]. The backlash was swift and inspired Waldman to follow up the op-ed with a memoir reflecting on motherhood in response to the fallout. See AYELET WALDMAN, BAD MOTHER: A CHRONICLE OF MATERNAL CRIMES, MINOR CALAMITIES, AND OCCASIONAL MOMENTS OF GRACE 6–7 (2009). For more on this and the culture of good mothers, see Melissa Murray, Response, *Panopti-Moms*, 4 CALIF. L. REV. CIR. 165, 174 & nn.59–62, 176 (2013). For more on the legal implications of judging mothers and family performance, see Clare Huntington, *Staging the Family*, 88 N.Y.U. L. REV. 589, 613–15, 619–24 (2013).

⁴⁵ On the idealization of motherhood as the primary role for women — at least white women — especially in the nineteenth century, see Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375, 399–409 (1996). Indeed, white motherhood was associated with the health of the nation, as the Court made clear in *Muller v. Oregon*, 208 U.S. 412 (1908), in which it famously upheld hour restrictions for working women on maternal grounds:

[W]oman’s physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence [A]s healthy mothers are essential to

referring to the judgment King Solomon renders when two women claim the same child.⁴⁶ King Solomon offers to cut the baby in half.⁴⁷ The reaction of the two women — one cries out in pain — tells King Solomon, and us, who is the true mother.⁴⁸ The good mother. In other words, judging mothers has a long history. And that’s before we even get to the number of “bad” mother cases that have become staples of criminal law casebooks. Think *Commonwealth v. Howard*,⁴⁹ in which a mother was convicted for failing to protect her child from the mother’s abusive boyfriend.⁵⁰ Or *Commonwealth v. Cardwell*,⁵¹ in which a mother, herself a victim of abuse, was convicted for failing to protect her child from the same abuser.⁵² Or *People v. Chavez*,⁵³ a case that Professor Margaret Montoya has written so eloquently about.⁵⁴ Or *People v. Wu*,⁵⁵ or *State v. Williams*.⁵⁶ Some years ago Professor Jeannie Suk Gersen argued that criminal law had “come home,” as evidenced by the recognition that the state should intervene in cases of domestic

vigorous offspring, the physical well-being of woman becomes an object of public interest and care in order to preserve the strength and vigor of the race.

Id. at 421. For a reading of *Muller* through a racial lens, see I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9, 16–18 (2006). Even today, the expectation is that “good mothers” will center their lives around their children. This ideal even came up in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), the marriage equality case. *See id.* at 2606. As Professor Cynthia Godsoe has documented, Justice Kennedy’s description of a lesbian couple in the case is so idealized that he “could be referring to the mothers of nineteenth-century literature (like Mrs. March of *Little Women*) or 1950s television (such as Harriet Nelson of *Ozzie and Harriet*).” Cynthia Godsoe, *Marriage Equality and the “New” Maternalism*, 6 CALIF. L. REV. CIR. 145, 153 (2015) (referencing LOUISA MAY ALCOTT, *LITTLE WOMEN* (Collier Books, 1962) (1868); *THE ADVENTURES OF OZZIE & HARRIET* (ABC television series 1952)). Their desire for marriage is not about them, but rather their desire “to protect their children.” *Obergefell*, 135 S. Ct. at 2606. Justice Kennedy even laments that “for them and their children the childhood years will pass all too soon.” *Id.*

⁴⁶ 1 Kings 3:16–22 (King James).

⁴⁷ *Id.* at 3:25.

⁴⁸ *Id.* at 3:26–27. For an interesting discussion of King Solomon’s judgment, see generally Ann Althouse, Essay, *Beyond King Solomon’s Harlots: Women in Evidence*, 65 S. CAL. L. REV. 1265 (1992).

⁴⁹ 402 A.2d 674 (Pa. Super. Ct. 1979).

⁵⁰ *Id.* at 675–76. For an excellent discussion of the case, see Dorothy E. Roberts, *Motherhood and Crime*, 79 IOWA L. REV. 95, 96 & n.6 (1993).

⁵¹ 515 A.2d 311 (Pa. Super. Ct. 1986).

⁵² *Id.* at 312, 316. For more on the prosecution of mothers for failing to protect their children from crimes perpetrated by others, see Jennifer M. Collins, Ethan J. Leib & Dan Markel, *Punishing Family Status*, 88 B.U. L. REV. 1327, 1329–30, 1335 (2008), and see generally Michelle S. Jacobs, *Requiring Battered Women Die: Murder Liability for Mothers Under Failure to Protect Statutes*, 88 J. CRIM. L. & CRIMINOLOGY 579 (1998).

⁵³ 176 P.2d 92 (Cal. Ct. App. 1947).

⁵⁴ Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/masking the Self While Un/braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185, 201–06 (1994).

⁵⁵ 286 Cal. Rptr. 868 (Cal. Ct. App. 1991) (reversing a woman’s conviction for strangling her seven-year-old son before attempting to commit suicide herself, partially on the ground that the trial court erred in refusing her attorney’s request to present a cultural defense, *id.* at 870, 887).

⁵⁶ 484 P.2d 1167 (Wash. Ct. App. 1971) (affirming the manslaughter conviction of a mother and her husband for failing to realize their infant’s toothache had become infected and failing to seek medical aid, *id.* at 1170, 1174).

violence.⁵⁷ A more accurate statement might be that the criminal law took up residence in the home a long time ago, at least when it comes to policing mothers. Or rather some mothers. It is no accident that all of these cases involve women of color.

But returning to *The School for Good Mothers*, I want to focus on the novel's critique of surveillance technologies, and, for this purpose, some further description of the plotline is necessary. At Frida's hearing, the family-court judge does not terminate Frida's parental rights (p. 75), an outcome sometimes referred to as "civil death."⁵⁸ Rather, the judge announces, "[w]e're going to fix you, Ms. Liu," and explains that Frida will be sent to a live-in facility to "undergo a year of instruction and training. . . . You'll need to pass our tests" (p. 75).

At the facility, Frida and the other "bad" mothers are forced to surrender their personal belongings, they are given uniforms, their retinas are scanned for identification, and they are surveilled by cameras everywhere, "in every hallway, every room, on the outside of every building" (pp. 77–80). There are even cameras "trained on each bed" (p. 88). In an auditorium, the school's executive director welcomes the women, telling them: "Bad parents must be transformed from the inside out. The right instincts, the right feelings, the ability to make split-second, safe, nurturing, loving decisions" (p. 83). She tells them they are the fortunate ones, since they'll be benefiting from the latest retraining techniques (p. 83). She concludes: "Now, repeat after me: I am a bad mother, but I am learning to be good" (p. 83).⁵⁹

It is only later, though, that their training, and a deeper surveillance, really begins. During one of their training sessions, the mothers suddenly hear "shuffling feet, peals of laughter, the high-pitched murmur of small children" (p. 98). When their instructor, Ms. Russo, opens the equipment-room door, five toddler girls are there, "mirror images of the mothers, dressed in navy blue jumpsuits and sneakers" (p. 99). Here is what happens next:

The instructors herd the girls into a single row at the front of the classroom. The children giggle and wave.

"Settle down," Ms. Russo says, guiding one of the wayward toddlers back in line. "Class, we want to start with a little surprise we prepared for you."

Ms. Khoury raises her arms. "On the count of three. Ready? One... two... three!"

"Hello, Mommy!" the children shout. "Welcome!" (p. 99)

⁵⁷ Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2, 7 (2006).

⁵⁸ See, e.g., Stephanie N. Gwillim, Comment, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 ST. LOUIS U. PUB. L. REV. 341, 344 n.13 (2009).

⁵⁹ Emphasis has been omitted.

The dolls are robots, but so lifelike that it takes a while for the mothers to realize they’re not real children (pp. 99, 101–02). An instructor explains: “They can move and speak and smell and feel like real children. They can hear. They can think. They are sentient beings with age-appropriate brain development, memory, and knowledge. In terms of size and abilities, they resemble a child of about eighteen to twenty months” (p. 102). Think of the lifelike AI doll in the recent movie *M3GAN*,⁶⁰ but younger and actually realistic.⁶¹ The catch is there’s a camera inside each doll (p. 102). The other catch is that the dolls will collect data (p. 102). They will monitor “the mothers’ heart rates . . . to judge anger,” and monitor “[t]heir blinking patterns . . . to detect stress, fear, ingratitude, deception, boredom, ambivalence, and a host of other feelings” (pp. 102–03). Each “doll will record where the mother’s hands are placed, will detect tension in her body, her temperature and posture, how often she makes eye contact, the quality and authenticity of her emotions” (p. 103). They’ll gauge the mother’s purported love.

