

# Debt and Policing: The Case to Abolish Credit Surveillance

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## ABSTRACT

*This paper serves as an indictment of contemporary credit monitoring, reporting, and scoring, which is the lifeblood of the debt-based extractive economy and ultimately, the prison-industrial complex. Grounded in history, this paper demonstrates that credit surveillance and debt police the economic participation and physical bodies of Black people, Indigenous people, and immigrants. Credit reporting's protection of capitalism, the economic backbone of settler-colonialism, is at the heart of government mass surveillance programs, which through lucrative private-public partnerships facilitate wealth accumulation predicated on the banishment of Black people, Indigenous people, and immigrants. For this reason, abolishing the prison-industrial complex requires the abolition of credit surveillance and survival debt. Racial justice requires social provisioning to push back against systems of policing rather than increase access to credit systems that entrench surveillance. From this perspective, this paper urges a shift beyond access-to-credit reform to the solidarity economy and community-controlled finance grounded in an abolitionist ethic.*

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#### I. INTRODUCTION

We shall push our trading houses and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands.<sup>1</sup>

—Thomas Jefferson, 1803

The amount of stress I’ve been put under has weighed upon me so much that I’ve lost a good chunk of my hair, I’ve gained weight, I barely sleep, I have suicidal thoughts just to escape the debt. The stress isn’t just on me, it’s on my family. Not only do I feel like a complete failure, I’ve been taken care of like I’m a child again. For over a year I battled not killing myself because every day I would be called ten to fifteen times about my debt and every time, I was pressured into paying some form of monetary value even though I didn’t have the money to spend.<sup>2</sup>

—Debtor, 2016

The United States is built on debt as a form of punishment and control. In its earliest years, the United States government facilitated predatory lending

1. STUART BANNER, HOW THE INDIANS LOST THEIR LAND: LAW AND POWER ON THE FRONTIER 143 (2005) (quoting Thomas Jefferson).

2. *In re Villalba v. ITT ESI*, No. 16-07207-JMC-7A Ex. 24 at 4, Bankr. S.D. Ind. (2016). The choice to describe loan borrowers as debtors is an intentional one that is derived from the work of debtor union organizers seeking to reclaim the vocabulary of “debtor” from its long-held shameful connotation. See HANNAH APPEL ET AL., THE POWER OF DEBT: IDENTITY AND COLLECTIVE ACTION IN THE AGE OF FINANCE, 4 (2019) (quoting J. Paul Getty); see generally STRIKE DEBT/OCCUPY WALL STREET, THE DEBT RESISTORS’ OPERATIONS MANUAL, THE DEBT COLLECTIVE (2012), <https://strikedebt.org/The-Debt-Resistors-Operations-Manual.pdf>.

schemes designed to steal land from Indigenous nations.<sup>3</sup> The soil was then worked by enslaved Black people, who white colonizers viewed as owing them an “absolute, infinite, irredeemable” debt for being spared their lives.<sup>4</sup> This debt incurred for mere survival, among other racist fictions, served as the foundation of chattel slavery. The end of chattel slavery gave rise to debt peonage, debtor prisons, and redlining, all of which relied on government manipulation of the debt economy to lock Black people in cages and out of homes.<sup>5</sup> These policies have gone through multiple iterations but persist to this day.

There is nothing more American than debt, and yet there is nothing more American than the condemnation of individual debtors.<sup>6</sup> In *Debt: The First 5,000 Years*, David Graeber writes:

The very fact that we don’t know what debt is, the very flexibility of the concept, is the basis of its power. If history shows anything, it is that there’s no better way to justify relations founded on violence, to make such relations seem moral, than by reframing them in the language of debt—above all, because it immediately makes it seem that it’s the victim who’s doing something wrong.<sup>7</sup>

Debt has long been the economic force that mediates the relationships between people and power.<sup>8</sup> Government debt to fund war and corporate debt to produce wealth for the wealthy have been integral to the U.S. economy throughout its history. At the same time, individual survival debt—healthcare debt, welfare debt, punishment bureaucracy debt, education debt, housing debt, and consumer debt incurred to meet basic needs—has been the justification for austerity, land takings, and incarceration.<sup>9</sup> J. Paul Getty is thought to have said, “if you owe the bank \$100,000 the bank owns you. If you owe the bank \$100 million, you own the bank.”<sup>10</sup>

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3. See BANNER, *supra* note 1, at 143.

4. See David Graeber, *Debt: The First 5,000 Years* 7 (2009) (on file at the Anarchist Library).

5. See generally Ta-Nehisi Coates, *The Case for Reparations*, Atl. (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>; Whitney Bennis and Blake Strode, *Debtors’ Prison in 21<sup>st</sup>-Century America*, Atl. (Feb. 23, 2016), <https://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/>.

6. See DAVID GRAEBER, *DEBT: THE FIRST 5,000 YEARS* 16 (2011) (on condemnation of debtors); Appel et al., *supra* note 2, at 1018 (on the rise of U.S. household debt in the 20<sup>th</sup> Century); Jackson Lears, *The American Way of Debt*, N.Y. Times Mag. (June 11, 2006), [https://www.nytimes.com/2006/06/11/magazine/11wwln\\_lede.html?smid=url-share](https://www.nytimes.com/2006/06/11/magazine/11wwln_lede.html?smid=url-share) (on the tradition of debt in the U.S.).

7. GRAEBER, *supra* note 6, at 5.

8. See K-Sue Park, *Money, Mortgages, and the Conquest of America*, 41 L. & Soc. Inquiry 1006, 10251032 (2016) (explaining how debt facilitated Indigenous dispossession and has continued to define dispossession through mortgage foreclosure).

9. See STRIKE DEBT/OCCUPY WALL STREET, *supra* note 2, at 41–42, 52, 61, 103 (on the relationship between survival debt and austerity, incarceration, and land takings); Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About “Criminal Justice Reform,”* 128 Yale L.J. 848, 848–849 (2019) (defining the punishment bureaucracy and “human caging”).

10. APPEL ET AL., *supra* note 2, at 4 (quoting J. Paul Getty).

Although debtor control is at the root of the U.S. settler-colonial project, individual indebtedness is often considered a poor reflection of morality and character.<sup>11</sup> Personal shame for debt is codified in credit reporting, which exists to facilitate the debt economy. Credit reporting, at its antebellum inception, explicitly sought to evaluate the character of potential debtors based on race, national origin, religion, gender, sexuality, and reputation, facilitating surveillance-based capitalism for a “society of strangers.”<sup>12</sup> Credit bureaus ultimately developed such deep surveillance mechanisms that their information formed the foundation of the Federal Bureau of Investigation’s (FBI) policing apparatus.<sup>13</sup>

Credit reporting’s protection of capitalism, the economic backbone of settler-colonialism, is at the heart of government mass surveillance programs, which through lucrative private-public partnerships facilitate wealth accumulation predicated on the banishment of Black people, Indigenous people, and immigrants.<sup>14</sup> This generates the core of the prison-industrial complex, “a system of social control unparalleled in world history” rooted in slavery, which keeps over 2.3 million disproportionately Black and Latinx people in the U.S. behind bars.<sup>15</sup> For this reason, abolishing the prison-industrial complex, which is “the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems,” requires the abolition of credit surveillance and survival debt.<sup>16</sup>

This paper serves as an indictment of contemporary credit monitoring, reporting, and scoring, which is the lifeblood of the debt-based extractive economy and

11. See Josh Lauer, *Creditworthy: A History of Consumer Surveillance and Financial Identity in America*, COLUM. UNIV. PRESS 19 (2017), <https://www.jstor.org/stable/10.7312/laue16808.1>; see generally *The Dig Podcast: Rethinking Migration with Aziz Rana*, Jacobin Mag. (Jan. 9, 2019), <https://www.thedigradio.com/podcast/rethinking-migration-with-aziz-rana/> (discussing the relationship between citizenship and capitalism in the settler-colonial United States).

12. See Lauer, *supra* note 11, at 20 (on the factors considered by nineteenth-century credit bureaus); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 11 (2007) (on Michel Foucault’s “society of strangers”); Sean Trainor, *The Long, Twisted History of Your Credit Score*, Time Mag. (July 22, 2015), <https://time.com/3961676/history-credit-scores/> (on nineteenth-century discriminatory criteria used by credit bureaus).

13. See Lauer, *supra* note 11, at 179.

14. Note that race, especially as it intersects with immigration status and national origin, is not the only identity marker that has shaped historical marginalization by the debt economy. Gender identity, sexuality, ability, marital status, religion, and the ways in which these identities intersect are all key to understanding the devastation of the debt economy. I hope to be able to expand on this further in the future. For now, race, as it intersects with class, is particularly salient because of the history of racial capitalism in the U.S.

15. MICHELLE ALEXANDER, *THE NEW JIM CROW* 8 (2010) (the U.S. penal system is “a system of social control unparalleled in world history;” also see generally for how the U.S. penal system is rooted in slavery); *Mass Incarceration*, AM. C.L. UNION (accessed Dec. 7, 2021), <https://www.aclu.org/issues/smart-justice/mass-incarceration> (over 2.3 million people behind bars in the U.S.); see generally ASHLEY NELLIS, *THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITIES IN STATE PRISONS* (2021), <https://www.sentencingproject.org/wp-content/uploads/2016/06/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf> (on the racial and ethnic disparities in incarceration).

