# Cycles of Failure: The War on Family, The War on Drugs, and The War on Schools Through HBO's *The Wire*

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"Don't matter how many times you get burnt, you just keep
doing the same."—Bodie

"We got our thing, but it's just part of the big thing."—
Zenobia

*"…all the pieces matter"*—Freamon

Freamon, Bodie, and Zenobia's statements cut straight to the heart of *The Wire*'s overarching theme: Individuals are trapped in a complex "cycle of harm" where social problems of inequality, crime, and violence are constantly reinforced.[1] *The Wire* was a television drama that ran on HBO from 2002 through 2008, created by David Simon.[2] The show focuses on the narcotics scene in Baltimore through the perspective of different stakeholders and residents of the city.[3] *The Wire* highlights how self-perpetuating, interconnected, and broken social institutions act in concert to limit individual opportunity.[4] These institutions squash attempts at reform by punishing good ideas and reinforcing the status quo.[5]

*The Wire*'s characters are all trapped in this cycle of harm. No matter how desperately individuals want to make change, the house always wins, and attempts to reform institutions often do more harm than good. This paper will discuss three specific institutions that play central roles in *The* Wire: The family unit, the War on Drugs, and the public-school systems. Each section will focus particularly on how past efforts at reform have contributed to institutional failure. David Simon's critique of each institution and *The Wire*'s relevant lessons are also examined. Ultimately, this paper recognizes that because society's failing institutions are

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1. *See* Anmol Chaddha & William Julius Wilson, *"Way Down in the Hole"*: *Systemic Urban Inequality and The Wire*, 38 CRITICAL INQUIRY 164, 164-65. (2011) ("*The Wire* sheds light on the persistence and durability of concentrated disadvantage, which is reproduced across generations . . . . Through the characters of *The Wire*, viewers can clearly see that various institutions work together to limit opportunities for the urban poor and that the actions, beliefs, and attitudes of individuals are shaped by their context.").

2. *See id.* (describing the HBO series as a fictional, albeit real-life inspired, television show created by former *Baltimore Sun* reporter, David Simon, and cowriter, Ed Burns, a former Baltimore police detective and public-school teacher). *See generally* David Simon, *The Wire: The Complete Series*, DVD (HBO Video 2002–2008).

3. *See* Chaddha & Wilson, *supra* note 1 (summarizing the plot and basic premise of the television series).

4. *See* Chaddha & Wilson, *supra* note 1 and accompanying notes (detailing the social commentary expressed in *The Wire*).

5. *See id.* (describing the ways in which *The Wire* brings to a broader audience themes long discussed by scholars).

inextricably linked, efforts at reform must target structural problems, in order to effect genuine change.[6]

## *Part One: The War on Families*

## *I. The War on Families*

## *A. Introduction*

The importance of the familial institution in the social fabric of American life has generated countless reform efforts aimed at strengthening and assisting low-income families.[7] These policies, however, have unwittingly changed the structure of the family and its ability to provide for and socialize the next generation.[8] In *The Wire,* the family itself is a key lever in determining whether individuals will reproduce, or break free from, the cycle of harm.[9] This section of the paper will analyze the detrimental effects of current social welfare policy on families, and explore the implications that the stories of three families in *The Wire* hold for successful social policy solutions.

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6.  *See* Robert J. Sampson, *Racial Stratification and the Durable Tangle of Neighborhood Inequality*, 621 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 260, 276–77 (Jan. 2009) (arguing the durability of racial inequality in poor neighborhood absent government intervention and significant policy change).

7.  *See* Gregory Acs & Sandi Nelson, *Changes in Living Arrangements During the Late 1990s: Do Welfare Policies Matter?*, 23 J. OF POL'Y ANALYSIS & MGMT. 273, 273 (2004) ("Reducing non-marital childbearing and encouraging marriage and the formation and maintenance of two-parent families are explicit goals of welfare reform set forth in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996").