To be reunited with their children, the mothers in turn must prove they are “good” mothers. They must “narrate everything, impart wisdom, give their undivided attention, maintain eye contact at all times” (p. 107). And they must internalize the wisdom their trainers impart. “A mother is always patient. A mother is always kind. A mother is always giving. A mother never falls apart. A mother is the buffer between her child and the cruel world” (pp. 115–16). “Fix the home . . . and fix society” (p. 82). “A mother must never look away” (p. 147). The child is always a mother’s “top priority” (p. 182). “A mother who is in harmony with her child, who understands her place in her child’s life and her role in society, is never lonely. Through caring for her child, all her needs are fulfilled” (p. 200). And so on.

The surveillance technology in *The School for Good Mothers* sounds dystopian, to be sure.⁶² But what interests me is how the law once again provides the structure that makes this surveillance possible, even normal. Though one might assume the Fourth Amendment would provide some protection from government surveillance, the fact is that courts have long recognized what Professor Doriane Lambelet Coleman calls a “child welfare exception” — really a bundle of exceptions — to the

⁶⁰ See *M3GAN* (Blumhouse Productions 2022).

⁶¹ Of course, while this may sound futuristic, the future is fast approaching, as a recent article in the *New York Times* made clear. See Cade Metz, *How Smart Are the Robots Getting?*, N.Y. TIMES (Jan. 25, 2023), <https://www.nytimes.com/2023/01/20/technology/chatbots-turing-test.html> [<https://perma.cc/63DW-U8GC>].

⁶² As Roberts puts it in *Torn Apart*: “The child welfare system has entered the digital age. Governments are increasingly employing big databases, computer programming, and artificial intelligence to monitor families and make automated decisions about intervening in them” (p. 176). Numerous jurisdictions are already using algorithmic risk-assessment tools developed by technology companies to predict risk and magnify family surveillance (p. 176).

Fourth Amendment.⁶³ The most important exception in that bundle is consent since the Supreme Court has long held that a search based on voluntary consent is reasonable under the Fourth Amendment, even where probable cause or reasonable articulable suspicion is lacking.⁶⁴ Indeed, by at least one estimate, child protective services workers secure consent in over ninety percent of their cases.⁶⁵ But the psychological pressure to consent is well documented,⁶⁶ and this pressure is repeatedly highlighted in *The School for Good Mothers*. Near the beginning of the novel, when men from CPS arrive at Frida's house to install cameras in every room to collect live video feed, they both tell her there's nothing she or her lawyer can do about it and hand her "a form to sign. She must consent to the surveillance" (p. 20).⁶⁷ And when the family-court judge rules Frida must attend a live-in facility where she'll be under surveillance for a year, the judge frames it as "her choice" (p. 75) but also says "she has to" (p. 73).⁶⁸ Even at the school, even after they are assigned robot dolls, things are framed as a choice: the mothers are initially made to understand that they can quit at any time (pp. 84, 111, 176). And here, too, the law hovers in the background, invisibly giving the surveillance legitimacy. Under our current Fourth Amendment

⁶³ Doriane Lambelet Coleman, *Storming the Castle to Save the Children: The Ironic Costs of a Child Welfare Exception to the Fourth Amendment*, 47 WM. & MARY L. REV. 413, 416 (2005). Coleman uses the "child welfare exception" as an umbrella term to encompass other exceptions, such as categorizing a search as a special needs/administrative search — in other words, that the primary goal of the search is not law enforcement — to circumvent the Fourth Amendment's presumptive requirement for a warrant supported by probable cause. *Id.* at 416–17. For more on the interplay between the Fourth Amendment and family surveillance, see generally Anna Arons, *The Empty Promise of the Fourth Amendment in the Family Regulation System*, 100 WASH. U. L. REV. (forthcoming 2023), <https://papers.ssrn.com/abstract=4192039> [<https://perma.cc/MGX8-SRDG>].

⁶⁴ *Schneekloth v. Bustamonte*, 412 U.S. 218, 222 (1973). The Court made clear that warnings of the right to refuse consent are not necessary to render consent voluntary. *See id.* at 226–27. The Court reaffirmed this position in *United States v. Drayton*, 536 U.S. 194 (2002), finding that even though the officer did not advise a suspect of his right to refuse consent, the officer "did request permission to search, and the totality of the circumstances indicates that their consent was voluntary, so the searches were reasonable." *Id.* at 207. There is also *Dupuy v. Samuels*, 465 F.3d 757 (7th Cir. 2006), in which Judge Posner rejected the notion that a child safety plan interfered with the fundamental right of parents to raise their children and thus required due process review. *Id.* at 761. For Judge Posner, all that mattered was that the plans were voluntary, and he concluded they were. *Id.*

⁶⁵ Coleman, *supra* note 63, at 430.

⁶⁶ *See, e.g.*, Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 STAN. L. REV. 841, 866–71 (2020); *cf.* Janice Nadler, *No Need to Shout: Bus Sweeps and the Psychology of Coercion*, 2002 SUP. CT. REV. 153, 165–97 (2003).

⁶⁷ In *Torn Apart*, Dorothy Roberts also explores the coercive nature of "consent" when it comes to supervision plans "offered" by CPS caseworkers. She explains that supervision plans "are considered to be voluntary because the parents ostensibly agree to them by signing a form or giving verbal consent" (p. 135). But in actuality, the parents are "coerced by an agency ultimatum: agree to let us transfer your children to Grandma or we'll immediately file a petition in court to transfer them to foster care" (p. 135). Tellingly, this section of the book is titled "More Power than the President" (p. 134).

⁶⁸ As another mother says about coming to the school: "The judge made it seem like I had a choice, but *choice* and this place do not belong in the same sentence" (p. 113).

jurisprudence, continued participation can be enough to constitute non-verbal consent.⁶⁹ Indeed, under Fourth Amendment jurisprudence, a court could describe the surveillance conducted by the doll as a type of “assumption of risk,” a type of consensual surveillance.⁷⁰ The law is like an invisible hand, shaping what is allowed and what is not. And what seems normal.

But there’s also a more basic surveillance that runs alongside this technological surveillance, one to which the Court has also given its blessing, and which may seem equally pernicious. It is that more basic surveillance that I discuss next.

II. GOOD CITIZENS

A few years ago, I wrote *Criminal Procedure and the Good Citizen*,⁷¹ the main argument of which seems apt here. The thrust of the argument was about particular messages embedded in criminal procedure cases: “Embedded in the Supreme Court’s criminal procedure jurisprudence — at times hidden in plain sight, at other times hidden below the surface — are asides about what it means to be a ‘good citizen.’”⁷² Indeed, the “decisions not only *reflect* ideas about good citizenship. They *produce* good citizenship.”⁷³ When asked, the good citizen willingly waives their right to silence. The good citizen consents to searches. The good citizen, having nothing to hide, welcomes police surveillance. And perhaps most importantly, the good citizen willingly aids the police state. And of course, it’s not just messages from the Court. “[E]xhortations to be good citizens are all around us.”⁷⁴

This pressure to be a “good citizen” is evident in how Frida and the other mothers respond to requests for consent throughout *The School for Good Mothers*. But there is another aspect of “good citizenship” that also permeates the novel. We’ve been conscripted to watch each other. On the surface, it is the advanced surveillance technology that makes the novel seem dystopian. The cameras everywhere. The sensors measuring empathy and care. The dolls collecting biometric data. The government’s ability to survey everyone’s online communications. “It’s not like there’s any privacy anymore. You have to remember that. They’ll

⁶⁹ See, e.g., *United States v. Sabo*, 724 F.3d 891, 894 (7th Cir. 2013) (finding that responding to officer’s request to search by stepping back and letting officer enter constituted nonverbal consent); *United States v. Carter*, 378 F.3d 584, 588 (6th Cir. 2004) (similar); *United States v. Patten*, 183 F.3d 1190, 1195 (10th Cir. 1999) (holding that a defendant’s nonverbal conduct in opening his suitcase supported a finding of voluntary consent).

⁷⁰ Cf. *United States v. White*, 401 U.S. 745, 752–53 (1971); *United States v. Gonzalez*, 328 F.3d 543, 548 (9th Cir. 2003).

⁷¹ I. Bennett Capers, Essay, *Criminal Procedure and the Good Citizen*, 118 COLUM. L. REV. 653 (2018).

⁷² *Id.* at 654.

⁷³ *Id.* at 655.

⁷⁴ *Id.* at 661.

be watching you” (p. 18).⁷⁵ But in fact, an equally pernicious “old-school” surveillance exists alongside, and even undergirds, the more technological surveillance. And yet we have become so inured to this traditional surveillance that it seems mundane, normal. It barely registers. A close reading reveals just how critical, and intrusive, that old-school surveillance is. Indeed, it is present as the catalyst for the novel. It is not Frida’s smartphone “listening in” or its location data that alerts authorities that her child is unattended (p. 3). It is simply a neighbor (p. 3). “You left your baby at home,” an officer tells Frida at the start of the novel (p. 3). “Your neighbors heard her crying” (p. 3).