16. See *What is the PIC? What is Abolition?*, CRITICAL RESISTANCE (accessed Dec. 7, 2020), <http://criticalresistance.org/about/not-so-common-language/> (defining the prison-industrial complex).

ultimately, the prison-industrial complex. Grounded in history, this paper demonstrates that credit surveillance and debt police the economic participation and physical bodies of Black people, Indigenous people, and immigrants. From this perspective, this paper urges a shift beyond the “magical thinking” of access-to-credit reform to community-controlled finance grounded in an abolitionist ethic.<sup>17</sup>

## II. POLICING AND CREDIT SURVEILLANCE: TWIN HISTORICAL DEVELOPMENTS

The insidious role of credit surveillance in the prison-industrial complex derives from the twin developments of public-sector policing and private-sector credit surveillance. The separation of public and private in the traditional understanding of the rise of state policing functions and private economic transactions masks the extent to which the two have always sought to reinforce each other. This holds true in the very core of monetary theory, the inception of U.S. police powers and governance, the development of credit, and the rise of modern cooperation between the state and financial institutions.

### A. *Debt: A System for State Control*

Individual credit is usually conceived of as an invention and tool of the private sector.<sup>18</sup> However, credit, even from its start, has been tangled in public law and state power. Credit, in its simplest terms, is the prediction that borrowers will repay debt based on the collective belief in the enforceability of the valuation of currency. The value of money is driven by state systems of power.<sup>19</sup> Currency was first devised to allow for the expansion of empires through the force of military powers.<sup>20</sup> To fund the expansion of military presence, empires devised official currency that was demanded back as tax payments by residents of conquered territories.<sup>21</sup> The collection of taxes in state-issued currency, backed by the threat of force, enforced the value of money.<sup>22</sup> This system continues to be a mechanism by which states enforce the value of money, and by extension, the validity of credit and debt.<sup>23</sup>

The mutually-reinforcing relationship between currency and state interest in force is such that it should be no surprise that debt is a tool of state control. As demonstrated below, U.S. state power originated from debt, which continued to function as a mechanism of state-control over Black people, Indigenous people,

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17. Dylan Rodriguez, *Reformism Isn't Liberation, It's Counterinsurgency*, Medium (Oct. 20, 2020), <https://level.medium.com/reformism-isnt-liberation-it-s-counterinsurgency-7ea0a1ce11eb> (on the magical thinking of reform); see also Allegra McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1207–1211 (2015) (on the abolitionist ethic).

18. See Geoff Gilbert, *Who Plans Our Political Economy? A Solidarity Economy Vision for Democratic Political Economy Planning*, 12 UNBOUND 102, 133 (2019).

19. See *id.* at 135.

20. See *id.* (relying on GRAEBER, *supra* note 6, at 46–52).

21. See *id.*

22. See *id.*

23. See *id.*

and immigrants throughout the nineteenth century. Debt was the primary tool by which the U.S. acquired its land and labor, and created a system of racialized subordination to retain political control.<sup>24</sup> In her book, *Carceral Capitalism*, Jackie Wang notes that “[n]ative dispossession occurs through the expropriation of land, while black dispossession is characterized by enslavement and bodily dispossession,” both of which were supported by the logic of debt.<sup>25</sup>

Early colonial settlers relied on the creation of Indigenous debts to acquire land.<sup>26</sup> Settlers depleted the land that Indigenous people resided on, artificially manufacturing Indigenous dependency on settler trade to meet basic needs.<sup>27</sup> This allowed settlers to create coercive contracts with Indigenous people that resulted in their inevitable debts, which were settled by the theft of land set forth as collateral.<sup>28</sup> The U.S. government later encouraged and sanctioned these predatory takings of Indigenous lands by requiring congressional approval of all Indigenous land sales to establish state monopoly over origination of land ownership.<sup>29</sup>

The U.S. commitment to a debt-based political economy bolstered the institution of slavery and its progeny by justifying “legal efforts to strip black people of their humanity . . . to justify the extraction of profit.”<sup>30</sup> U.S. laws condoning slavery codified the parameters of recognized debt: enslaved Black people were understood as owing their white enslavers an irredeemable debt, but enslaved Black people were barred from owning property such that they could not be owed debts.<sup>31</sup> Laws “ensured that human beings could be bought and sold at will to pay debts . . . and assur[ed] that everything of value black people managed to accrue would add to the wealth of those who enslaved them.”<sup>32</sup> After the end of chattel slavery, convict leasing relied on the same debt logic to exploit the labor of Black people.<sup>33</sup> The state-

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24. See BANNER, *supra* note 1, at 143; Graeber, *supra* note 4, at 7.

25. JACKIE WANG, *CARCERAL CAPITALISM* 59 (2018).

26. See BANNER, *supra* note 1, at 143.

27. See COLIN CALLOWAY, *THE WORLD TURNED UPSIDE DOWN: INDIAN VOICES FROM EARLY AMERICA* 78-87 (1994).

28. See *id.*

29. See *id.*; see also *Johnson v. M’Intosh*, 21 U.S. 543, 562 (1823) (holding that sovereignty gives the U.S. the right to all land within its borders, and that Indigenous people merely have a “right of occupancy,” which is divorced from title. Indigenous people therefore lacked the legal recognition to convey land to private actors without U.S. government approval); Roxanne Dunbar-Ortiz, *The International Indigenous Peoples’ Movement: A Site of Anti-Racist Struggle Against Capitalism, in RACISM AFTER APARTHEID: CHALLENGES FOR MARXISM AND ANTI-RACISM* 30, 32 (2019), <https://www.jstor.org/stable/10.18772/22019033061.6>.

30. Nikole Hannah-Jones, *What Is Owed*, N.Y. TIMES (June 30, 2020), <https://www.nytimes.com/interactive/2020/06/24/magazine/reparations-slavery.html>.

31. *Id.*; see Graeber, *supra* note 4, at 7; see generally Mary Elliott and Jazmine Hughes, *Four hundred years after enslaved Africans were first brought to Virginia, most Americans still don’t know the full story of slavery*, N.Y. TIMES (Aug. 19, 2019), <https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html> (on the process of racial differentiation in debts of servitude owed and the rise of slavery).

32. Hannah-Jones, *supra* note 30.

33. See Abbye Atkinson, *Borrowing Equality*, 120 COLUM. L. REV. 1403, 1455 (2020).



manufactured debts “owed” by Black people were constructed to be so deep so as to justify no proportional relationship between the criminalized act and the labor coerced, such that debt persisted as a tool for racial exploitation.<sup>34</sup>

### B. *The Rise of Credit Bureaus*

The U.S. solidified its commitment to a debt-based political economy system in the nineteenth century. This era also gave rise to credit bureaus, the first organized intelligence-gathering sites in the U.S.<sup>35</sup> The first credit bureaus became powerful private actors, which over time, produced a template for mass espionage for public actors.<sup>36</sup> Tappan Mercantile Agency, which later evolved into the notorious Dun & Bradstreet, was established in the early nineteenth century with the explicit purpose of aggressively enforcing Christian morality as a condition of borrowing by engaging in surveillance.<sup>37</sup> The Mercantile Agency’s reach was extensive: in 1844, the Mercantile Agency had just over 300 correspondents.<sup>38</sup> Just thirty years later, the Mercantile Agency grew to over 10,000 correspondents, who produced thousands of volumes of credit reports.<sup>39</sup> Being in the good graces of the Mercantile Agency was critical not only for access to credit, but also for public prestige. In fact, Presidents Lincoln, Grant, Cleveland, and McKinley all came from the ranks of the Mercantile Agency correspondents.<sup>40</sup> Credit bureaus, including the Mercantile Agency, copiously gathered information that served to police private lives and deny access to consumer goods, financial products, employment, and housing, facilitating discrimination based on race, gender, sexuality, national origin, and class.<sup>41</sup> This narrative information was recorded as objective fact, providing a neutral façade for systemically exclusionary economic practices.<sup>42</sup>

Importantly, the rise of credit bureaus was rooted in, not opposed to, the U.S. values system. Given that debt was at the heart of the U.S. national project, the expansion of credit reporting to facilitate debt transactions fueled the national economy. The rise of systematic credit monitoring by Tappan Mercantile Agency, Bradstreet, and their successors facilitated far-reaching trade that no longer required personal relationships.<sup>43</sup> This expansion was both praised for

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34. *See id.*

35. *See* Lauer, *supra* note 11, at 9–11; Trainor, *supra* note 12.

36. *See* Sarah Jeong, *Credit Bureaus Were the NSA of the 19<sup>th</sup> Century*, ATL. (Apr. 21, 2016), <https://www.theatlantic.com/technology/archive/2016/04/mass-surveillance-was-invented-by-credit-bureaus/479226/>.

37. *See* Lewis Tappan, PBS (accessed Dec. 9, 2021), [http://www.pbs.org/wgbh/theymadeamerica/whomade/tappan\\_hi.html](http://www.pbs.org/wgbh/theymadeamerica/whomade/tappan_hi.html).

38. *See* Jeong, *supra* note 36.

39. *See id.*

40. *See* PBS, *supra* note 37.

41. *See* Trainor, *supra* note 12.

42. *See* Kenneth Lipartito, *The Narrative and the Algorithm: Genres of Credit Reporting from the Nineteenth Century to Today* 10–12 (Jan. 6, 2011) (unpublished manuscript presented at Harvard Business School conference, <https://ssrn.com/abstract=1736283>).

43. James H. Madison, *The Evolution of Commercial Credit Reporting Agencies in Nineteenth-Century America*, 48 BUS. HIST. REV. 164, 168 (1974).

revolutionizing financial services and indicted for developing “an organized system of espionage, which, centered in New York, extend[ed] its ramifications to every city, village, and school district in the Union.”<sup>44</sup>

The surveillance practices of credit bureaus became exponentially more damaging through collusion between public- and private-sector policing. Public-private surveillance partnerships joined debt-based exploitation, financial banishment, and physical policing into a unified system of control. Examining the rise of this schema helps us understand our current iteration of contemporary credit surveillance.