8.  *See id.* at 287 ("Using their new flexibility in the wake of federal welfare reform or under waivers to federal law in the years leading up to PRWORA, many states modified their welfare policies and practices in ways that could directly or indirectly affect family living arrangements"); *see also* Robert A. Moffitt, *Welfare Benefits and Female Headship in U.S. Time Series*, *in* OUT OF WEDLOCK 143, 143 (Lawrence L. Wu and Barbara Wolfe, eds., 2001) ("[T]here are indeed effects of welfare on some aspects of family structure, namely, marriage and nonmarital fertility").

9.  *See* Chaddha & Wilson, *supra* note 1, at 185 (describing the impact of family on youth futures as depicted in *The Wire*).

Section I will first discuss the critical social roles of the family institution, and how welfare and child support laws have, in fact, negatively impacted low-income families.[10] Section II will analyze how Simon portrays the families of Michael, the Barksdales, and Namond to demonstrate that the strength of the family can be a lynchpin for individual outcomes with the potential to either perpetuate or break the cycle of harm.[11] Section III will discuss social policy solutions for increasing the ability of at-risk families to fulfill the nuclear family's key nurturing and socialization functions, concluding that such policies must be attuned to the realities and preferences of the highest risk families in order to be effective.[12] Two promising areas for reform include providing increased support for new, low-income parents and redesigning child support policies to support, rather than punish, fathers.

## B. The Function, Form, and Erosion of the Familial Institution

The family is the engine that drives production of future generations and, is therefore, charged with a number of critical social functions.[13] At the most basic level, families are expected to meet individual needs for physical and emotional growth and integrity by providing physical protection and the essential resources of food and housing. The family also plays a key role in "socialization," by transmitting shared societal values to the next

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10. *See* Sara McLanahan et al., *Unwed Parents or Fragile Families? Implications for Welfare and Child Support Policy, in* OUT OF WEDLOCK 202, 222–25 (Lawrence L. Wu and Barbara Wolfe, eds.., 2001) (explaining that, in some critical ways, U.S. welfare and child support policies have dis-incentivized marriage and father involvement).

11. *See* Chaddha & Wilson, *supra* note 1, at 185 (describing the impact of family on youth futures in low-income families generally).

12. *See* McLanahan et al., *supra* note 10, at 203 (arguing that policymakers must understand the relationships of families that they are trying to influence in order to design effective programs). The authors want to note that while the policies analyzed here tend to be defined in heteronormative terms, this analysis can apply to two parent households of whatever gender makeup.

13. *See* DAVID CHEAL, FAMILY AND THE STATE OF THEORY 4 (1991) ("[F]amilies are believed to perform essential functions for family members, and for society . . . . If the structural functional argument is correct, then the smooth functioning of families must be vital for the success of any society.").

generation[14] in order develop productive, responsible citizens.[15] The degree to which a family is able to fulfill these roles will define the "success" of the family as an institution for the purposes of this paper.

The familial institution is not confined to the cultural ideal of two married, heterosexual adults raising children.[16] In fact, the model of the American nuclear family centered on a married couple is becoming less and less common demographically[17] and less viable as an exclusive unit of analysis.[18] In reality, families may organize themselves a number of ways that do not conform to the idealized, two-parent model.[19] Indeed, the families portrayed in *The Wire* take a variety of forms, including households headed by adolescents, divorced parents, and single parents.[20] The most prevalent type of family featured on *The Wire*—a family headed by a single mother[21]—reflects a real demographic increase in female-headed households.[22] Ultimately, any discussion about the

14.  *See id.* ("[T]he four main social functions of the family are the reproduction, maintenance, social placement and socialization of the young.").

15.  *See* Lynne Marie Kohm & Rachel K. Toberty, *A Fifty-State Survey of the Cost of Family Fragmentation*, 25 REGENT U. L. REV. 25, 29–31 (2013) (emphasizing the role of family with cost survey of corrective state action to fix the fragmentation of American families).