And of course, this quotidian, old-school surveillance is everywhere. There is the routine surveillance from other mothers, what Professor Melissa Murray calls “the harsh scrutiny of ‘the Panopti-mom,’”⁷⁶ a play on Jeremy Bentham’s panopticon prison.⁷⁷ (Frida recalls how earlier, other mothers would give “her disapproving looks when she pushed Harriet on the swings silently, when she sat at the edge of the sandbox and tried to skim the *New Yorker* while Harriet played alone” (p. 30). The prevailing wisdom was that “toddlers need to hear ten thousand words a day, from birth until age five, in order to be prepared for kindergarten,” and Frida tried to comply, but often failed (p. 30).⁷⁸

Beyond this, there is the old-school surveillance that comes with what we have already given up, what we already take for granted, the fact that almost all of us exist in a “network of writing,”⁷⁹ marked and tracked by things as seemingly innocuous as social security numbers. Indeed, hovering over Frida is the risk she will be placed in yet another network of writing, the Negligent Parent Registry, where:

[Parents’ negligence] will be revealed when they try to rent or buy a home, register their child for school, apply for credit cards or loans . . . the moment they do anything that requires their social security number. The registry will alert a community that a bad parent has moved into the neighborhood. (p. 81)

⁷⁵ The novel presses home the point about government technological surveillance by recounting advice from Frida’s advocate that surveillance is already everywhere. As the advocate rhetorically puts it: “Who isn’t using facial recognition software?” (p. 24). She advises Frida that they can monitor her Google searches and tap into her work computer, and that anything she does “could be interpreted as defiance” (p. 24).

⁷⁶ Murray, *supra* note 44, at 176. Murray hasn’t been shy about sharing her own experience being under the glare of other mothers. *Id.* at 176–77; see also Melissa Murray, *Foreword: The Milkmaid’s Tale*, 57 CAL. W. L. REV. 211, 228 (2021) (mentioning the Panopti-mom and her own experience being judged as a mother); Huntington, *supra* note 44, at 613–15, 619–24 (highlighting the legal implications of judging mothers and family performance).

⁷⁷ See 4 JEREMY BENTHAM, PANOPTICON; OR, THE INSPECTION-HOUSE (1787), reprinted in THE WORKS OF JEREMY BENTHAM 37 (John Bowring ed., Russell & Russell, Inc. 1962) (1843).

⁷⁸ Tellingly, this is one of the lessons pressed upon mothers at the school where Frida is sent, except now, instead of other mothers doing the monitoring, it will be the doll (p. 107).

⁷⁹ MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON 189 (Alan Sheridan trans., Vintage Books 1979) (1977).

But it is the routine surveillance of mothers, the way we all have been conscripted into watching mothers, policing mothers, that I want to focus on. It is this routine surveillance that becomes more apparent — if one looks for it — as the book progresses, especially as Frida learns from other mothers at the school. On her first day at the school, another mother casually mentions how she ended up there: “They caught me spanking my kid at the grocery store. Some old lady followed me to the parking lot and took down my license plate” (p. 82).

As the novel progresses, even as new surveillance technologies seemingly take center stage, old forms of surveillance are never far behind. For example, there is Roxanne, a Black mother whose seven-month-old was taken from her and placed in foster care (p. 130). The reason? “Roxanne let her twelve-year-old niece babysit Isaac when she got called into work on a Sunday. A passerby saw the girl wheeling Isaac in his stroller in front of Roxanne’s apartment building and called the police” (p. 130).

There is something comforting in the saying, “it takes a village to raise a child.” And yet there is something disturbing and intrusive too, something that should make us question whether there has ever been a “right to be let alone.”⁸⁰ Or maybe an amendment is in order. I have written in the past about the police surveillance of Black and brown bodies. I have written that we are “treated as ‘panoptic sort,’ ‘always already suspect,’ and routinely subjected to ‘heightened scrutiny,’ to repurpose a legal term.”⁸¹ But reading *The School for Good Mothers*, and looking around, I realize that mothers too are subject to a heightened surveillance. Especially poor mothers. Especially mothers of color, an issue I explore in Part III.

To be clear, I am not suggesting that there is no role for the community/village to play in raising children. Children *are* vulnerable. But there must be some balance, and *The School for Good Mothers* makes clear we are decidedly off-kilter. Especially when you consider why the mothers have been sent to school and what they are “in” for:

Alice is originally from Trinidad. Her five-year-old daughter, Clarissa, began kindergarten without the required vaccinations. Another woman tested positive for marijuana. Another let her two-year-old son play in their backyard alone. A mom with purple streaks in her hair had three children removed because of inadequate childproofing in her apartment. She lost custody of her one-year-old twin boys and five-year-old daughter. A woman named Melissa says her six-year-old son, Ramon, wandered out of their apartment while she was asleep, made it out of the building and walked

⁸⁰ *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

⁸¹ I. Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 N.Y.U. L. REV. 1, 46 (2019) (quoting OSCAR H. GANDY, JR., *THE PANOPTIC SORT: A POLITICAL ECONOMY OF PERSONAL INFORMATION I* (1993); Frank Rudy Cooper, *Always Already Suspect: Revising Vulnerability Theory*, 93 N.C. L. REV. 1339, 1363 (2015); I. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1209 (2017)).

fifteen minutes, was found at a bus stop. They all look so young. A mother named Carolyn, who looks closer to Frida's age, says her three-year-old daughter was removed after she posted a video of one of her tantrums on Facebook. (p. 85)

Of course, these mothers exist in the world of the novel. However mimetic the novel may seem, these mothers are characters, peripheral characters, and are no more "real" than the robot doll with AI that is assigned to Frida. And yet in a way, they are reminders of the world we live in. And reminders of the news headlines that opened Part I of this Review. This is the way we live now. Or at least some of us.

These days, it is commonplace for Fourth Amendment and privacy scholars to decry the loss of privacy.⁸² And with the Court's decision in *Dobbs* overturning the right to abortion, the concern about privacy has only grown. We worry "about how digital bread crumbs might expose women seeking abortions to potential legal jeopardy."⁸³ We worry that women seeking abortions are traceable through their credit card use, through their Google searches, through period-tracking apps, through location tracking in their phones, and through the use of Google Maps to travel to abortion providers.⁸⁴ I too share this worry, even though I am skeptical about whether the public is as concerned about surveillance as privacy scholars make it out to be. But the larger point *The School for Good Mothers* surfaces is this: Even without new surveillance technologies, our so-called privacy is illusory. Even without smartphones or big data or machine learning, we are being watched. Indeed, we are watching each other. And if that sounds dystopian, that suggests the future is already here. And again, it is the law that has enabled this, disciplined us so that we have all become watchers. Good citizens. We have been trained well.

⁸² See generally DANIELLE KEATS CITRON, *THE FIGHT FOR PRIVACY: PROTECTING DIGNITY, IDENTITY, AND LOVE IN THE DIGITAL AGE* (2022); JON FASMAN, *WE SEE IT ALL: LIBERTY AND JUSTICE IN AN AGE OF PERPETUAL SURVEILLANCE* (2021); CHARLES J. SYKES, *THE END OF PRIVACY* (1999); REG WHITAKER, *THE END OF PRIVACY: HOW TOTAL SURVEILLANCE IS BECOMING A REALITY* (1999); SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER* (2019); A. Michael Froomkin, *The Death of Privacy?*, 52 STAN. L. REV. 1461 (2000); Jed Rubinfeld, *The End of Privacy*, 61 STAN. L. REV. 101 (2008).

⁸³ Shira Ovide, *Our Data Is a Curse, With or Without Roe*, N.Y. TIMES (June 29, 2022), <https://www.nytimes.com/2022/06/29/technology/abortion-data-privacy.html> [<https://perma.cc/BBZ4-J7YK>].

⁸⁴ See *id.* For more on these issues, see Anya E.R. Prince, *Reproductive Health Surveillance*, B.C. L. REV. (forthcoming 2023) (manuscript at 26–29, 31–33), <https://papers.ssrn.com/abstract=4176557> [<https://perma.cc/FV8V-A5QH>]; and Elizabeth E. Joh, *Dobbs Online: Digital Rights as Abortion Rights*, in *FEMINIST CYBERLAW* (Amanda Levendowski & Meg Leta Jones eds., forthcoming 2023) (manuscript at 4–6), <https://ssrn.com/abstract=4210754> [<https://perma.cc/9TFV-9ATB>].