### C. *The Rise of Public-Private Partnerships*

The FBI began information-sharing relationships with credit bureaus during World War I, shortly after its establishment in 1908, for the explicit purpose of quashing anti-capitalist movements.<sup>45</sup> At that time, credit bureaus’ information repositories dwarfed those of the FBI. J. Edgar Hoover’s notorious fingerprinting surveillance program, which created a biometric database of over eleven million Americans by World War II, paled in comparison to the over fifty million personal records credit bureaus held during that same time.<sup>46</sup> In recognition of the mutual surveillance goals of both credit bureaus and law enforcement, in 1937, the Department of Justice entered a formal, monetized agreement to share files with the National Consumer Credit Reporting System.<sup>47</sup>

Cooperation between law enforcement and credit bureaus did not end there. Throughout the 1960s, credit bureaus around the country set aside desks for FBI and police officers who regularly retrieved information from credit bureaus.<sup>48</sup> Notably, this took place during the height of COINTELPRO (“counter-intelligence program”), J. Edgar Hoover’s landmark program aimed at quashing social movements of the left.<sup>49</sup> COINTELPRO was initially designed to target groups that explicitly espoused opposition to capitalism, including the Communist Party USA and the Socialist Workers Party.<sup>50</sup> The FBI’s insistence that these groups posed a threat to U.S. national security once again reinforced the notion that capitalism and its instruments, including credit and debt, were at the heart of the United States’ police power.

COINTELPRO’s targets also included the Puerto Rican independence movement, Indigenous movements, the Nation of Islam, the Black Panthers, the

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44. *Id.* at 169 (quoting journalist George G. Foster, 1854).

45. See Lauer, *supra* note 11, at 179; see also *A Brief History: The Nation Calls, 1908–1923*, FBI.GOV (last visited Dec. 9, 2020), <https://www.fbi.gov/history/brief-history>.

46. See Lauer, *supra* note 11, at 271.

47. See *id.* at 179.

48. See *id.* at 180.

49. See Dia Kayyali, *The History of Surveillance and the Black Community*, ELEC. FRONTIER FOUND., <https://www.eff.org/deeplinks/2014/02/history-surveillance-and-black-community> (last visited Dec. 9, 2021).

50. Branko Marcetic, *The FBI’s Secret War*, Jacobin Mag. (Aug. 2016), <https://www.jacobinmag.com/2016/08/fbi-cointelpro-new-left-panthers-muslim-surveillance>.



Southern Christian Leadership Conference (SCLC) and Rev. Dr. Martin Luther King, and the Congress of Racial Equality (CORE).<sup>51</sup> These groups were all dedicated to the liberation of Black people, Indigenous people, and colonized people and, as a result, were understood as a threat to the U.S. political order. The FBI sought to destroy these groups by using surveillance to stir conflict. The FBI accessed and exploited private information, including personal financial records that would have been easily accessible to credit bureaus, of group leaders to create strife.<sup>52</sup> The close collaboration between law enforcement and private credit bureaus allowed the FBI access to expansive information about the intimate lives of citizens, which could easily be used to undermine the work and livelihood of those considered dissidents.

Government partnerships with credit bureaus extended beyond law enforcement. The Federal Housing Administration (FHA) relied heavily on credit bureaus to facilitate redlining,<sup>53</sup> allowing the FHA to facilitate and profit from the state-sanctioned banishment of Black families from housing and intergenerational wealth. This systemic denial of home ownership and wealth based on demographic information disseminated by credit bureaus kept generations trapped in neighborhoods disproportionately subject to policing and incarceration, without access to education, healthcare, transportation, and work.<sup>54</sup>

#### *D. Challenging Public-Private Surveillance*

Throughout the twentieth century, credit bureaus eagerly shared information with the FBI and other U.S. government agencies, often in the name of patriotism.<sup>55</sup> This is indicative not only of the collusion between private and public surveillance but also of the degree to which the U.S. national order relies on debt and control. The civil rights movement challenged that political order and urged the creation of a new political order grounded in Black liberation, the end of institutional racism, and economic justice. As a result, the dangers of public-private credit surveillance partnerships came into political consciousness, and eventually sparked a wave of regulatory reforms.

The tireless work of civil rights activists challenged racially and economically marginalizing financial practices facilitated by credit bureaus. Subsets of both the Civil Rights Movement and Women's Rights Movement focused on access to the conventional market as a critical site of democratic inclusion.<sup>56</sup>

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51. *See id.*

52. *See id.*

53. *See* Richard Rothstein, *From Ferguson to Baltimore: The Fruits of Government-Sponsored Segregation*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 205, 207 (2015). Redlining was the Federal Housing Administration's policy of refusing to insure home mortgages for Black families, as well as any homes in the vicinity of Black families.

54. *See* Coates, *supra* note 5.

55. *See* Lauer, *supra* note 11, at 179.

56. *See* Atkinson, *supra* note 33, at 1414.

Access to credit, or the ability to purchase money in the form of loans, was understood as a defining feature of equality.<sup>57</sup>

The history of equality movements and their relationship to economic justice shaped the policy landscape that followed soon after. One of the first organizations to advocate for access to credit was the National Organization of Women (NOW), co-founded by civil rights activist Rev. Dr. Pauli Murray.<sup>58</sup> However, over time, Murray found that NOW was coopted into primarily serving the interests of professional white women while sidelining women of color.<sup>59</sup> This shift was reflected in the access to credit legislation that followed.

The National Welfare Rights Organization (NWRO) also played a critical role in advocating for economic justice, especially for Black women, including access to credit.<sup>60</sup> The NWRO's roots were in the Barry Farm, D.C. tenants' council, and the Band of Angels, led by Lillian Wright and Etta Mae Horn.<sup>61</sup> Wright and Horn partnered with George Wiley, a member of the Congress for Racial Equality to formally create the NWRO.<sup>62</sup> From there, the NWRO grew from a local Barry Farm organizing base to a national organization of approximately 25,000 people credited with introducing economic justice concerns into the Civil Rights Movement.<sup>63</sup> Through direct actions that set the stage for Rev. Dr. Martin Luther King's Poor People's Campaign, the NWRO advocated for both access to welfare and credit.<sup>64</sup>

During that same period, the Johnson administration established the Kerner Commission to investigate the origins of Civil Rights Movement uprisings.<sup>65</sup> The Kerner Commission latched on to their finding that economic injustice and exclusion from the mainstream credit market were a major concern of the Civil Rights Movement and made that the priority for forthcoming policy reform.<sup>66</sup> The Kerner Commission's decision to elevate economic concerns over other major demands of the Civil Rights Movement created the conditions for access to credit reform that failed to address racial justice concerns.

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57. *Id.* at 1419.

58. *Id.* at 1424 (on NOW's leadership role in raising access to credit as a gender justice issue).

59. Kathryn Schulz, *The Many Lives of Pauli Murray*, NEW YORKER (Apr. 17, 2017), <https://www.newyorker.com/magazine/2017/04/17/the-many-lives-of-pauli-murray>.

60. See ANNE FLEMING, CITY OF DEBTORS: A CENTURY OF FRINGE FINANCE 213 (2018); Felicia Kornbluh, *To Fulfill Their "Rightly Needs": Consumerism and the National Welfare Rights Movement*, 69 *Radical Hist. Rev.* 77, 82 (1997).

61. See Sarah Shoenfeld, *The History and Evolution of Anacostia's Barry Farm*, D.C. POLICY CENTER, <https://www.dcpolicycenter.org/publications/barry-farm-anacostia-history/> (last visited Dec. 9, 2021).

62. See Marya McQuirter, *2 September 1968 & Remembering 1st National Welfare Rights Convention*, DC1968 PROJECT (Sept. 3, 2018), <https://www.dc1968project.com/blog/2018/9/3/2-september-1968-remembering-1st-national-elfare-rights-convention>.

63. See Shoenfeld, *supra* note 61.

64. See *id.*

65. See Atkinson, *supra* note 33, at 1420–21.

66. See *id.* at 1421.

### *E. Introduction of Regulation*

Following the Civil Rights Movement, Congress passed a series of federal reforms that purported to address the harms of credit surveillance. The reforms extended critical rights to consumers and banned discriminatory provisions that had long kept Black people banished from economic participation. However, the reforms were merely reforms: they established a regulatory regime to make access to the debt- and surveillance-based market “fair” rather than address debt and surveillance as a root of race-based marginalization.

Congress began to examine the activities of credit bureaus and their collusion with law enforcement in the late 1960’s. During that time, policymakers became concerned with the lack of oversight over credit bureaus that could use new digital technology to easily aggregate and permanently store personal information.<sup>67</sup> In response, the Fair Credit Reporting Act (FCRA) created a regulatory regime designed to protect consumer privacy by curbing credit reporting abuses. FCRA required that credit bureaus make personal files accessible to consumers, created a dispute process, mandated the expungement of data on race, sexuality, and disability, compelled credit bureaus to delete negative reported information after a certain period of time, and limited access to credit reports to parties with “a legitimate business need for the information in connection with a business transaction with the consumer.”<sup>68</sup>

While FCRA’s consumer protections represented a shift away from the unregulated behavior of credit bureaus that characterized over half of the twentieth century, they failed to address the historic perils of credit surveillance. FCRA implemented safeguards to manage which data could be reported and to whom but did little to reign in the longstanding surveillance apparatus of credit bureaus. It did not change the debt-based nature of the U.S. political economy, and as such, did little to curtail the need for credit bureaus.

In addition to FCRA’s regulatory regime, Congress passed a series of laws to increase fair access to the debt market. The 1968 Fair Housing Act (FHA) implemented key anti-discrimination provisions in mortgage lending, which were further extended to lending generally by the Equal Credit Opportunity Act (ECOA).<sup>69</sup> However, Congress’ ambivalence about extending equal credit to Black people was reflected even in the process of passing ECOA, which first only extended equal borrowing rights to women and only two years later protected borrowers from racial discrimination in borrowing.<sup>70</sup> Shortly afterward, Congress passed the Community Reinvestment Act (CRA), which effectively mandated that mainstream financial institutions extend lending to Black borrowers.<sup>71</sup>

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67. See Trainor, *supra* note 12.