16.  *See* SHIRLEY A. HILL, FAMILIES: A SOCIAL CLASS PERSPECTIVE xv–xxi (describing the modern notion of "family" as a result of cultural, political, and economic forces which coalesced in the twentieth century to transform the traditional nuclear family).

17.  *See* UNITED STATES CENSUS BUREAU, HOUSEHOLDS AND FAMILIES: 2010 5 (2012) (stating as of 2010, only 48 percent of family households were headed by a husband and wife).

18.  *See* CHEAL, *supra* note 13, at 6 (noting that scholars have not sufficiently considered the diversity of family structures).

19.  *See* Bruce Bower, *Families in Flux: As Household Arrangements Take New Directions, Scientists Attempt to Sort Out the Social Effects*, 182 SCI. NEWS 16, 16–20 (2012).

20.  *See generally* David Simon, *The Wire: The Complete Series*, DVD (HBO Video 2002–2008).

21.  *See id.* (including the single-mother headed families of Michael Lee, Namond Brice, Beadie Russell, Brianna Barksdale, and Randy Wagstaff).

22.  *See* UNITED STATES CENSUS BUREAU, *supra* note 17 (stating that as of 2010, 13.1 percent of households were headed by a single woman); *see also* BENJAMIN SCAFIDI, THE TAXPAYER COSTS OF DIVORCE AND UNWED CHILDREN: FIRST-EVER ESTIMATES FOR THE NATION AND ALL FIFTY STATES (2008) (reporting that 78.5 percent of children living in a single-parent household lived with a

family must recognize that this institution is diverse in its many forms, and is constantly changing, both in response to society, as well as other forces like technology.[23]

Efforts to strengthen low-income families through welfare and child support policies have eroded the ability of low-income families to fulfill the key social functions that they are charged with. Current welfare policies are means-tested, which actually incentivizes parents to live apart so that mothers can qualify for assistance while still receiving support from fathers.[24] Furthermore, punitive child support laws attempting to increase paternal involvement have backfired.

Punitive and unrealistic child support laws have the effect of discouraging financial and social contributions particularly for low-income fathers.[25] Child support laws impose contribution requirements that are based on "presumptive minimum earnings" rather than the father's actual earnings.[26] Since child-support laws target a population of fathers who are less likely to be legitimately employed, these income requirements are unreasonably high.[27] Fathers may actually be discouraged from contributing due to feelings of inadequacy or embarrassment,[28] or to turn to illegal means of meeting payments.[29] The consequences for not meeting

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female parent).

23. *See generally* Zachary E. Shapiro**,** *Savior Siblings in the United States: Ethical Conundrums, Legal and Regulatory Void*, 24 WASH. & LEE J. OF CIV. RTS. AND SOC. JUST. 419 (2018)

24. *See* McLanahan et al., *supra* note 10, at 222 (explaining how means-tested welfare policies encourage fragile family formation because couples fear that marriage or living together will disqualify the low-income mother from receiving welfare benefits, when the father has earnings).

25. *See id.* at 222 (examining the effects that child support laws have on low-income fathers).

26. *Id.* at 216, 222.

27. *Id.* at 224 (discussing how income requirements can have an outsized effect on the population of fathers impacted by child-support laws).

28. *Id.* at 223 (discussing how feelings of inadequacy can actually encourage fathers to disengage from their familial responsibilities).

29. *See* Kathryn Edin, et al., *Fatherhood and Incarceration as Potential Turning Points in the Criminal Careers of Unskilled Men,* NW. U. INST. FOR POL'Y RES., May 2001, at 20 ("[T]he start-up costs associated with having a baby, the crib, the stroller, and other relatively expensive one-time purchases that a baby's birth often requires, can sometimes motivate criminal involvement . . . .")

payments are also punitive and often counterproductive. Arrears can accumulate quickly, which gives fathers yet another incentive to turn to the informal sector for employment.[30] Finally, many disadvantaged fathers end up in a revolving cycle of incarceration for failing to make payments (or trying to earn money for payments illegitimately), which of course removes them from any opportunity to contribute to the child.[31]

In many ways, the current child support and welfare policies are a subtle "war on families" that actually erodes the institution and reinforces the cycle of harm across generations. The harmful effects of current social policies are particularly troubling because, as *The Wire* demonstrates, this institution can be determinative of individual outcomes. The families portrayed on *The Wire* warn that the erosion of the family unit has dire consequences, while demonstrating that a strong family can be transformative. *The Wire* urges a critical reexamination of the assumptions underlying social programs targeting families and urges policy reform that will effectively strengthen this foundational social structure.