III. TORN APART

Up to this point, I’ve said little about race, but of course race matters, and Chan knows this. Chan is Asian American, as is her protagonist Frida.⁸⁵ And although race is not at the center of the book, it is definitely there at the margins. Frida knows that she can sob in the middle of Starbucks and people will assume she’s “been dumped or fired. No one would guess her crime. She looks too fancy. Too proper. Too Asian” (p. 19). And her advocate makes this observation before they appear in front of the family-court judge:

[The advocate] didn’t want to be crass about it, but the judge probably won’t see Frida as a person of color. She isn’t Black or brown. She’s not Vietnamese or Cambodian. She’s not poor. Most of the judges are white, and white judges tend to give white mothers the benefit of the doubt, and Frida is pale enough. (p. 69)

At the same time, Frida’s not immune from routine microaggressions,⁸⁶ such as being asked if English is her first language (p. 42), bringing to mind the “perpetual foreignness” of Asian Americans that critical race theory (CRT) scholars such as Professors Robert Chang,⁸⁷ Leti Volpp,⁸⁸ and Neil Gotanda⁸⁹ have written about. Indeed, *The School for Good Mothers* subtly demonstrates the double bind Frida faces. She is “pale enough” but still faces the demand that she *be* “foreign.” Perhaps nowhere is this clearer than in her exchange with the court-appointed psychologist, whose questions are not only racially charged, but also recall CRT scholar Professor Kendall Thomas’s observation that race is better thought of as a verb rather than a noun, and we are all “raced.”⁹⁰ Consider the questions the psychologist puts to Frida:

⁸⁵ Jessamine Chan, Essay, *As a Chinese American Mother, I Didn’t Want My Family’s Native Language to End with Me.*, ELLE (Jan. 4, 2022), <https://www.elle.com/culture/books/a38425184/jessamine-chan-family-native-language-essay> [<https://perma.cc/EAT5-69BW>].

⁸⁶ Indeed, Frida experiences what Professor Peggy Cooper Davis would term “law as microaggression,” since the assumption about foreignness comes from the court-appointed psychologist (p. 42). See Peggy C. Davis, *Law as Microaggression*, 98 YALE L.J. 1559, 1576 (1989) (describing the interplay between legal systems and microaggressions, which are “stunning, automatic acts of disregard that stem from unconscious attitudes of white superiority”).

⁸⁷ Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1258 (1993), *reprinted in* 1 ASIAN L.J. 1 (1994).

⁸⁸ Leti Volpp, *Ngai: Impossible Subjects: Illegal Aliens and Alien Citizens*, 103 MICH. L. REV. 1595, 1616, 1622 & n.105 (2005) (book review) (“The Asian is the quintessential alien.” *Id.* at 1622.).

⁸⁹ Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689, 1694–95, 1698–702 (2000).

⁹⁰ See Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, in WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT 53, 61 (Mari J. Matsuda et al. eds., 1993) (citing Kendall Thomas, Comments at Frontiers of Legal Thought Conference, Duke Law School (Jan. 26, 1990)); see also Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1261 (2011) (citing Thomas, *supra*) (describing Thomas’s observation and suggesting that we should “shift[] the frame of CRT toward a dynamic rather than static reference”).

“Was Harriet being raised bilingual? What did Frida mean when she said her Mandarin is only proficient? That she speaks Chinglish with her parents? Wasn’t that denying Harriet a crucial part of her heritage?” (p. 49).

Race also takes a prominent role when Frida is sent to the yearlong school for instruction and training. It is not lost on Frida that she is the only Asian, and the other women are almost all Black or brown (p. 80); that, as in *Orange Is the New Black*,⁹¹ cliques are formed along racial lines (p. 80); and that even work assignments seem to be based on race (p. 133). Frida knows that at the school, “she’s getting away with more because she’s yellow” (p. 251). Even the assigned dolls are raced, programmed to conform to racial assumptions (pp. 99, 216, 237). But it’s really from her interaction with Roxanne, a Black mother, that Frida receives a different education, learning how racialized the child welfare system is and that the hypersurveillance of Black parents even has a name: “Parenting while Black” (p. 181). Later, after a session where the mothers are supposed to teach their dolls about racial difference, Roxanne schools Frida again. She tells Frida, “I don’t care how much you’ve read about intersectionality. You won’t have to worry about [your daughter] getting shot. You can take her anywhere. She’ll never get hassled” (p. 238).

Race is never far from the book. Even the fact that Frida’s ex-husband is white (p. 43), that he left her for a white woman (pp. 26, 28), that Frida’s child is half-Asian and half-white (p. 100), figures in the book. One could add that in addition to showing the “perpetual foreignness” many Asian Americans face, the author is also critiquing the “model minority” myth.⁹² Frida is struggling to make ends meet financially (p. 6). She suffers from depression (p. 13). She is sexual in a way that many conservatives might view as troubling (pp. 35–36).⁹³ Rather than being society’s idea of a model minority — which somehow seems to keep the emphasis on the word minority — Frida is simply Frida. That said, for the most part race hovers in the margins. While race enriches the book, it is not central to it. One could read the novel and

⁹¹ See PIPER KIRMAN, *ORANGE IS THE NEW BLACK* 49 (2011).

⁹² For more on the model minority myth, see Chang, *supra* note 87, at 1258–65; and Frank Wu, *Keynote Address: “Asian Americans at a Crossroads,”* 19 *HASTINGS RACE & POVERTY L.J.* 205, 210–11 (2022).

⁹³ In many ways, the author jars the reader out of assumptions they might have about Frida. For example, the author waits until the second chapter to tell the reader more about Frida. That, for example, in her twenties she would “show up at the homes of men she found on the Internet and leave bruised and disoriented” (p. 35). Even though Frida doesn’t remember names, she “remembers bodies, and the rare compliment, as well as the one who choked her. The one who played porn while she went down on him. The one who tied her wrists so tight she lost feeling in her hands” (p. 36). And this: “The one who called her timid when she refused to attend an orgy. She’d been proud of herself for saying no that time, for having limits” (p. 36).

not think about race at all.⁹⁴ Indeed, I suspect most readers are like the advocate’s description of Frida’s family-court judge: They set aside the fact that Frida is “a person of color. She isn’t Black or brown. She’s not Vietnamese or Cambodian. She’s not poor. . . . Frida is pale enough” (p. 69).

In this sense, *Torn Apart*, Dorothy Roberts’s important follow-up to her earlier book, *Shattered Bonds*,⁹⁵ functions as a correction of sorts. Race is front and center in *Torn Apart*. Indeed, the centering of race is made clear by the full title, which is *Torn Apart: How the Child Welfare System Destroys Black Families — And How Abolition Can Build a Safer World*.⁹⁶ For Roberts, race is at the heart of family separation. Indeed, family separation and family policing only fully come into focus through the lens of race. Roberts doesn’t disagree that all mothers are judged, which is the argument Ayelet Waldman makes.⁹⁷ But as Roberts demonstrates, Black and poor mothers are judged with a difference: one that enables the state to exact punishment in the form of forcible family separation. Quite simply, while white mothers who are class privileged may feel judged and policed, for them, the policing is largely metaphorical. For Black women, on the other hand, especially poor Black women, the policing is often literal.⁹⁸

To be sure, notwithstanding Roberts’s emphasis on race, there are passages from *Torn Apart* that would fit well in *The School for Good Mothers*, and vice versa. For example, Roberts introduces us to Jornell, a mother who could easily be one of the mothers at the retraining school in *The School for Good Mothers*. Jornell was “living in public housing” and “suffering from diabetes” when she became pregnant (p. 5). Since she had a history of abusing drugs and alcohol, she signed up for an intervention program after seeing a flyer in her neighborhood (p. 5). But participating in the program also put Jornell on the state’s radar as a potentially bad mother. Because of this, when Jornell gave birth, state workers “put the newborn on ‘social hold’ until they could inspect Jornell’s living arrangements. Jornell wasn’t allowed to bring David home until four days after she was released” (p. 5). And this was just the beginning of Jornell’s entanglement with child protective services. Later, when she took her son to the emergency room because he was having digestive problems, the staff called the child abuse hotline and

⁹⁴ This is not a criticism of the book. Chan likely recognizes that any more race, and the book itself would face the same “perpetual foreignness” fate that her protagonist does, that the book would have lost some of its mass-audience appeal. Or it would have drawn attention away from the main focus of the book, a dystopian vision of family separation writ large.

⁹⁵ DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

⁹⁶ Race is also front and center in the earlier book, the full title of which is *Shattered Bonds: The Color of Child Welfare*.

⁹⁷ See Waldman, *supra* note 44.

⁹⁸ A special thanks to Professor Clare Huntington for focusing me on this point, and for her suggested turn of phrase. For more on the way different mothers are judged, see Chris Gottlieb, *Reflections on Judging Mothering*, 39 U. BALT. L. REV. 371, 377–82 (2010).

protective services took custody of the baby (pp. 5–6). Even after an internal review concluded there was no abuse, the state agency refused to return her son, and instead:

issued a list of steps Jornell would have to take to be rehabilitated enough for reunification: enroll in a drug treatment program, submit monthly urine samples for drug testing, attend Alcoholics Anonymous meetings, see a parenting coach once a week, undergo a series of psychological evaluations, meet with a psychotherapist regularly, and make scheduled visits with [her infant] under a social worker’s supervision. (p. 6)

Only if she met all of these demands “and passed the team’s assessment” could she have her infant back (p. 7).