68. See *id.*; Lauer, *supra* note 11, at 261 (quoting the Fair Credit Reporting Act).

69. See Fair Housing Act, 42 U.S.C.A. § 3604 (1988) (originally passed in 1968); Mikella Hurley and Julius Adebayo, *Credit Scoring in the Era of Big Data*, 18 YALE J. L. & TECH. 148, 190 (2016) (on the key provisions of ECOA).

70. See Atkinson, *supra* note 33, at 1430.

71. See Appel et al., *supra* note 2, at 14.

By increasing access to the debt market without radically curtailing credit reporting, the FHA, ECOA, and CRA gave license to engage in subprime lending and other predatory inclusion practices.<sup>72</sup> However, Congress did so exclusively by subverting the language of civil rights by bifurcating the twin concepts of credit and debt.<sup>73</sup> In her article, *Borrowing Equality*, Abbye Atkinson writes that:

Although, as an essential matter, Congress could have reasonably passed the Equal *Debt* Opportunity Act instead of the Equal *Credit* Opportunity Act, the classification of democratized financial obligation as “credit” in the first instance has at least two important consequences. First, the classification is politically expedient because it permits regulators to draw consumers’ eyes to the shiny front door and away from the worrisome state of the foundation, to government officials’ political benefit. Second, focusing on the reverie of “credit” while keeping “debt” as a mere afterthought draws marginalized people into the dream of financed equality while conveniently situating the resulting lack of any meaningful social change on them as well.<sup>74</sup>

The bifurcation of debt and credit not only failed to meaningfully include Black people who had historically been excluded from mainstream capital markets as Atkinson indicates, but also provided cover for exploitative predatory lending practices. The explosion of credit participation opened the floodgates for the rise of subprime lending. This predatory inclusion—racially exploitative proliferation of deregulated debt products—by mainstream financial institutions only augmented demand for credit surveillance, amplifying the power of credit bureaus.

#### *F. Financialization of the Welfare State*

The neoliberal order that developed in the 1970’s ushered in the contemporary credit reporting and surveillance landscape. Though new regulation sought to diminish the power of credit bureaus, the overall trend towards financialization only increased their utility. Neoliberal leaders viewed people, relationships, and society in financial terms, promoting deregulated finance as a solution to social problems.<sup>75</sup> Although neoliberal theories champion small-government deregulation, neoliberal practices rely heavily on government institutions.<sup>76</sup>

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72. See KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP 6 (2019) (discussion of predatory inclusion as HUD’s housing policy beginning in the 1970s); *see id.* at 14.

73. *See* Atkinson, *supra* note 33, at 1446.

74. *See id.* at 1459.

75. *See* Samuel Aber, *Neoliberalism: An LPE Reading List and Introduction*, LPE Project, 5–7 (2020), <https://lpeproject.org/wp-content/uploads/2020/07/Neoliberalism-Primer.pdf>; APPEL ET AL., *supra* note 2, at 13.

76. *See* David Singh Grewal and Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 9 (2014).

Consequentially, predatory inclusion became a cornerstone of government welfare policy.<sup>77</sup>

The neoliberal approach to welfare champions “access to credit,” or the right to be a debtor, as a financial answer to social problems steeped in race-based economic injustice. This approach shifted the burden of social provision from the state to individuals. When wages stagnated in the 1970’s, Black people were disproportionately harmed.<sup>78</sup> As a response, the government, under the guise of inclusion, deregulated credit, shifting the burden of institutional financial failure to individuals.<sup>79</sup> Soon after, the Reagan administration implemented austerity policies that slashed public benefits, forcing families to take on more debt.<sup>80</sup> This continued under the Clinton administration’s “welfare-to-work” agenda that pushed people off welfare and into survival debt to supplement sub-living wages and to access higher education.<sup>81</sup> The perverse neoliberal representation of capitalism, a system of control and exclusion, as a system of freedom and inclusion, remains the life-threatening logic of social provision today.<sup>82</sup>

The replacement of publicly funded social programs with debt-based provisioning was a political response as well as an economic strategy. Debt was explicitly used as a tool of repression against political dissidents.<sup>83</sup> For example, during his tenure as Governor of California, Reagan, in response to student uprisings against the Vietnam War, issued a ten percent funding cut to the University of California system, forcing students to pay newly instituted tuition.<sup>84</sup> Reagan’s decision to abdicate government responsibility for higher education funding undermined growing Black, Indigenous, and immigrant political power by systemically barring Black, Indigenous, and immigrant students from accessing the university system by saddling them with debt, which remains the case today.<sup>85</sup>

The resurgence of debt as a tool of repression was especially striking in the criminal punishment system. The Civil Rights Movement uprisings challenged the well-established U.S. political order rooted in racial subordination. The political establishment, threatened by the growing power of political dissidents, sought to maintain the status quo by bolstering the increasingly retributive criminal

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77. See, e.g., TAYLOR, *supra* note 72, at 3–4 (discussion of predatory inclusion as HUD’s housing policy beginning in the 1970s).

78. See ANGELA HANKS ET AL., SYSTEMIC INEQUALITY: HOW AMERICA’S STRUCTURAL RACISM HELPED CREATE THE BLACK-WHITE WEALTH GAP 17 (2018), <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/> (explaining that Black people were most harshly impacted by wage stagnation).

79. Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1138 (2019).

80. *Id.* at 1140–42.

81. *Id.* at 1140–44.

82. See GRAEBER, *supra* note 6, at 381 (characterizing capitalism as a system of power and exclusion).

83. See, e.g., Amy Czulada, *Debt is a Tool of Oppression*, THE HILL (May 15, 2021), <https://thehill.com/opinion/finance/553643-debt-is-a-tool-of-oppression>.

84. *See id.*

85. *See id.*

punishment system.<sup>86</sup> The implementation of punitive policies, including truth in sentencing, mandatory minimums, and three strikes, drove the rise of mass incarceration, which was especially geared at punishing Black people.<sup>87</sup>

Mass incarceration brought with it the explosion of punishment debt resulting from bail, fines, and fees.<sup>88</sup> The expanding use of the punishment system as a response to social problems strained state and local budgets.<sup>89</sup> Jurisdictions across the U.S. responded by imposing excessive bail, fines, and fees, shifting the burden of punishment from the state to the individual.<sup>90</sup> The debt incurred by individuals to pay for their involvement in the criminal punishment system financed expenses both within and outside of the criminal punishment system, while also bolstering the role of debt as a system of control that operates in tandem with policing.<sup>91</sup>

The expansion of survival debt as a response to social problems only bolstered the credit reporting and surveillance industry. Neoliberal policy provides free reign for existing racial and economic inequalities to reproduce, and “is therefore perfectly compatible with and often committed to, racial exploitation, discrimination, and “traditional” conservative views about gender and family structure.”<sup>92</sup> Credit reporting, under the pretext of increasing digitalization and algorithmic neutrality, amplifies neoliberalism’s exacerbation of racialized oppression. It supplies a scientific management rationalization for subprime financial products, making it more expensive for marginalized people to access money.<sup>93</sup> This perpetuates negative credit reporting, keeping marginalized people locked out of homes, jobs, access to transportation, healthcare, and education, and locked into systems of state control.

### III. PUBLIC-PRIVATE PARTNERSHIPS REDUX

In the wake of neoliberalism, the credit reporting industry not only consolidated its power as the facilitator of debt-based welfare policy, but also reinvented its role as a private apparatus of policing bureaucracies. The contemporary landscape of credit reporting and surveillance has seen the proliferation of data collection by private corporations unbound by public regulations for the purpose of policing. This reality is the product of increased consolidation and algorithmic standardization of credit reporting, the coerced production of “alternative data,” and the deregulation of private surveillance for public-sector use.

86. Karin D. Martin et al., *Shackled to Debt: Criminal Justice Financial Obligations and the Barriers to Re-Entry They Create*, 4 EXEC. SESSION ON CMTY. CORR. 1, 3–4 (Jan. 2017).

87. *Id.* at 3.

88. *Id.* at 4–5; see also Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors’ Prisons*, 75 MD. L. REV. 486, 508 (2016).

89. See Sobol, *supra* note 88, at 509 (explaining that increasing incarceration rates strain state and local budgets).

90. *Id.*

91. *Id.* at 509 (explaining that criminal system fines and fees help finance government spending within and outside of the criminal system).

92. Aber, *supra* note 75, at 7.

93. See STRIKE DEBT/OCCUPY WALL STREET, *supra* note 2, at 59.



### A. Consolidation of Credit Bureaus and the Rise of Credit Scoring

The public scrutiny that credit bureaus faced during the rise of FCRA did little to deter them from consolidating their power. Under the reign of neoliberalism, people, not corporations, became the subjects of heightened policing. Deregulation of the finance industry allowed major credit bureaus to consolidate under new names, leading to a speedy recovery from legislation intended to curtail their power.<sup>94</sup>

The rise of computing allowed credit bureaus to centralize their information repositories, making full individual financial portraits easily accessible. The consolidation of credit bureaus into three major companies (now known as Equifax, Experian, and TransUnion), all of which retained centralized, national databases, created the conditions for the rise of credit scores. Fair, Isaac, and Company created an industry-standard credit-scoring algorithm, the FICO score, which purported to assess the financial precarity of individuals.<sup>95</sup>

Credit scoring gave the private surveillance industry new wind, creating a metric by which people could easily understand themselves as financial beings, wherein creditworthiness is a measure of worthiness more generally, a key to financialization of the welfare state.<sup>96</sup> The algorithmic standardization of creditworthiness became a black-box proxy for character that would follow individuals everywhere. Credit bureaus, now full data brokerages, maintain scores including “medication adherence score, health risk score, consumer profitability score, job security score, collection and recovery score, frailty score, energy people meter score. . . youth delinquency score, fraud score, casino gaming propensity score,” all of which fall outside of FCRA protections.<sup>97</sup> The Strike Debt/Occupy Wall Street collective explains that:

Having a credit score is like having a tattoo of a barcode on your forehead, and the tattoo artist is like a consumer reporting agency (CRA). It’s actually perverse—we all agree to be watched, located, defined, classified and evaluated. And if we don’t? Financial banishment—we’re thrown to the credit wolves and loan sharks.<sup>98</sup>

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94. See Trainor, *supra* note 12.