## II. Families As a Lynchpin in the Cycle of Harm in The Wire

The stories of *The Wire*'s Michael Lee, the Barksdale family, and Namond Brice demonstrate that the family has important implications for whether an individual will reproduce the cycle of harm or break free from it.[32] Michael's story imparts a bleak warning that children from an ineffective family unit are particularly susceptible to the influence of illegitimate

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30.     *See* Virginia Knox et al., *Policies that Strengthen Fatherhood and Family Relationships: What Do We Know and What Do We Need to Know?*, 635 ANNALS AM. ACAD. POL. & SOC. SCI. 216, 223 (2011) ("Fathers cited their substantial arrears as a discouragement to formal employment, which although it might offer more stable or higher-paying jobs than the informal sector, could also result in garnished wages.").

31.     *See* Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. GENDER, RACE & JUST. 617, 621 (2012) (chronicling the experience of disadvantaged fathers with the child support system including the application of unrealistically high support orders and being penalized by punitive enforcement measures).

32.     *See generally* Simon, *supra* note 20.

institutions. The Barksdale family, comprised of prominent Baltimore drug dealers when *The Wire* begins, successfully navigate Baltimore's corrupt social web by targeting its developmental and socialization functions directly toward reproducing the cycle of criminality.[33] Finally, Namond's story demonstrates that when the family is successful in its developmental and socialization functions, the cycle of harm can be broken. Namond's successful break from the cycle of harm provides us with a glimmer of hope that strong familial institutions can change individual outcomes.

### A. Michael's Story: The Failure of the Family

Although he is only an eighth-grader, Michael is the de-facto parent in a household that consists of his drug-addicted mother and his younger brother, Bug.[34] Michael's mother fails to physically provide for him or encourage his personal development.[35] Instead of nurturing Michael and Bug, she sells their food to buy drugs,[36] and seems to take no interest in her children's lives.[37] Michael is forced to fill the protective function usually filled by the familial institution.[38] He handles the family's welfare check,[39] provides for the family financially by working for drug crews in the neighborhood,[40] and takes responsibility for his little brother, Bug, by walking him to and from school, feeding him, and ensuring that he does his homework.[41] The idealized gender roles of the "standard" American family in which the father is the

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33. *Id.*

34. *See, e.g.*, *The Wire: Refugees*, Season 4: Episode 4 (HBO television broadcast Oct. 1, 2006).

35. *Id.*

36. *See, e.g.*, *The Wire: Unto Others,* Season 4: Episode 7 (HBO television broadcast Oct. 29, 2006).

37. *Id.*

38. *Id.*

39. *Id.*

40. *See, e.g.*, *The Wire: Soft Eyes*, Season 4: Episode 2. (HBO television broadcast Sept. 17, 2006).

41. *Id.*

breadwinner and the mother is the emotional caregiver[42] are thus completely subverted in Michael's family.[43]

The failure of Michael's family to fulfill its developmental role causes him to turn to an illegitimate institution—Marlo's gang—as a replacement.[44] When Michael's abusive stepfather Devar[45] returns from prison and attempts to reclaim the patriarchal role, Michael again plays the role of protector by refusing to hand over the family's D.S.S. card and trying to keep Bug out of Devar's influence.[46] Unable to rely on legitimate social institutions, Michael ultimately turns to Marlo Stanfield's gang for help. In exchange for Devar's murder, Michael agrees to be trained by the murderous duo of Chris and Snoop.[47] The gang thus usurps the development and socialization roles traditionally left to the family in order to perpetuate its criminal activities.[48]