Torn Apart also tells the story of Vanessa, a nursing student whose troubles with child protective services began when she was with her two sons, ages two and four, at a family picnic (p. 13). When a passerby saw her four-year-old in the parking lot — the toddler was “traips[ing] behind” Vanessa’s cousin, who had agreed to watch the toddler — the passerby called 911 and claimed the boy was unattended (pp. 13–14). As a result, an officer cited Vanessa for child neglect (p. 14). A month later, members from the local social services department showed up at her residence and, suspecting her children were home unattended, summoned the police when no one answered the door (p. 14). (Vanessa was cleaning up in the basement and is “hard of hearing in one ear,” which is why she didn’t hear anyone at the door (p. 15).) Once the officers arrived, they entered Vanessa’s home — “without a warrant or permission” — and confronted her (pp. 14–15). One of the officers “began to walk around the house, recording the condition of each room with his body camera. As he scanned the kitchen, he opened the refrigerator and cabinets to record their contents” (p. 16). When Vanessa protested the police presence in her home, the police escalated the situation, pinning her and restraining her with shackles, dislocating her shoulder in the process (pp. 17–18).

But as a nonfiction book, *Torn Apart* can more easily zoom out to present a fuller picture. Part of this zooming out is about sheer numbers. For example, we learn that in 2018, child protective services agencies throughout the United States investigated the homes of about 3.5 million children (p. 21), that “every year, [they] . . . remove about 500,000 children from their homes” (p. 22), that “Black and Native children . . . are more than twice as likely as white children to experience the termination of both parents’ rights” (p. 23), that “more than half of Black children . . . are subjected to a” child welfare investigation during their childhood (p. 37), and that “[m]ore than one in ten Black children in America will be forcibly separated from their parents and placed in

foster care by the time they reach age eighteen” (p. 22).⁹⁹ In order to keep or be reunited with their children, these parents are assigned “back-breaking tasks” (p. 22). And failure to comply with each task risks permanent termination of parental rights, which Roberts calls the “death penalty of the family-policing system” (p. 23).

Another part of this zooming out is temporal. Roberts reminds the reader that family separation has a long history in this country and that history is inseparable from our racial history (p. 27). The story of slave owners forcefully separating children from their enslaved parents, and the federal government’s campaign to remove Native American children from their families, will be familiar to most readers. Indeed, the story of the Indian Child Welfare Act of 1978¹⁰⁰ (ICWA) — currently being challenged in the Supreme Court in *Haaland v. Brackeen*¹⁰¹ — is the story of the federal government’s attempt to remedy this history (pp. 106–08). What may be less familiar is the role the Black Codes played in continuing the practice of removing Black children from their families. The Black Codes — enacted post-Emancipation to create slavery by a different name — often included provisions for compelled apprenticeships, which permitted judges the authority to “bound out” Black children to whites, including white planters, “if they found the parents to be unfit, unmarried, or unemployed and if they deemed the displacement ‘better for the habits and comfort of the child’” (p. 97).¹⁰² And during the Progressive Era, public aid to mothers was designed to benefit unmarried and widowed white mothers, such that in 1931, ninety-six percent of the recipients were white while only three percent were Black (p. 115),¹⁰³ setting up patterns of poverty that would later give agencies the license to find Black parents unfit. Later still, federal laws reduced the safety net for poor families while simultaneously

⁹⁹ Roberts cites U.S. DEP’T OF HEALTH & HUM. SERVS., CHILD.’S BUREAU, THE AFCARS REPORT: PRELIMINARY FY 2019 ESTIMATES AS OF JUNE 23, 2020 — NO. 27, at 1 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcarsreport27.pdf> [<https://perma.cc/SG7W-C6RE>]; Gupta-Kagan, *supra* note 66, at 852; Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, PLOS ONE Mar. 2014, at 1, 5.

¹⁰⁰ Pub. L. No. 95-608, 92 Stat. 3069 (codified as amended in scattered sections of 25 U.S.C.).

¹⁰¹ No. 21-376 (U.S. argued Nov. 9, 2022). The Court will decide whether ICWA’s placement preferences — the Act favors placing Indian children with Indian families — unconstitutionally discriminates on the basis of race. Petition for Writ of Certiorari at i, *Brackeen*, No. 21-376. For more on the case, see Amy Howe, *In Challenge to Indian Child Welfare Act, Court Will Weigh the Rights of States and the Role of Race*, SCOTUSBLOG (Nov. 8, 2022, 2:56 PM), <https://www.scotusblog.com/2022/11/in-challenge-to-indian-child-welfare-act-court-will-weigh-the-rights-of-states-and-the-role-of-race> [<https://perma.cc/954Q-9V2Z>]. See also Rebecca Nagle, *The Story of Baby O — And the Case that Could Gut Native Sovereignty*, THE NATION (Nov. 9, 2022), <https://www.thenation.com/article/society/icwa-supreme-court-libretti-custody-case> [<https://perma.cc/5XFR-S3P4>].

¹⁰² Roberts quotes Richard Paul Fuke, *Planters, Apprenticeship, and Forced Labor: The Black Family Under Pressure in Post-Emancipation Maryland*, AGRIC. HIST., Fall, 1988, at 57, 63.

¹⁰³ Roberts cites LAURA BRIGGS, *TAKING CHILDREN: A HISTORY OF AMERICAN TERROR* 31 (2020).

encouraging the removal of children and the termination of parental rights to facilitate adoption (pp. 119–24). In short, there is a long history of separating minority families when it served to benefit whites. At the same time, there is a long history of supporting white families, and of protecting white motherhood. This solicitude even appears in Supreme Court opinions. As but one example, consider *Muller v. Oregon*,¹⁰⁴ in which the Court found constitutional an Oregon statute that limited the workday of women, largely on the ground that protecting women was necessary to protect “the strength and vigor of the race”¹⁰⁵ and the “well-being of the race.”¹⁰⁶ That the Court meant the white race was clear.¹⁰⁷ All of this history is crucial to understanding what Roberts calls the “foster-industrial complex” (p. 25), a multibillion-dollar behemoth¹⁰⁸ that, for financial reasons alone, has become a “well-fed lion” (p. 148), and may be hard to undo (pp. 141–47).¹⁰⁹

Roberts’s real intervention, however, is showing the links between the family welfare system and the criminal system and arguing for abolition as an alternative.¹¹⁰ Roxanne, the Black mother in *The School for Good Mothers*, mentions the phenomenon of “Parenting While Black”

¹⁰⁴ 208 U.S. 412 (1908).

¹⁰⁵ *Id.* at 421.

¹⁰⁶ *Id.* at 422.

¹⁰⁷ For more on race and *Muller v. Oregon*, see Capers, *supra* note 45, at 16–18. See also Khiara M. Bridges, *Muller v. Oregon*, in *CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND THE LAW* 651, 659–62 (Bennett Capers et al. eds., 2022).

¹⁰⁸ Roberts cites one organization that estimates federal, state, and local child welfare expenditures in 2016 totaled \$29.9 billion (p. 142) (citing KRISTINA ROSINSKY & SARAH CATHERINE WILLIAMS, *CHILD WELFARE FINANCING SFY 2016: A SURVEY OF FEDERAL, STATE, AND LOCAL EXPENDITURES* 7 (2018), https://cms.childtrends.org/wp-content/uploads/2018/12/CWFSReportSFY2016_ChildTrends_December2018.pdf [<https://perma.cc/V78D-MJUF>]).

¹⁰⁹ For more on the problem of funding, see Caitlyn Garcia & Cynthia Godsoe, *Divest, Invest, & Mutual Aid*, 12 *COLUM. J. RACE & L.* 601, 609 (2022).

¹¹⁰ Importantly, Roberts began making this connection more than two decades ago in *Shattered Bonds: The Color of Child Welfare*. She wrote:

Spend a day at dependency court in any major city and you will see the unmistakable color of the child welfare system. Dependency court is where judges decide the fate of children who have been taken into state custody because their parents are charged with abusing or neglecting them. Nearly every family in these urban courts is Black. If you came with no preconceptions about the purpose of the child welfare system, *you would have to conclude that it is an institution designed to monitor, regulate, and punish poor Black families.*

ROBERTS, *supra* note 95, at 6 (emphasis added). It is not an exaggeration to say that Roberts has helped a younger generation of scholars to see the connection. See, e.g., S. Lisa Washington, *Essay, Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 *COLUM. L. REV.* 1097, 1103, 1106 (2022); Alexis Karteron, *Family Separation Conditions*, 122 *COLUM. L. REV.* 649, 650 (2022); Garcia & Godsoe, *supra* note 109, at 602–03; Julia Hernandez & Tarek Z. Ismail, *Radical Early Defense Against Family Policing*, 132 *YALE L.J.F.* 659 (2022). Recently, the *Columbia Journal of Race and Law*, together with Columbia Law School, held a symposium to honor Roberts and recognize her influence on the movement to abolish the welfare system. See *The Columbia Journal of Race and Law Announces Its Volume 11 Symposium*, *COLUM. J. RACE & L.* (Feb. 4, 2021), <https://journals.library.columbia.edu/index.php/cjrl/announcement/view/376> [<https://perma.cc/X5A7-HZB3>].