95. See *id.*; Tamara K. Nopper, *Digital Character in “The Scored Society”: FICO, Social Networks, and Competing Measures of Creditworthiness*, in *Captivating Technology: Race, Carceral Technoscience, and Liberatory Imagination in Everyday Life* 170, 171 (Ruha Benjamin ed., 2019).

96. See Lauer, *supra* note 11, at 16 (explaining the rise of credit scores as a “vital personal statistic”); see also Susan K. Urahn, et al., *The Complex Story of American Debt*, PEW CHARITABLE TRS. 1, 8 (July 2015) (explaining that debt and creditworthiness has become a measure of general social judgment, where “although most Americans consider debt a necessity in their own lives, they view it as a negative force in the lives of others”), [https://www.pewtrusts.org/~media/assets/2015/07/reach-of-debt-report\\_artfinal.pdf](https://www.pewtrusts.org/~media/assets/2015/07/reach-of-debt-report_artfinal.pdf).

97. Bernard E. Harcourt, *EXPOSED: DESIRE AND DISOBEDIENCE IN THE DIGITAL AGE* 205 (2015) (quoting Pam Dixon & Robert Gellman, *The Scoring of America: How Secret Consumer Scores Threaten Your Privacy and Your Future*, WORLD PRIVACY FORUM (Apr. 2, 2014), [http://www.worldprivacyforum.org/wp-content/uploads/2014/04/WPF\\_Scoring\\_of\\_America\\_April2014\\_fs.pdf](http://www.worldprivacyforum.org/wp-content/uploads/2014/04/WPF_Scoring_of_America_April2014_fs.pdf)).

98. STRIKE DEBT/OCCUPY WALL STREET, *supra* note 2, at 3.

The state-reinforced policy of letting opaque credit scores, not personhood, determine access to housing, transportation, healthcare, employment, and money itself allows credit to continue to serve as a policing mechanism that keeps people locked into conditions rooted in the United States' history of white supremacy.<sup>99</sup>

### B. *Alternative Data*

The reign of credit visibility has banished the “credit invisible,” the 20% of Americans, disproportionately Black, Latinx, and immigrants, deemed unscorable due to (often coerced) lack of participation in the mainstream debt economy.<sup>100</sup> Given the financialization of welfare, credit invisibility forces a cycle of exclusion from necessary economic resources, housing, transportation, and telecommunication.<sup>101</sup> The U.S. neoliberal order again answered this social problem with further financial deregulation that gave rise to the fintech sector.

The fintech sector consists of financial institutions that engage in credit scoring using “alternative data”—that is, data unreportable under FCRA—under the guise of generously serving the credit invisible and economically underserved, who are overwhelmingly Black and Latinx.<sup>102</sup> This data includes records of bank account transactions, rental and utility payments, subprime credit and payday loan history, educational and occupational attainment, social media usage, friends and family network information, and web browser history, all of which reflect back discriminatory conditions.<sup>103</sup> Fintech companies, like credit bureaus, often gather data without knowing consent.<sup>104</sup> Ultimately, the data gathered, riddled with proxies for race, is used to determine who can access money at what cost, further entrenching racial disparities in access to wealth.<sup>105</sup>

99. See generally Chi Chi Wu, *Past Imperfect: How Credit Scores and Other Analytics “Bake In” and Perpetuate Past Discrimination*, NAT’L CONSUMER L. CTR. 1, 2 (May 2016), [https://www.nclc.org/images/pdf/credit\\_discrimination/Past\\_Imperfect050616.pdf](https://www.nclc.org/images/pdf/credit_discrimination/Past_Imperfect050616.pdf).

100. See Tamara K. Nopper, *Alternative Data and the Future of Credit Scoring*, DATA FOR PROGRESS 1, 3 (August 2020), <https://filesforprogress.org/pdfs/alternative-data-future-credit-scoring.pdf> (providing that 20% of people in the U.S., disproportionately Black and Latinx, are credit invisible); see also Angel Padilla & Alicia Atkinson, *The Use (and Overuse) of Credit History*, NAT’L IMMIGR. LAW CTR. 1, 2 (August 2014), <https://www.nilc.org/wp-content/uploads/2015/11/Credit-Use-and-Overuse-NILC-CFED-2014-08.pdf> (on immigrant credit invisibility).

101. *Examining the Use of Alt. Data in Underwriting and Credit Scoring to Expand Access to Credit: Hearing Before the H. Comm. on Fin. Serv. Task Force on Fin. Tech.* 116th Cong. 3 (2019) (statement of Chi Chi Wu, Att’y, Nat’l Consumer L. Ctr.).

102. See Nopper, *supra* note 95, at 180.

103. See Nopper, *supra* note 100, at 6.

104. See *id.* at 8–9.

105. See, e.g., RELMAN COLFAX PLLC, FAIR LENDING MONITORSHIP OF UPSTART NETWORK’S LENDING MODEL 4 (Apr. 14, 2021), [https://www.relmanlaw.com/media/cases/1088\\_Upstart%20Initial%20Report%20-%20Final.pdf](https://www.relmanlaw.com/media/cases/1088_Upstart%20Initial%20Report%20-%20Final.pdf) (“The opacity of automated credit decision-making means that where discrimination is occurring, it can be harder for consumers to detect, and therefore harder to challenge. The sheer number of variables used in some AI/ML algorithms increases the risk that variables that proxy for protected class status will be included, and even absent proxies, facially neutral models can exacerbate disparate adverse to historically disadvantaged groups.”).

The rise of fintech is firmly the product of bipartisan government support. Both the Obama and Trump administrations supported deregulation of the fintech industry under the guise of increasing access to credit.<sup>106</sup> Richard Cordray, the former head of the Consumer Financial Protection Bureau (CFPB), explained that “alternative data from unconventional sources may help consumers who are stuck outside the system build a credit history to access mainstream credit sources.”<sup>107</sup> Former CFPB Deputy Director Raj Date himself serves on the boards of a number of fintech companies, such as Prosper Marketplace and Better, and has wholeheartedly endorsed their work removing barriers to borrowing.<sup>108</sup> Vice President Kamala Harris has even called to amend FCRA to include what is now considered alternative data in credit reporting and scoring in order to increase access to the mainstream debt economy.<sup>109</sup> Government support for use of alternative data in credit reporting has given fintech companies the green light to keep engaging in predatory inclusion, now with the addition of unfettered personal data collection.

#### IV. STATE SURVEILLANCE AND ENTRAPMENT

The rise of credit scoring and alternative data revitalized systems of control that keep Black people, Indigenous people, and immigrants locked out of housing, jobs, and economic opportunities and into the subprime market, as was the case over the course of the twentieth century. Edwin McDonald, a member of the Debt Collective, a debtor union fighting against illegitimate survival debt, shared the following on his experience with entrapment caused by predatory lending:

I shouldn't have to pay for something that should be a human right to me . . . I shouldn't have to pay and if I can't pay, why are you tacking on that interest and leaving me in debt to the point where I can't even find a job because of my credit score? I can't even buy a house. I can't even live in an apartment. What the hell is credit? Why should that be a deciding factor on how I live or how my life ends up?<sup>110</sup>

McDonald further explains that the debt-economy has shut him out of well-resourced neighborhoods and instead locked him into his highly-surveilled area

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106. Alyssa Katz, *The Fintech Trap*, INTERCEPT (Aug. 30, 2020), <https://theintercept.com/2020/08/30/fintech-debt-personal-loans-economic-crisis/>.

107. Steven Melendez, *Now wanted by big credit bureaus like Equifax: Your 'alternative' data*, FAST CO. (Apr. 6, 2019), <https://www.fastcompany.com/90318224/now-wanted-by-equifax-and-other-credit-bureaus-your-alternative-data>.

108. See Katz, *supra* note 106; Raj Date, FENWAY SUMMER, <http://fenwaysummer.com/raj-date> (last visited Dec. 9, 2021).

109. Jacob Passy, *Kamala Harris Says Credit Scores Should Include Rent, Cell Phones, and Utilities*, MARKETWATCH (July 13, 2019), <https://www.marketwatch.com/story/kamala-harris-says-credit-scores-should-include-rent-cell-phones-and-utilities-2019-07-09>.

110. THE DEBT COLLECTIVE, *The Power Report: Member Profiles*, <https://powerreport.debtcollective.org/profiles/edwin-mcdonald/> (last visited Dec. 9, 2021).

where “the police are still . . . either killing me or locking me up.”<sup>111</sup> Credit monitoring facilitates this racialized dispossession, too.