For Michael, the absence of an effective family structure made membership in an illegitimate institution a logical, and arguably necessary, choice.[49] Michael's story is not uncommon for children in poverty. Fairly early on, children may realize that their parents cannot help them navigate the hostile world of urban inequality.[50] Gangs can therefore take on the role of a "surrogate family" and provide a sense of belonging and protection that the actual family

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42.  *See* CHEAL, *supra* note 13, at 5 (describing the post-World War II breadwinner-homemaker traditional model for the American nuclear family).

43.  *See generally The Wire*, Season 4 (HBO television broadcast 2006).

44.  *See The Wire*, *supra* note 40 (depicting Michael catching the attention of gang-leader, Marlo Stanfield).

45.  *See The Wire: Took*, Season 5: Episode 7 (HBO television broadcast Feb. 17, 2008) (referring to Devar as a "baby-bumping motherfucker"); *The Wire: Corner Boys*, Season 4: Episode 8 (HBO television broadcast Nov. 5, 2006) (depicting Devar rebuking Michael for not being able to forgive him); *The Wire*, Season 4: Episodes 4–5 (showing Michael distrustful of adult males who try to engage him including his teacher, Prezbo; his boxing coach, Cutty; and the neighborhood kingpin, Marlo).

46.  *See, e.g.*, *The Wire: Corner Boys*, Season 4: Episode 8 (HBO television broadcast Nov. 5, 2006).

47.  *See The Wire, supra* note 43.

48.  *Id.*

49.  *See id.* (depicting the precarious nature of Michael's situation: continue to be abused by mother and stepfather or turn to an entity offering protection and a financial future).

50.  *See, e.g.*, Will Dunn, Guest Speaker (Nov. 18, 2014).

may be incapable of giving.[51] Importantly, gangs also usurp the family's function of instilling pro-social values; instead, youth are educated according to the gang's worldview.[52] By filling the vacuum left by the ineffective family, gangs engage in a process of self-perpetuation, reinforcing the system of corruption and disadvantage that *The Wire* portrays so vividly.[53] Social policy reform *must* be cognizant of this reality, and be redesigned to strengthen, rather than erode, the two-parent family structure.

## B. The Barksdales

The Barksdale family, which consists of kingpin Avon Barksdale, his sister Brianna, and her son D'Angelo, runs a criminal organization that has monopolized the drug trade in West Baltimore.[54] This familial institution is "successfully deviant": The family uses its developmental and socialization as a vehicle for navigating, co-opting, and reinforcing Baltimore's cycle of harm.[55] The members of the Barksdale family are well provided for in clothes, food, and housing with proceeds from Baltimore's drug trade, which in turn reinforce allegiance to the familial institution.[56] The Barksdale family successfully socializes its

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51. *See* Robert T. Muller, *Poverty, Broken Homes, Violence: The Making of a Gang Member*, PSYCHOL. TODAY (Aug. 24, 2013), http://www.psychologytoday.com/blog/talking-about-trauma/201308/poverty-broken-homes-violence-the-making-gang-member (arguing that forces in low-income communities push youths toward gang membership) (on file with Washington & Lee Journal of Civil Rights & Social Justice); *see also* Chaddha & Wilson, *supra* note 1, at 185. (explaining how structural inequality can lead to violent crime like that depicted in *The Wire*).

52. *See* Chaddha & Wilson, *supra* note 1, at 185 (describing a scene in which an older gang member imparts his views on the central importance of earning money to younger members).

53. *See id.* (describing the influence that older dealers exert on younger ones).

54. *See The Wire: The Target*, Season 1: Episode 1 (HBO television broadcast June 2, 2002) (introducing *The Wire*'s audience to the Barksdales).

55. *See* Chaddha & Wilson, *supra* note 1 at 171–72 (describing the business-like nature of the Barksdale family drug operation as depicted in *The Wire*).