(p. 181). Roberts explores it at length. For Roberts, it is more than coincidence that foster care rates for children are about equal to incarceration rates for adults, and yet most Americans fail to think of the child welfare system — a “form of state violence imposed on oppressed communities” — as “political injustice” (p. 23). When one of the many Black women Roberts interviews says that everyone in her neighborhood “knows someone in the system” (p. 56), or another worries about “catching a case” (p. 170), their language recalls language Black and brown communities use about the criminal system.¹¹¹ Roberts adds: “‘Policing’ is the word that captures best what the system does to America’s most disenfranchised families. It subjects them to surveillance, coercion, and punishment. It is a family-policing system” (p. 24). One could add that just as we prefigure criminal defendants as Black and Blacks as criminals,¹¹² we seem to do something similar when it comes to Blacks and parenting. We prefigure bad parents as Black and Blacks as bad parents. (Though excellent nannies, which again goes to our history of adopting views — even contradictory views — when it benefits whites.)

Roberts goes on to add: “The child welfare system not only resembles the criminal punishment system; it also operates in tight conjunction with police and prisons” (p. 162). Indeed, one of the paradoxes is that in many ways, child protective services agencies are more intrusive than typical policing agencies while also subject to fewer regulations and less judicial oversight. Roberts observes that caseworkers routinely enter homes without ever obtaining a warrant, that they question parents and children without needing to provide *Miranda*¹¹³ warnings, and that they “show up at schools or day care centers to pull children aside and question them without parental permission” (p. 165). For Roberts, this is nothing less than Big Brother everywhere, including in the home.

And of course this entanglement of the child welfare system and policing extends beyond surveillance. “CPS staff not only act like police officers; they also work hand-in-hand with police officers,” sharing information, jointly participating in home visits, and assisting in forcible separations (pp. 191–92). Meanwhile, “[p]arents are accused, investigated, and prosecuted just like defendants in criminal court” (p. 184).

Service plans are akin to probation orders that list requirements and restrictions judges impose on people convicted of crimes. In the criminal context, violation of a single provision lands the offender in prison. In the child welfare system, parents who fail to comply risk having their rights terminated and never seeing their children again (p. 184).

¹¹¹ See, e.g., Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983, 998 (2004) (describing the term “catch[ing] a case” as hip-hop slang for getting arrested).

¹¹² See Jennifer L. Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 877 (2004).

¹¹³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

Having described the child welfare system — which again seems less about welfare and more about policing — Roberts ends *Torn Apart* with a call to arms: we should collectively rise up and abolish child protective services. Echoing many of the persuasive arguments she recently made in the pages of this journal in *Abolition Constitutionalism*,¹¹⁴ she argues that reforms have failed to support families and keep children safe precisely because “the system was established to oppress Black people” (pp. 282–83) and that “[t]hose in power have no interest in fundamentally changing a system that is benefiting them financially and politically, one that continues to serve their interests in disempowering Black communities, reinforcing a white supremacist power structure, and stifling calls for radical social change” (pp. 283–84). As such, Roberts argues for abolishing the system in toto and investing in families and communities to make them safe. She also provides persuasive examples of how this is already happening in some places (pp. 290–92). Indeed, one of the most illuminating parts of her book illustrates a recent occurrence of accidental abolition, with positive results. During the pandemic, child protective services agencies in cities such as New York essentially went on hold (p. 290). And yet there is no evidence to suggest instances of child neglect or abuse went up (p. 291). If anything, the evidence suggests that families were able to stay together and thrive (p. 291).

So are there advantages to reading *The School for Good Mothers* with *Torn Apart*, a fierce polemic and call to arms by one of the country’s leading legal scholars and public intellectuals? I think so. To my mind, the books are in many ways in conversation with each other, especially with respect to how the harm of forced separation is often several magnitudes greater than any assumed harm caused by the parent. But reading them together also points to areas left underexamined and to questions left unanswered.

Each could have gone further. For example, in *The School for Good Mothers*, the reader learns the circumstances that led to Frida’s leaving her child at home — she was exhausted (p. 4); she’d only had a few hours’ sleep the last few nights because her daughter “was in the throes of an ear infection” (p. 2); and she’d simply stepped out to get a coffee (p. 4), then popped into the office because she couldn’t lose her job as child support was barely enough (p. 6). But these details seem to be provided solely to contextualize what follows; they are not a call for more resources. By contrast, one of the central themes of *Torn Apart* is that we have no real social safety net to speak of, and that CPS agencies, notwithstanding the word “Services” in their name, fail to provide even basic services to families. As Roberts notes, it is Orwellian to describe these agencies as “‘serving’ families when the vast majority of families

¹¹⁴ Dorothy E. Roberts, *The Supreme Court, 2018 Term — Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 7–8 (2019).

are ‘served’ against their will. The agency’s ‘service plan’ usually has nothing to do with providing the tangible things families need,” like help making ends meet or childcare (pp. 183–84).

And, while both *The School for Good Mothers* and *Torn Apart* problematize the way communities have been conscripted to watch and police each other — showing the intrusive side of “it takes a village” — *Torn Apart* also emphasizes the positive side of this expression. Roberts emphasizes that Black communities in particular have a long history of watching out for one another, including watching out for the most vulnerable (pp. 292–95). Caring for children was not just the responsibility of birth parents. It was also the responsibility of extended family, of made families, of church groups and local clubs, and of the community as a whole.¹¹⁵ However, rather than providing space for communities to continue to provide care, our current system seems designed to discourage community interventions in favor of state interventions, which too often lead to family separations.

Finally, Roberts’s demand in *Torn Apart* that we tear apart the child welfare system brings into sharp relief the absence of any demand at the end of *The School for Good Mothers*. Having experienced the dysfunction of the child welfare system — and indeed, a yearlong forced schooling on how to be a good mother, complete with a lifelike doll — Frida seems indifferent to disrupting or even challenging the system; her one act of rebellion at the very end of the novel — I won’t spoil it for the reader — is personal rather than political. There is nothing to urge the reader to feel differently. Or, rather, the novel may fuel anxiety about intrusive technologies, but it doesn’t seem to fuel anxiety about the child welfare system writ large. Part of this is likely due to Chan’s goal in writing the book. *The School for Good Mothers* seems meant to be a good read, not an agitation for change. Still, I couldn’t help but wish it had aimed to be both. As I wrote a few years ago:

Real change, after all, often begins with popular culture. If Harriet Beecher Stowe’s *Uncle Tom’s Cabin* could start a great war, if Sinclair Lewis’s *The Jungle* could motivate the public to agitate for food-safety regulations, if George Orwell’s *1984* still prompts us to be vigilant against government control of how we think and speak, if the film *Philadelphia* could change the way Americans think about gay men with AIDS, what might [other artistic works] do?¹¹⁶

One could add to this list Margaret Atwood’s *The Handmaid’s Tale* — the work of fiction *The School for Good Mothers* seems to share the most with — which continues to reverberate politically.

¹¹⁵ See Dorothy E. Roberts, *Black Club Women and Child Welfare: Lessons for Modern Reform*, 32 FLA. ST. U. L. REV. 957, 959 (2005).

¹¹⁶ Bennett Capers, *Criminal Procedure, The Police, and The Wire as Dissent*, 2018 U. CHI. LEGAL F. 65, 85 (2019).