Edwin McDonald resides in Detroit, which was ground zero of the mass-collapse of the housing market and recession in 2008. Detroit was particularly harmed by the 2008 recession because of the confluence of industry disinvestment from the city and white flight, making the city a prime environment for predatory, subprime lending to thrive.<sup>112</sup> Detroit’s financial peril in the wake of the 2008 financial crisis then provided an opportunity for financial institutions to extend risky loans to the municipality itself.<sup>113</sup> When Detroit was subsequently forced to declare bankruptcy, the city’s credit rating tanked, jeopardizing its ability to finance public spending.<sup>114</sup>

#### A. The “Expository Society”

The symbiotic relationship between credit bureaus and law enforcement continued post-FCRA, with only the slight modification that law enforcement became required to produce court-ordered warrants for information from credit bureaus.<sup>115</sup> However, this safeguard was also diluted under the guise of “national security,” particularly after 9/11.<sup>116</sup> In the age of alternative data, effectively all personal information can qualify as financial information, providing national surveillance bureaucracies with easy-to-access full portraits of individuals as both physical and financialized beings.<sup>117</sup> Bernard Harcourt explains that the melding of the private and public intelligence-gathering spheres has created an “expository society” in which personal information is stored in “one gigantic trove of data, one colossal data market, that allows corporations and governments to identify and cajole, to stimulate our consumption and shape our desires, to manipulate us politically, to watch, surveil, detect, predict, and for some, punish.”<sup>118</sup>

The expository society thrives on its pervasive invisibility. Peter Thiel, who founded Palantir, which holds expansive contracts with U.S. policing bureaucracies to facilitate the aggregation of data from brokerages, told Bloomberg News that “civil libertarians ought to embrace Palantir, because data mining is less repressive than the ‘crazy abuses and draconian policies’ proposed after September 11.”<sup>119</sup> In other words, the invisibility of the ever-present surveillance state provides the policing efficacy of traditional intelligence without the tangible presence that obviates its incredible privacy violations and repressive goals of a

111. *Id.*

112. WANG, *supra* note 25, at 56.

113. *Id.*

114. *Id.*

115. *See* Lauer, *supra* note 11, at 180.

116. *See* discussion *infra* part IV(d).

117. *See* discussion *supra* part III.

118. HARCOURT, *supra* note 97, at 187.

119. Peter Waldman, Lizette Chapman, and Jordan Robertson, *Palantir Knows Everything About You*, BLOOMBERG BUSINESSWEEK (Apr. 19, 2018), <https://www.bloomberg.com/features/2018-palantir-peter-thiel/>.

police state. The invisible but unavoidable participation in this system by merely engaging in financial transactions, operating a motor vehicle, holding a lease, and participating in online activity puts Black people and immigrants at heightened risk as targets of the police state.

*B. Credit Surveillance and Banishment Based on National Origin*

Immigrants are among the most severely punished by the expository society. Multimillion-dollar contracts between Immigration Customs Enforcement (ICE) and data brokerages, including Thomson Reuters' CLEAR and LexisNexis, utilize credit bureau data to facilitate deportation and family separation.<sup>120</sup> For example, ICE relies on personal utility data listed in Equifax credit reports retrieved from CLEAR to track and arrest immigrants who might otherwise have a limited traditional credit history.<sup>121</sup> For example, ICE relies on personal utility data listed in Equifax credit reports retrieved from CLEAR to track and arrest immigrants who might otherwise have a limited traditional credit history. Similarly, LexisNexis' most recent contract with the Department of Homeland Security (DHS) specifies that LexisNexis will provide DHS with access to billions of easily-aggregable personal records, including credit history, bankruptcy records, cell phone data, and license plate images, all of which can facilitate investigations of civil immigration violations, deportations, and surveillance of immigration activists.<sup>122</sup> Jacinta Gonzalez, senior campaign organizer at Mijente, a grassroots movement for Latinx and Chicanx people who seek racial, economic, gender and climate justice, explained that,

You might be in a city where your local politician is trying to tell you, 'Don't worry, you're welcome here,' but then ICE can get your address from a data broker and go directly to your house and try to deport you . . . Your state might be down to give you a driver's license, but that information might get into the hands of a data broker. You might feel like you're in a life or death situation and have to go to the hospital, but you're concerned that if you can't pay your bill a collection agency is going to share that information with ICE.<sup>123</sup>

This rule requires that USCIS officers review immigrants' credit reports and scores to predict whether they might become a "public charge" in the future,

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120. McKenzie Funk, *How Ice Picks Its Targets in the Surveillance Age*, N.Y. TIMES (Oct. 2, 2019), <https://www.nytimes.com/2019/10/02/magazine/ice-surveillance-deportation.html>; Sam Biddle, *LexisNexis to Provide Giant Database to ICE*, THE INTERCEPT (Apr. 2, 2021), <https://theintercept.com/2021/04/02/ice-database-surveillance-lexisnexis/>.

121. See Drew Harwell, *ICE investigators used a private utility database covering millions to pursue immigration violations*, WASH. POST (Feb. 26, 2021), <https://www.washingtonpost.com/technology/2021/02/26/ice-private-utility-data/>; Nina Wang, *Is your utility company telling ICE where you live?*, CTR. ON PRIV. & TECH. AT GEO. L. (Feb. 26, 2021), <https://medium.com/center-on-privacy-technology/is-your-utility-company-telling-ice-where-you-live-ae1c7d187eff>.

122. See Biddle, *supra* note 120.

123. See *id.* (quoting Jacinta Gonzalez).

which is grounds for denying legal status.<sup>124</sup> Under this regime, participating in the debt economy to survive puts immigrants at risk of deportation or losing access to legal status, marrying economic and political banishment structures.

### C. Data Brokerages and National Policing Databases

Generally, participation in the debt economy puts Black people and immigrants at disproportionate risk of policing. In the age of data brokerage, financial institutions, debt collectors, and credit bureaus that rob individuals, families, and communities of their mobility also contributes to the policing of their physical bodies. The FBI's National Security Branch Analysis Center (NSAC) maintains an amalgamation of databases to use for policing, including hundreds of millions of records supplied by data brokers including Accurant and Acxiom, which also service debt collectors and fintech companies.<sup>125</sup> Under this schema, the racist financial systems that disproportionately target Black people and immigrants with predatory debt collection and coerced participation in the "alternative" financial sector directly bolster policing systems rooted in slavery and designed to protect white supremacy.<sup>126</sup>

Notably, data brokerages facilitate policing and dispossession of marginalized people by seemingly more benign government institutions as well, including the Social Security Administration (SSA). SSA subscribes to Accurant, one of LexisNexis' government-facing products, to surveil individuals receiving Supplemental Security Income (SSI).<sup>127</sup> Data supplied by Accurant is riddled with errors, often misattributing assets and financial transactions, which has resulted in wrongful termination of benefits for disabled people who rely on SSI.<sup>128</sup> Here, the insidious partnership between government agencies and credit surveillance yet again banishes marginalized people from systems of provisioning, physically jeopardizing their livelihood.

The peril of inevitably entering data brokerage databases for Black people and immigrants is immense. Palantir's analytical database amalgamates troves of personal data acquired from data brokerages with government contracts to create expansive digital dossiers of people who are not accused of a crime without any

124. 8 C.F.R. § 212.22 (2019).

125. See Ryan Singel, *Newly Declassified Files Detail Massive FBI Data-Mining Project*, *Wired* (Sept. 23, 2009), <https://www.wired.com/2009/09/fbi-nsac/>; see also *Financial Services Marketing*, ACXIOM, <https://www.acxiom.com/how-we-can-help/financial-services/> (last visited Dec. 9, 2021); *Accurant for Collections*, LEXISNEXIS RISK SOLS., <https://www.accurint.com/collections.html> (last visited Dec. 9, 2021).

126. See Alec Karakatsanis, *Why "Crime" Isn't the Question and Police Aren't the Answer*, *CURRENT AFFS.* (Aug. 10, 2020), <https://www.currentaffairs.org/2020/08/why-crime-isnt-the-question-and-police-arent-the-answer>; Derecka Purnell, *How I Became a Police Abolitionist*, *ATL.* (July 6, 2020), <https://www.theatlantic.com/ideas/archive/2020/07/how-i-became-police-abolitionist/613540/>.

127. See Sarah Mancini, Kate Lang & Chi Chi Wu, *Mismatched and Mistaken: How the Use of an Inaccurate Private Database Results in SSI Recipients Unjustly Losing Benefits*, *NAT'L CONSUMER L. CTR.* (Apr. 2021), [https://www.nclc.org/images/pdf/credit\\_reports/RptMismatchedFINAL041421.pdf](https://www.nclc.org/images/pdf/credit_reports/RptMismatchedFINAL041421.pdf).

128. *Id.*



due process.<sup>129</sup> Palantir is used by a wide range of policing bureaucracies, including DHS, FBI, CDC, and local police departments to map social networks and determine who may be loosely adjacent to criminalized activity.<sup>130</sup> In this way, technology enabled by credit surveillance reinforces discriminatory policing patterns by further surveilling people who are more likely to be in a community with people targeted by the police based on their race.

Credit surveillance, driven by the debt economy, not only polices people who may be predisposed to be accused of engaging in criminalized behavior; it also is used as a mechanism of control to engage people in policing practices themselves. For example, the FBI informant program often preys on people in debt, determined by systems of credit surveillance, to engage them in FBI operations that may be dangerous. One strategy law enforcement uses to lure informants is the promise of debt forgiveness.<sup>131</sup> In this way, credit surveillance is again used to entrap people based on their survival debt to become involved in systems of policing. As Hamid Khan, co-leader of the Stop LAPD Spying Coalition, elucidates, “surveillance is basically the tip of the policing knife . . . . When you look at policing and the history of policing, from our vantage point, it’s not about public safety when it comes to nonwhite folks. It’s about the content to cause harm.”<sup>132</sup>

#### D. The PATRIOT Act and Financial Surveillance

Similarly, introduction of the PATRIOT Act provided legislative cover to further solidify relationships between financial institutions and national surveillance bureaucracies. Under the PATRIOT Act’s amendments to the Bank Secrecy Act, financial institutions are required to file suspicious activity reports (SARs) with the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCEN) when individuals conduct banking transactions of over \$5,000 that appear subjectively suspect.<sup>133</sup> Depositing more money than a bank teller might expect one to have based on perceived occupation is enough to constitute

129. See Michael Steinberger, *Does Palantir See Too Much?*, NYTIMES (Oct. 21, 2020), <https://www.nytimes.com/interactive/2020/10/21/magazine/palantir-alex-karp.html>.