56. *See The Wire: Cleaning Up*, Season 1: Episode 12 (HBO television broadcast Sep. 1, 2002) (depicting Avon reminding Brianna he has purchased her a car and apartment, and that the Barksdales have "a lot to protect"); *see also The*

members with values and knowledge essential to the continuation of its illegitimate prosperity—most notably, unquestioning loyalty to the family and its trade.[57] For example, Avon frequently leverages his relationship with D'Angelo to groom him for the drug trade.[58] Loyalty to the familial institution ultimately preserves the Barksdales.[59] When the organization is compromised by a police investigation, Brianna convinces D'Angelo to sacrifice himself on a twenty-year prison sentence instead of entering the witness protection program.[60]

The Barksdales interact with urban poverty in a way that is mutually advantageous to both the family and the broader system.[61] The success of the Barksdales reflects an endemic problem that perpetuates *The Wire's* broken social system: The majority of characters that achieve success do so through unethical and illegal means rather than through legitimate ones.[62] The Barksdales' story urges a close examination of social policies that may actually create incentives for families to engage with illegitimate institutions in order to understand—and change—the self-perpetuating cycle of harm that *The Wire* dramatically portrays.

## C. Namond Brice

Namond Brice is the son of Wee-Bey Brice, an infamous ex-enforcer for Avon Barksdale who is serving a life sentence for multiple murders.[63] Namond's mother De'Londa attempts to use

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*Wire, supra* note 54 (Brianna generously supports Wee-Bey's family in exchange for the prison sentence he is serving).

57.   *See, e.g.*, *The Wire,* Season 1: Episodes 1, 5–6 (statement of Avon Barksdale) ("Cause its family, that's what it's all about, family.").

58.   *See, e.g.*, *The Wire, supra* note 54.

59.   *Id.*

60.   *See e.g.*, *The Wire: Sentencing,* Season 1: Episode 13 (HBO television broadcast Sep. 8, 2002).

61.   *See generally The Wire*, Season 1 (HBO television broadcast 2002).

62.   *See* Todd Sodano, All the Pieces Matter: A Critical Analysis of HBO's *The Wire* 186 (2008) (unpublished Ph.D. dissertation, Syracuse University) (on file with Harvard Law School).

63.   *See e.g.*, *The Wire: Boys of Summer*, Season 4: Episode 1 (HBO television

the functions of the family in a similar manner to the Barksdales in order to socialize him into the drug trade.[64] She ultimately fails, however, to fulfill Namond's needs for protection and emotional development, and instead, the Colvins—a successful family that is able to fulfill these needs—take in Namond.[65]

Financially, Namond is well provided for by the Barksdales because of his father's sacrifice to the organization,[66] and enjoys fresh clothes, a comfortable home, and an X-Box.[67] De'Londa expects Namond to follow in his father's footsteps[68] and attempts socialize him into the drug trade. She pushes Namond to hit the corners with his own package,[69] chastises him for his missteps,[70] and ridicules his fear of prison.[71] Despite De'Londa's efforts to push Namond toward the corner, it soon becomes clear that his heart is not in the family business.[72] Critically, De'Londa fails to protect her son from the drug trade's harsh consequences. When Namond is arrested and De'Londa is nowhere to be found, Namond calls on Bunny Colvin, a teacher who he has developed a bond with, to pick him up from baby booking.[73] Bunny invites Namond to his home for dinner, where Namond gets a glimpse of successful family life outside the corner.[74]

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broadcast Sept. 10, 2006) (introducing Namond Brice's storyline).

64.   *Id.*

65.   *Id.*

66.   *See The Wire: Alliances*, Season 4: Episode 5 (HBO television broadcast Oct. 8, 2006).

67.   *See The Wire: Soft Eyes*, Season 4: Episode 2 (HBO television broadcast Sept. 17, 2006).

68.   *See The Wire: A New Day*, Season 4: Episode 11 (HBO television broadcast Nov. 26, 2006).