That said, there are areas where *The School for Good Mothers* tells a thicker story than *Torn Apart*. A missed opportunity in *Torn Apart* is its discussion of who is deemed a neglectful parent (pp. 70–82). Roberts observes that the child welfare system “accuses poor parents of neglecting their children for the exact same behavior that is considered perfectly acceptable if wealthier parents engage in it” (p. 70). While middle-class white mothers can join a “free-range-kids movement that seeks to end helicopter-parenting norms,” and a spokeswoman for Let Grow¹¹⁷ can publish an op-ed titled *Why I Let My 9-Year-Old Ride the Subway Alone*¹¹⁸ without repercussions, women of color routinely find themselves ensnared in the child welfare system when they give their kids any free rein at all (p. 71).¹¹⁹ A large part of this is that child welfare workers associate neglect with race, as studies confirm (p. 79),¹²⁰ and as admitted to by workers themselves.¹²¹ I don’t disagree with Roberts’s assessment. I just wish she’d gone further. Put differently, Roberts misses another way that neglect and abuse are classed and racialized — just as we associate bad parenting with Blackness, we seem to associate good parenting with whiteness, even when such parenting could also be categorized as harmful. In other words, behavior we associate with wealth and whiteness routinely escapes negative scrutiny altogether. When this behavior is noticed at all, our default is that, because the parents are white or wealthy, it must be good parenting; this way some parenting is almost by definition exempted from what child protective services consider abusive or neglectful. Allow me to provide a few examples, starting with a line from John Guare’s *Six Degrees of Separation*: “There is a boarding school in Switzerland that takes you at age eighteen months.”¹²² The line is delivered for laughs, but in fact it is not far from the truth. The Collège du Léman, for example, costs about \$94,000 a year and takes children as young as two.¹²³ And yet

¹¹⁷ Let Grow is a nonprofit that provides to parents and teachers “the tools and confidence to raise independent kids” (p. 71). See also *Let Grow Mission and Values*, LET GROW, <https://letgrow.org/about-us> [<https://perma.cc/UHK2-MAJC>].

¹¹⁸ Lenore Skenazy, Opinion, *Why I Let My 9-Year-Old Ride the Subway Alone*, N.Y. SUN (Apr. 1, 2008, 1:48 AM), <https://www.nysun.com/article/opinion-why-i-let-my-9-year-old-ride-subway-alone> [<https://perma.cc/6TH4-F2FC>].

¹¹⁹ The same is true of moderate drug and alcohol use, as Roberts details (p. 73). See also Emma S. Ketteringham, *Some Pro-Pot Parents Blog, Others Lose Their Children*, HUFFPOST (Dec. 12, 2012), https://www.huffpost.com/entry/some-propot-parents-blog_b_1962580 [<https://perma.cc/2M3Q-FUML>].

¹²⁰ Roberts cites as an example Sheila D. Ards et al., *Racialized Perceptions and Child Neglect*, 34 CHILD. & YOUTH SERVS. REV. 1480 (2012).

¹²¹ Andy Newman, *Is N.Y.’s Child Welfare System Racist? Some of Its Own Workers Say Yes.*, N.Y. TIMES (Nov. 23, 2022), <https://www.nytimes.com/2022/11/22/nyregion/nyc-acs-racism-abuse-neglect.html> [<https://perma.cc/XM2A-8YP9>].

¹²² JOHN GUARE, *SIX DEGREES OF SEPARATION* 29 (1990).

¹²³ Dan Williams, *6 Top Swiss Boarding Schools Where Royalty and the Super-Rich Send Their Children — And Pay up to US\$150,000-a-Year in Fees*, S. CHINA MORNING POST: STYLE

our system is set up to *not* see that as child abandonment, let alone neglect. Or turning to wealth, consider the parenting Yale Law Professor Amy Chua touts in her memoir *Battle Hymn of the Tiger Mother*, which explores “how Chinese parents raise such stereotypically successful kids.”¹²⁴ Chua brags:

Here are some things my daughters, Sophia and Louisa, were never allowed to do:

- ♦ attend a sleepover
- ♦ have a playdate
- ♦ be in a school play
- ♦ complain about not being in a school play
- ♦ watch TV or play computer games
- ♦ choose their own extracurricular activities
- ♦ get any grade less than an A
- ♦ not be the #1 student in every subject except gym and drama
- ♦ play any instrument other than the piano or violin
- ♦ not play the piano or violin.¹²⁵

But none of this behavior would be considered abusive or neglectful, at least not by child welfare workers. And of course, it doesn’t have to be as extreme as Chua’s treatment of her children. Notwithstanding evidence that hits to the head cause chronic traumatic encephalopathy (CTE),¹²⁶ it’s hard to imagine CPS categorizing parents who let their kids play football (or soccer or rugby, for that matter) as bad parents. Ditto for parents who berate their children for being the wrong weight. Ditto for parents who disparage their children for not being feminine enough or masculine enough. Or for not having the “right” friends. Ditto. Ditto. Ditto. Because so much of this type of parenting is associated with whiteness or “Asian-ness”, with “middle” America, it escapes scrutiny, though it is arguably far more harmful than actions that subject Black families especially to surveillance and separation.

I mention all this because a close reading of *The School for Good Mothers* seems to offer a more critical take on the race and class lines that divide good parents from bad ones. Throughout the novel Frida frets about how her daughter is faring in her absence. Frida isn’t concerned about abuse or neglect as child protective services would understand it, but rather about harms that CPS would likely not recognize as harms at all because of their source. Frida worries about the “health” choices that are being made by her ex-husband’s new girlfriend,

(Oct. 31, 2019, 2:00 PM), <https://www.scmp.com/magazines/style/luxury/article/3035693/6-top-swiss-boarding-schools-where-royalty-and-super-rich> [<https://perma.cc/CFG5-GW9B>].

¹²⁴ AMY CHUA, *BATTLE HYMN OF THE TIGER MOTHER* 3 (2011).

¹²⁵ *Id.* at 3–4.

¹²⁶ *Study: Hits, Not Concussions, Cause CTE*, B.U. CHOBANIAN & AVEDISIAN SCH. MED. (Jan. 18, 2018), <https://www.bumc.bu.edu/busm/2018/01/18/study-hits-not-concussions-cause-cte> [<https://perma.cc/N7UH-6NED>].

Susanna, a 28-year-old Pilates instructor who is independently wealthy (p. 28), and who almost reads as a stand-in for white women of a certain class. (As one reviewer put it, “Susanna is a demon of perfected domesticity: resplendent in silk peasant dresses, serving homemade gluten-free apple crumble, [and] singing the praises of plant-based diaper cream.”)¹²⁷ And yet it is clear that Susanna’s choices about Harriet’s diet, and the diapers she uses, and everything else, will escape scrutiny simply because of who is doing the defining of what is neglect, and what is not. Students of critical race theory may recognize the critique I’m making here. One of CRT’s central tenets is that “both the procedures and the substances of American law . . . are structured to maintain white privilege”¹²⁸ and to “keep insiders in power.”¹²⁹ Even seemingly neutral and colorblind laws can “further insider privileges along the lines of race, gender, and class while marginalizing and obscuring social, political, and economic inequality.”¹³⁰ The same is true of family law writ large, and more specifically in how we define what behavior constitutes child abuse or neglect.¹³¹ Or rather don’t define it, since abuse and neglect statutes are notoriously vague, enabling the troubling race-based and class-based discretion that benefits those who are privileged (in terms of race, class, education, or other characteristics).¹³² I wish Roberts had explored, or at least acknowledged, this point.

And since this came across my news feed as I was writing this Review, allow me one more example of how “bad” parenting is raced and classed: an article in the *New York Times* about the Norland College in England, where nannies are trained and can expect “to fetch six-figure salaries, looking after the offspring of bankers, royals and celebrities, either working independently or joining a carousel of domestic staff — private tutors, housekeepers, chefs — that serve the globe-trotting elite.”¹³³ Presumably many of the parents who will hire these

¹²⁷ Molly Young, *A Chilling Debut Novel Puts Mothers Under Surveillance and into Parenting Rehab*, N.Y. TIMES (Jan. 11, 2022), <https://www.nytimes.com/2022/01/11/books/review-school-for-good-mothers-jessamine-chan.html> [<https://perma.cc/F9QQ-DKCS>].

¹²⁸ Francisco Valdes et al., *Battles Waged, Won, and Lost: Critical Race Theory at the Turn of the Millennium*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 1 (Francisco Valdes et al. eds., 2002).

¹²⁹ Jasmine B. Gonzales Rose, *Toward a Critical Race Theory of Evidence*, 101 MINN. L. REV. 2243, 2250 (2017) (citing Bernie D. Jones, *Critical Race Theory: New Strategies for Civil Rights in the New Millennium?*, 18 HARV. BLACKLETTER L.J. 1, 59 (2002)).

¹³⁰ Capers, *supra* note 81, at 25; see also Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1, 2–3 (1991); Cheryl I. Harris, *Equal Treatment and the Reproduction of Inequality*, 69 FORDHAM L. REV. 1753, 1758, 1766–67 (2001).

¹³¹ Cf. Charisa Smith, *From Empathy Gap to Reparations: An Analysis of Caregiving, Criminalization, and Family Empowerment*, 90 FORDHAM L. REV. 2621, 2634 (2022).

¹³² For more on the vagueness of child abuse and neglect statutes, see Cynthia Godsoe & Carissa Hessick, *Vague Neglect* (n.d.) (manuscript at 1–2) (on file with the Harvard Law School Library).

¹³³ Saskia Solomon, *Where Did the Royals Find Prince George’s Nanny?*, N.Y. TIMES (Dec. 12, 2022), <https://www.nytimes.com/2022/12/02/style/where-did-the-royals-find-prince-georges-nanny.html> [<https://perma.cc/R5R8-2WCP>].

nannies are not caring for their children themselves, instead outsourcing primary care to paid help, and yet this escapes scrutiny or the moniker of bad parenting. And this has everything to do with race and class.