130. Mara Hvistendahl, *How the LAPD and Palantir Use Data to Justify Racist Policing*, INTERCEPT (Jan. 30, 2021), <https://theintercept.com/2021/01/30/lapd-palantir-data-driven-policing/> (discussing LAPD use of Palantir technologies to engage in predictive policing). See also *Social Media Surveillance by Homeland Security Investigations: A Threat to Immigrant Communities and Free Expression*, BRENNAN CTR. FOR JUST. (Nov. 15, 2019), <https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-homeland-security-investigations-threat> (highlighting Palantir’s technology that enables “social network analysis”); Matt Burns, *Leaked Palantir Doc Reveals Uses, Specific Functions And Key Clients*, TECH CRUNCH (Jan. 11, 2015), <https://techcrunch.com/2015/01/11/leaked-palantir-doc-reveals-uses-specific-functions-and-key-clients/> (on Palantir’s government clients).

131. Paul Harris, *Fake terror plots, paid informants: the tactics of FBI ‘entrapment’ questioned*, THE GUARDIAN (Nov. 16, 2011), <https://www.theguardian.com/world/2011/nov/16/fbi-entrapment-fake-terror-plots>.

132. See Hvistendahl, *supra* note 130.

133. 12 C.F.R. § 21.11(c)(2); see Maria A. de Dios, *The Sixth Pillar of Anti-Money Laundering Compliance: Balancing Effective Enforcement with Financial Privacy*, 10 BROOK. J. CORP. FIN. & COM. L. 495, 506 (2016).

suspicion for a SAR filing, aggravating the racial discrimination already baked into surveillance.<sup>134</sup> Financial institutions may also file SARs voluntarily and are incentivized to submit as much information as possible in filings.<sup>135</sup> Once a SAR is filed with FinCEN, companies like Palantir, operating under government contracts, aggregates the information which is then entered with the FBI's NSAC databases and may be forwarded to any other governmental agency that requests it for terrorism investigations.<sup>136</sup>

The melding of public and private information through FinCEN's regulations are particularly harmful to Muslim people. SAR practices came under fire for infringement on individual privacy prior to 9/11 but were vigorously enforced post-9/11 amidst growing anti-Muslim sentiment.<sup>137</sup> Michael German, a former FBI special agent and security expert, explains that after 9/11, "the SAR program became more about mass surveillance than identifying discrete transactions to disrupt money launderers."<sup>138</sup> Civil rights advocates have expressed grave concern over how individual financial data, especially as collected by fintech companies, are being shared with law enforcement through FinCEN.<sup>139</sup> This concern is warranted: a 2017 investigation found that FinCEN data had been used to "repeatedly and systematically violate[] domestic surveillance laws by snooping on the private financial records of US citizens,"<sup>140</sup> and FinCEN processed twelve million SAR reports between 2011 and 2017 alone.<sup>141</sup> At the same time, FinCEN took no action to force banks to shut down money laundering, despite its explicit mission.<sup>142</sup> This reveals that our financial system is working exactly as it was designed: to use debt and surveillance to control Black people, Indigenous people, and immigrants in the service of capitalism.

134. See Cheryl R. Lee, *Constitutional Cash: Are Banks Guilty of Racial Profiling in Implementing the United States Patriot Act?*, 11 MICH. J. RACE & L. 557, 571–74 (2006).

135. See *FinCEN Suspicious Activity Report (FinCEN SAR) Electronic Filing Instructions*, FIN. CRIMES ENF'T NETWORK (Oct. 2012), <https://www.fincen.gov/sites/default/files/shared/FinCEN%20SAR%20ElectronicFilingInstructions-%20Stand%20Alone%20doc.pdf>.

136. See de Dios, *supra* note 133, at 498 (2016); Lee, *supra* note 134, at 571; NAT'L SEC. ANALYSIS CTR., *DECLASSIFIED AND UNTITLED WHITE PAPER* (2006), [https://www.wired.com/images\\_blogs/threatlevel/2009/09/nsac\\_data\\_sets.pdf](https://www.wired.com/images_blogs/threatlevel/2009/09/nsac_data_sets.pdf).

137. See de Dios, *supra* note 133, at 514; Lee, *supra* note 134, at 558; Telephone Interview with Raúl Carrillo, Pol'y Couns., Demand Progress Educ. Fund (Nov. 12, 2020) (in his personal capacity).

138. Jason Leopold et al., *The Fincen Files*, BUZZFEED (Sept. 20, 2020), <https://www.buzzfeednews.com/article/jasonleopold/fincen-files-financial-scandal-criminal-networks> (quoting Michael German).

139. See Letter from Ams. for Fin. Reform Educ. Fund & Demand Progress Educ. Fund to Robert E. Feldman, Exec. Sec'y, Fed. Deposit Ins. Corp., 14–17 (Sept. 22, 2020), <https://www.fdic.gov/regulations/laws/federal/2020/2020-request-for-info-standard-setting-3064-za18-c-043.pdf>.

140. Jason Leopold & Jessica Garrison, *US Intelligence Unit Accused of Illegally Spying on Americans' Financial Records*, BUZZFEED (Oct. 6, 2017), <https://www.buzzfeednews.com/article/jasonleopold/us-intelligence-unit-accused-of-illegally-spying-on>.

141. Alicia Tatone, *Global Banks Defy U.S. Crackdowns by Serving Oligarchs, Criminals and Terrorists*, INT'L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Sept. 20, 2020), <https://www.icij.org/investigations/fincen-files/global-banks-defy-u-s-crackdowns-by-serving-oligarchs-criminals-and-terrorists>.

142. See Leopold et al., *supra* note 138.

## V. ABOLITIONIST VISIONS

Credit surveillance is integral to the political economy that sustains the prison-industrial complex (PIC). Its history is key: it serves as a reminder that credit surveillance is not merely a twenty-first century problem, but rather that it is baked into the structure of racial capitalism. Credit surveillance, by supporting the racialized conditions for wealth disparities, incarceration, and housing loss, create punishing conditions for Black people, Indigenous people, and non-white immigrants.

Throughout its history, credit surveillance has gone through iterations of regulation and reform, particularly with the development of FCRA. However, credit surveillance runs too deep for mere reform to be meaningful. Reform changes the mechanics of credit surveillance; it does not dismantle it. Regulating access to certain personal data in credit scoring brings about new sources of proxy data. Regulating certain communication between public policing bureaucracies and private financial entities are circumvented by the creation of new data brokerage technology. The consequences of credit surveillance are so severe that they must be addressed through systemic change.<sup>143</sup> So long as credit surveillance continues to exist, so will banishment of racially-marginalized people. This necessitates that we turn to PIC abolitionists to construct our vision for change.

### A. *What is Abolition?*

Prison-industrial complex abolition is a political vision, a present relational commitment, and a future horizon that requires that we both dismantle the PIC

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143. The severe racial disparities that arise from credit surveillance are well-documented. Three examples are as follows. First, white families typically have ten times the net worth of Black families, a gap that is projected to grow in part due to the 2008 Mortgage Foreclosure Crisis. See Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap>; SARAH BURD-SHARPS & REBECCA RASCH, SOC. SCI. RSCH. COUNCIL & AM. CIV. LIBERTIES UNION, IMPACT OF THE US HOUSING CRISIS ON THE RACIAL WEALTH GAP ACROSS GENERATION (2015), [https://www.aclu.org/sites/default/files/field\\_document/discrimlend\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf). Second, Black people are deeply disproportionately targeted by court-ordered wage garnishments and criminal legal debts. See Paul Kiel, *Debt and the Racial Wealth Gap*, N.Y. TIMES (Dec. 31, 2015), <https://www.nytimes.com/2016/01/03/opinion/debt-and-the-racial-wealth-gap.html>; ABBY SHAFROTH & LARRY SCHWARTZOL, NAT'L CONSUMER L. CTR. & CRIM. JUST. POL'Y PROGRAM AT HARV. L. SCH., CONFRONTING CRIMINAL JUSTICE DEBT: THE URGENT NEED FOR COMPREHENSIVE REFORM 3 (2016), <https://www.nclc.org/images/pdf/criminal-justice/confronting-criminal-justice-debt-1.pdf>; Paul Kiel & Annie Waldman, *The Color of Debt: How Collection Suits Squeeze Black Neighborhoods*, PROPUBLICA (Oct. 8, 2015), <https://www.propublica.org/article/debt-collection-lawsuits-squeeze-black-neighborhoods>. Third, four years after graduation, Black adults are nearly twice as likely to carry student debt as their white counterparts. See Jen Mishory et al., *How Student Debt and the Racial Wealth Gap Reinforce Each Other*, THE CENTURY FOUNDATION (Sept. 9, 2019), <https://tcf.org/content/report/bridging-progressive-policy-debates-student-debt-racial-wealth-gap-reinforce>.

and actively engage in building the world we wish to live in.<sup>144</sup> PIC abolition is necessary because “the system’s extreme racial disparities and daily dehumanization do not result from a glitch in the system but rather from the smooth functioning of a system designed to control and contain poor, Black, and brown people.”<sup>145</sup> The PIC is expansive, so a vision to dismantle it must similarly be expansive in its scope. Allegra McLeod offers that “a prison abolitionist framework entails, more specifically, developing and implementing other positive substitutive social projects, institutions, and conceptions of regulating our collective social lives and redressing shared problems.”<sup>146</sup>

Redressing the scale of policing and incarceration therefore requires that we pay attention to the many institutions of carceral control and how their expansion has hollowed out modes of social provisioning.<sup>147</sup> Credit surveillance serves as a connective tissue between systemic U.S. incarceration, punishment, and “hollowed out modes of social provisioning.”<sup>148</sup> For this reason, PIC abolition requires the abolition of credit surveillance and the survival debt it enforces.