69.   *See The Wire*, *supra* note 67.

70.   *See The Wire: Unto Others*, Season 4: Episode 7 (HBO television broadcast Oct. 29, 2006) (showing De'Londa reprimanding Namond for "bringing work home" and not making enough money on the corner).

71.   *See The Wire: Know Your Price*, Season 4: Episode 9 (HBO television broadcast Nov. 12, 2006).

72.   *See The Wire*, *supra* note 68.

73.   *See The Wire*: *Misgivings*, Season 4: Episode 10 (HBO television broadcast November 19, 2006).

74.   *Id.*

Tensions between Namond and his mother over his performance in the drug trade result in a physical altercation and ultimately cause him to leave home.[75] When De'Londa is informed that he is at the police station, she tells Sergeant Carver to "put him in baby booking and let him learn something."[76] De'Londa's attempt to harden Namond backfires; like Michael, Namond seeks out a different institution to replace his ineffective family. Namond, however, calls on Bunny for help—a decision that ultimately helps Namond break free from the system of harm that De'Londa is entangled in.[77] Bunny, seeing a chance to finally save a corner boy, convinces Wee-Bey to release Namond into his care and out of the drug trade.[78]

The involvement of the Colvins transforms Namond's path. Bunny and his wife provide Namond with a safe home, instill pro-social values in him, and encourage him to pursue his schoolwork.[79] For Namond, the opportunity to substitute a successful family for an ineffective, deviant one makes all the difference. At the end of Season 5, we see Namond shining as the star of a debate competition—he has clearly left the cycle of the corners, crime and prison that De'Londa would have pushed him toward.[80] Namond's happy ending creates hope that with the support of a successful family institution, individual trajectories can change.

A successful family unit has the potential to break cycles of crime and poverty for both adults and children. Male criminal offenders who become involved in a strong marriage become less and less likely to offend over time.[81] The birth of a child can serve

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75.   *See The Wire*, *supra* note 73.

76.   *Id.*

77.   *Id.*

78.   *See The Wire: That's Got His Own*, Season 4: Episode 12 (HBO television broadcast Dec. 3, 2006).

79.   *Id.*

80.   *See The Wire: Late Editions*, Season 5: Episode 9 (HBO television broadcast Mar. 2, 2008).

81.   *See* John H. Laub, et al., *Trajectories of Change in Criminal Offending: Good Marriages and the Desistance Process*, 63 AM. SOC. REV. 225, 234 (1998) (arguing a good marriage has a preventive effect on criminal activity of one or both of the married persons).

as a similar turning point for men involved in the criminal justice system.[82]

Like Namond's story, however, positive outcomes for children in low-income families are less common than we are willing to accept. *The Wire* illustrates that the functions performed by the familial institution can be critical to individual outcomes, and encourages viewers to realize that the "smooth functioning of families must be vital for the success of any society."[83] Effectively strengthening the family should be a public policy focus. Two promising starting points toward this end include expanding programs that provide resources and training to new, unmarried parents and reforming child support policies to encourage father involvement.

### III. Public Policy Recommendations to Increase Two-Parent Involvement

In order to increase the frequency of stories like Namond's, current policies must be changed to incentivize two-parent households instead of frustrating them. Two-parent involvement increases the family's ability to fulfill its institutional responsibilities due to the extra financial, emotional and social capital that two adults bring to the table.[84] In order to effectively increase a family's ability to develop and socialize children, the needs and realities of targeted parents must first be understood.[85] Expanding support programs for unwed couples and restructuring punitive child support laws with the needs of low-income parents in mind are two reform efforts that can have a tangible impact on the family's capacity to break the cycle of harm.

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82. *See* Edin et al., *supra* note 29, at 26 (finding that the birth of a child can have a preventive effect on fathers in the criminal justice system).