There is one more thing I should say about this point. To be clear, I am not suggesting that the answer is more policing of white families, or of wealthy families. Already, too many children are being separated; too often this creates more harm than good. Rather, I am suggesting something simpler: the state must recognize that its definitions of good and bad parenting are themselves socially constructed. Those definitions are raced, and they are classed. Indeed, the state’s raced and classed approach to good parenting enables a type of “epistemic injustice,” to borrow from Professor Lisa Washington’s framing.¹³⁴ This small recognition alone can result in a significant change in family separations and in family policing more broadly. It may even help close the “empathy gap” that Professor Charisa Smith has recently written about.¹³⁵

Finally, both books left me with questions. For *Torn Apart*, one issue Roberts omits in connecting the child welfare system to white supremacy is an awkward datapoint: many of the caseworkers involved in tearing Black families apart are in fact Black themselves.¹³⁶ In a way, the child welfare workers are like the Black criminal justice actors in Professor James Forman’s *Locking Up Our Own*,¹³⁷ except in *Torn Apart*, Roberts sidesteps the issue of why Black caseworkers participate in a racially subordinating system. One possible explanation can be found in a recent draft report of a racial equity audit of the New York City Administration for Children’s Services (ACS). In the draft report, Black and brown caseworkers describe a system where “white parents are presumed to be innocent . . . while Black and Brown parents are treated at every juncture as if they are not competent parents capable of providing acceptable care to their children.”¹³⁸ They describe their agency as a “predatory system that specifically targets Black and Brown parents.”¹³⁹ But they also describe their own relative powerlessness in the system. They describe “an organizational hierarchy that privileges white workers with senior leadership in central administration” and a culture that “primarily focuses on insulating . . . leadership.”¹⁴⁰ The

¹³⁴ See generally Washington, *supra* note 110.

¹³⁵ See generally Smith, *supra* note 131.

¹³⁶ See, e.g., ANTWUAN WALLACE ET AL., NAT’L INNOVATION SERV., DRAFT: NEW YORK CITY ADMINISTRATION FOR CHILDREN’S SERVICES RACIAL EQUITY PARTICIPATORY ACTION RESEARCH & SYSTEM AUDIT: FINDINGS AND OPPORTUNITIES 6 (2020), <https://int.nyt.com/data/documenttools/draft-report-of-nyc-administration-for-children-s-services-racial-equity-survey/fc3e7ced070e17a4/full.pdf> [<https://perma.cc/EV89-X6HR>] (“Black and Brown employees predominate frontline workers.”).

¹³⁷ See generally JAMES FORMAN JR., *LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA* (2017).

¹³⁸ WALLACE ET AL., *supra* note 136, at 15.

¹³⁹ *Id.* at 14.

¹⁴⁰ *Id.* at 6.

caseworkers, in turn, find themselves carrying out the views of the agency to “protect themselves from retribution in the agency.”¹⁴¹

I also wish Roberts had said more about the role lawyers for families play now, and the role they could play, issues that Professor Cynthia Godsoe questions in her perceptive review of *Torn Apart*.¹⁴² As Godsoe observes, “defense lawyers are too often let off the hook when examining their own complicity in these systems, even though these lawyers may silence clients, sort them into those who are ‘worthy’ and ‘unworthy,’ and ensure their compliant processing through an unjust system.”¹⁴³ And I wish Roberts had said more about the foster parents, and how they fit into her racial argument. To the extent separated children make it to foster homes, the vast majority of Black children end up in Black foster homes.¹⁴⁴ Of course it is possible that placing Black children with Black foster parents furthers white supremacy, but I wish Roberts had explained how.

And these are just some of the questions. Since Roberts’s book is a call to arms, I wonder how she would address the concern that her emphasis on Black families might in fact undermine her goal of abolition. While this might seem a strange observation, consider the work of the social psychologist Professor Jennifer Eberhardt, who has found that whites open to criminal justice reform become less receptive when race is made salient.¹⁴⁵ Beyond this, the Afrofuturist in me wonders if *The School for Good Mothers* and *Torn Apart* fall short by failing to recognize the good surveillance technology can do, at least as an intermediate step.¹⁴⁶ The same technological surveillance that dogs Frida and the women in Roberts’s book could be harnessed, from the bottom up, as an alternative to the forced separation of families. Just one example: to the extent ACS is worried about future neglect, or drug use in the home, or abandonment, installing surveillance cameras in the home is likely to be far less harmful than actual separation. This would not be ideal, of

¹⁴¹ *Id.* at 21.

¹⁴² Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. REV. (forthcoming 2023) (on file with the Harvard Law School Library) (reviewing *Torn Apart* and showing how lawyers for parents and children “(albeit perhaps unwittingly) participate in the system’s silencing and dehumanizing logic” (manuscript at 4)).

¹⁴³ *Id.* (manuscript at 4) (footnote omitted).

¹⁴⁴ One study looking at a random sample of 36,191 children in care and placed with nonrelatives noted that nearly three-quarters of the children were in a racially matched foster home. See Catherine A. LaBrenz et al., *Racial Matching in Foster Care Placements and Subsequent Placement Stability: A National Study*, 39 CHILD & ADOLESCENT SOC. WORK J. 583, 583, 585, 588 (2022). It should also be noted that approximately thirty-five percent of foster children are placed with a relative, which also suggests they are more likely to be of the same race. See CHILD.’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERVS., THE AFCARS REPORT 1 (2022), <https://www.acf.hhs.gov/sites/default/files/documents/cb/afcars-report-29.pdf> [<https://perma.cc/GD88-UGBE>].

¹⁴⁵ See, e.g., Rebecca C. Hetey & Jennifer L. Eberhardt, *Racial Disparities in Incarceration Increase Acceptance of Punitive Policies*, 25 PSYCH. SCI. 1949, 1950 (2014).

¹⁴⁶ See generally Capers, *supra* note 81. As I’ve written, Afrofuturism embraces technology, “especially technology that can disrupt hierarchies and contribute a public good.” *Id.* at 44.

course, and I am aware of the concerns over digital surveillance and “e-carceration.”¹⁴⁷ Still, it is less harmful than separation.¹⁴⁸

In the end though, the question that lingered with me the longest has to do with Roberts’s call for abolition. Maybe because it is a question I ponder myself when I think about abolishing the police, or about my own suggestion that we abolish prosecutors.¹⁴⁹ It seems easy to imagine abolishing something that is broken, and indeed that is the argument abolitionists make. But at the same time, we also argue that the system is serving its goal — perpetuating inequality, a hierarchy of citizenship, a hierarchy of bodies — quite well. If Professor Paul Butler, another CRT scholar, is right when he says, “the system is working the way it is supposed to,”¹⁵⁰ that what we think of as bugs are in fact features, how do we abolish that? Maybe this is why the question lingers with me. Because I, for my own work, sincerely want to know the answer.

CONCLUSION

In the end, as much as I admire *Torn Apart*, and enjoyed reading *The School for Good Mothers*, it is fiction in general that I want to end with. In part because, at the end of the day, it is fiction that remains my first love. If one were to ask me what ten books I’d take to a desert island, I’d list ten works of fiction, not legal books. Indeed, if someone gave me the option of taking anything to a desert island — as if one plans for those things — works of literature would be on the top of my list.

But fiction also speaks to me as a legal scholar, because I am convinced there is much to be gained when we pair works of fiction with the law. Perhaps ironically, it is fiction that reminds me that on the other side of the rigidity of the law, on the other side of its violence,¹⁵¹ is a person. After reading *Torn Apart*, I came away knowing how far-reaching the family policing system is in this country, and how raced it is. But in terms of knowing what it feels like to be an overwhelmed single parent and to lose a child and to be caught in the system and to be misunderstood and have things stacked against you? For that, I needed Frida. I suspect many readers do too. In fact, many lawyers do too.

So I want to end not with a final criticism of *The School for Good Mothers* or *Torn Apart*, but with praise for the editors of the *Harvard Law Review* for making space for fiction. For that, we are all the beneficiaries.

¹⁴⁷ See generally Chaz Arnett, *From Decarceration to E-carceration*, 41 CARDOZO L. REV. 641 (2019).

¹⁴⁸ Of course, in an ideal Afrofuturist world, wealth inequality will have long been eliminated, as well as extreme capitalism. Capers, *supra* note 81, at 39.

¹⁴⁹ See generally I. Bennett Capers, *Against Prosecutors*, 105 CORNELL L. REV. 1561 (2020).

¹⁵⁰ Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1456 (2016).

¹⁵¹ See Robert M. Cover, *Essay, Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986) (“Legal interpretation takes place in a field of pain and death.”).