Abolishing credit surveillance and survival debt requires profound creative thinking and commitment to sweeping change. The deep roots of credit surveillance in U.S. history engulf the contemporary world and mediate nearly all interactions between people and government. The enormity of public-private collusion to facilitate policing is such that there is no effective moderate alternative to sweeping change. Reformers may suggest measures including greater degrees of consumer transparency, new debt relief measures, or regulatory limits on credit data usage to allow borrowers a brief respite. However, such incremental proposals fail to confront that the entire U.S. political economic order is predicated on debt as a system of racialized punishment and control, and instead lend legitimacy to the web supporting credit surveillance and survival debt. Instead, we must urgently dismantle credit surveillance systems and in their place create economic systems that refuse to bolster credit as a viable solution to social problems.<sup>149</sup>

### B. *Grounding in Solidarity Economy*

Solidarity economy offers an alternative framework to our current political economic order. Solidarity economy is the practice of rooting economic relationships in mutual care rather than profit maximization to support egalitarian

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144. See CRITICAL RESISTANCE, *supra* note 16 (defining PIC abolition). This definition serves only as a starting point. Many abolitionist thinkers and leaders have contributed greatly to our understanding of what abolition is, which is still an active visioning project.

145. Reina Sultan & Micah Herskind, *What Is Abolition, and Why Do We Need It?*, VOGUE (July 23, 2020), <https://www.vogue.com/article/what-is-abolition-and-why-do-we-need-it>.

146. McLeod, *supra* note 17, at 1163.

147. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1842 (2020).

148. *Id.*

149. Chrystin Ondersma, *Borrowing Equality: Dispossession and the Need for an Abolitionist Approach to Survival Debt*, 120 COLUM. L. REV. 299, 316 (2020).

democracy.<sup>150</sup> This framework is supported by what Gar Alperovitz calls a “*pluralist*” vision, in which multiple forms of public, private, cooperative, and common ownership are structured at different scales and in different sectors to create the kind of future we want to see.<sup>151</sup> This vision is spacious: it welcomes informal and formal lending circles, credit and workers unions, mutual aid, community land trusts, public banking, postal banking, all of which exist at different levels of public control and centralization based on identity-specific needs.<sup>152</sup> What these informal and formal institutions hold in common is their commitments to social provisioning without debt and building collective resources in sites of racialized dispossession.

### 1. Solidarity Economy and Abolition

Grounding the solidarity economy in an abolitionist ethic is fundamental to undermining the logic of the banishing, extractive economy. Community-based solidarity economy structures, including mutual aid, credit unions, community land trusts, data trusts, and neighborhood corporations, all have the potential to reflect back the shameful history of structural racism and banishment if they are not grounded, reparative processes. Geoff Gilbert warns, “any governance regime will reproduce . . . intersecting forms of oppression if it does not include a proactive anti-oppression program.”<sup>153</sup> In the context of economic justice, part of a reparative, anti-oppressive process ought to be the abolition of survival debt and credit surveillance.

### 2. Implementing Solidarity Economy

Solidarity economy, is, by necessity, a long-standing practice of people who have been banished from the mainstream U.S. and global economy. In reflection on those traditions, Geoff Gilbert offers five principles to “guide an egalitarian transition toward solidarity economy institutions for democratic political economy planning,” which are “1) radical inclusion; 2) decentralization; 3) democratic governance; 4) reparations; [and] 5) capital serves people.”<sup>154</sup> In proposing these principles, Gilbert clarifies how we might approach an abolitionist horizon given the creative freedom enabled by Alperovitz’s pluralist vision.

The five principles are mutually reinforcing and elucidate a few starting points to implement solidarity economy models that have the capacity to support an abolitionist political economy. First, economic planning should stem from a

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150. Gilbert, *supra* note 18, at 106-07.

151. Gar Alperovitz, *Principles of a Pluralist Commonwealth: Introduction*, THE NEXT SYSTEM PROJECT (May 15, 2017), <https://thenextsystem.org/principles-introduction>.

152. *See generally id.*; Telephone Interview with Tedmund Wan, Attorney, TakeRoot Justice (Dec. 10, 2020) (Ted graciously shared his knowledge of informal “money circles” created by the Chinese immigrant community in New York to meet their financial needs as well as and more formalized lending circles, such as those facilitated by Chhaya—<https://chhayacdc.org/economic-justice>).

153. Gilbert, *supra* note 18, at 116.

154. *Id.* at 115, 117.

recognition of the abundance of resources that already exist.<sup>155</sup> Money and its scarcity are the products of legally protected political choices.<sup>156</sup> Holding this in mind, there is clear potential for the formulation of an inclusive economy that uplifts and centers people who have been historically marginalized.

Second, the process of visioning and building solidarity economies to support a PIC-free world must be rooted in transformative justice, which as adrienne maree brown describes, “1. [a]cknowledges the reality of state harm; 2. [l]ooks for alternative ways to address/interrupt harm, which do not rely on the state; 3. [r]elies on organic, creative strategies that are community created and sustained; 4. [t]ransforms the root causes of violence, not only the individual experience.”<sup>157</sup> Credit surveillance is a force of and for systemic racism, which is “the state-sanctioned or extralegal production and exploitation of group-differentiated vulnerability to premature death.”<sup>158</sup>

As the Movement for Black Lives demands, reparations for this violence must be at the foundation of building an abolitionist world.<sup>159</sup> Reparations provide the potential to transform power dynamics to lay the foundation to establish democratic economic governance. They also mark a solid departure from the racialized use of survival debt in lieu of affirmative social provisioning, a requirement for PIC abolition.

Third, building solidarity economy starts at the local, grassroots level, but ought to be supported by broader economic structures. Solidarity economy, by definition, requires mutual trust and care to thrive. For this reason, formal and informal solidarity economy structures including credit unions, worker cooperatives, and community land trusts should be decentralized and directed by community governance. However, centralized institutions may support the goals of decentralized solidarity economy practices by facilitating access to resources.<sup>160</sup> For example, public banking can provide the infrastructure to finance public priorities, as was the case with the Reconstruction Finance Corporation, which financed the New Deal.<sup>161</sup> A contemporary public banking movement can generate the money to fund new fiscal priorities, such as supporting solidarity economy practices, creating non-extractive financial services, and investing in de-commodified housing.<sup>162</sup>

155. *See id.* at 105.

156. Raúl Carrillo, *Our Money Where Our Mouth Is*, CURRENT AFFS. (Aug. 14, 2020), <https://www.currentaffairs.org/2020/08/our-money-where-our-mouth-is>.

157. ADRIENNE MAREE BROWN, EMERGENT STRATEGY 135 (AK Press, 2017).

158. Gilmore, *supra* note 12, at 28.

159. *See Reparations*, M4BL 2020 POL’Y PLATFORM, <https://m4bl.org/policy-platforms/reparations> (last visited Dec. 9, 2021).

160. *See* Gilbert, *supra* note 18, at 118.

161. *See* Geoff Gilbert, *Institutions of Solidarity Economy*, LPE PROJECT (May 1, 2019), <https://lpeproject.org/blog/institutions-of-the-solidarity-economy>.

162. *See Mission and Vision*, PUB. BANK NYC, <https://www.publicbanknyc.org/about> (last visited Dec. 9, 2021).



The process of transitioning towards solidarity economy institutions has the capacity to transform our relationships and unearth new visions of an abolitionist world that treats people, rather than capital, as sacred.<sup>163</sup> In adopting this framework, we allow ourselves to, in the words of Robin D. G. Kelley, “tap the well of our own collective imaginations, [and] do what earlier generations have done: dream.”<sup>164</sup>

## VI. CONCLUSION

In this paper, I argue that the abolition of the prison-industrial complex requires the abolition of credit surveillance and survival debt. In making this argument, I weave together the twin histories of consumer rights and policing to explicate why the history of racial capitalism demands the abolition of credit surveillance and survival debt. I demonstrate that debt provided the basis for U.S. land acquisition and slavery and its progeny. I also explain that credit reporting formed the foundation for national policing and surveillance bureaucracies. From there, I discuss how increasing collaboration between policing agencies and credit bureaus ultimately formed our current credit surveillance landscape, which provides the infrastructure for ubiquitous data-driven policing. I then conclude with an explanation of how the inextricable connection between credit and the prison-industrial complex requires that prison abolition include credit surveillance abolition, which can be accomplished by embracing solidarity economy practices rooted in racial justice. Ultimately, the objective of this paper was to systematically support the following response to the question, “What is owed?”:

To the financial establishment of the world, we have only one thing to say: We owe you nothing. To our friends, our families, our communities, to humanity and to the natural world that makes our lives possible, we owe you everything. Every dollar we take from a fraudulent subprime mortgage speculator, every dollar we withhold from the collection agency is a tiny piece of our own lives and freedom that we can give back to our communities, to those we love and we respect. These are acts of debt resistance, which come in many other forms as well: fighting for free education and healthcare, defending a foreclosed home, demanding higher wages and providing mutual aid.<sup>165</sup>

—Strike Debt/Occupy Wall Street Collective, 2012

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163. See Gilbert, *supra* note 18, at 115.

164. ROBIN D. G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* xii (2002).

165. See STRIKE DEBT/OCCUPY WALL STREET, *supra* note 2, at 2.