83. CHEAL, *supra* note 13, at 4.

84. *See id.; see also* McLanahan et al., *supra* note 10, at 204 (noting that unmarried parents have limited social capital); SCAFIDI, *supra* note 22, at 12 (arguing that social capital of two parents increases educational attainment of children).

85. *See* McLanahan et al., *supra* note 10, at 221 (identifying suggested policy focuses).

*A. Relationship Support Programs for Unmarried Couples*

Expanding programs that are focused on helping unwed mothers and fathers strengthen their relationship will increase two-parent involvement.[86] Despite the fact that both parents express a desire to be involved in a child's life surrounding birth, father involvement declines over time.[87] A major reason behind this decline in involvement is the relationship between the parents.[88] At the time of birth, eighty-two percent of low-income, unmarried parents are romantically involved with each other.[89] In addition, these parents may lack the social capital needed to successfully provide for and socialize children due to the parents' low levels of education, work experience, and income.[90]

Educational programs promoting fatherhood, co-parenting, and relationship skills have had success addressing these challenges and in providing social capital.[91] Engaging parents early on capitalizes on the high level of hope and investment both parents feel when the child is born.[92] Programs which target *both* parents and focus on building skills such as conflict resolution and cooperative parenting have proven most effective, in contrast to those programs targeting fathers alone.[93] Focusing on improving

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86.   *See id.* (positing policy reforms which will increase two-parent involvement).

87.   *See id.* at 204 (finding that whatever the status of the parents' initial relationship, overtime, unwed parents experience high incidence of fragmentation).

88.   *See id.* (highlighting the importance of parental relationships in determining involvement with children).

89.   *See id.* at 211 (identifying a common trajectory among low-income, unmarried parents).

90.   *See id.* (asserting parents with limited financial resources face challenges in addition to the upfront costs).

91.   *See* Knox et al., *supra* note 30, at 218 ("[P]rograms that are effective at strengthening the relationship between parents who live together have been found to increase fathers' involvement in parenting."); *see also* Kohm & Toberty, *supra* note 15, at 36 (noting "positive associations between marital stability and strong fathering").

92.   *See* McLanahan et al., *supra* note 10, at 204 (noting the marginalization low-income parents can often feel after a child is born).

93.   *See* Knox et al., *supra* note 30, at 220–21, 229–31 (discussing goals of fatherhood-focused and relationship-focused programs and summarizing the

parents' long-term relationships is likely to increase the quantity and quality of father involvement in the child's life.[94] And, as a result, the probability that the familial institution will be able to fulfill its critical functions increases as well. Many of these programs have also integrated employment services to improve the father's ability to provide for the family financially.[95]

## B. Reforming Punitive Child Support Laws

A number of simple changes to punitive child support laws will increase father involvement and thus improve the capacity of low-income families to successfully provide for and socialize children. First, parental contributions should be based off of the father's actual income rather than an arbitrary minimum.[96] This change would also stop the current practice of punishing fathers for being poor, which only reinforces disadvantage.[97] Also, government investment in job production for unskilled, underemployed workers would also be an important step in ensuring that all parents, including fathers, have the means to provide for their children.[98] Ultimately, a child support system that supports, rather than punishes, low-income fathers would increase not only the chances that children will actually receive support, but also two-parent involvement.[99] Fathers that are able

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impact of the Supporting Father Involvement (SFI) study).

94. *See id.* at 221 ("Thus, improvements in the couple's relationship may ultimately increase the quality or quantity of fathers' engagement with children . . . .").

95. *See id.* at 219–20 (describing some of the wrap-around education fathers can obtain to increase the chances of long-term engagement with the family and child).

96. *See* Brito, supra note 31, at 661 (proposing a system of child support system reforms that "makes the financial obligations imposed on disadvantaged fathers more realistically reflect individual fathers' income potential").

97. *See id.* at 664 ("An assumption that all nonpaying fathers are deadbeats is inequitable and unjust, especially in light of the [recent recession and historically high unemployment rate], particularly for low-skilled workers.").

98. *See id.* at 665 ("There is widespread understanding that many low-income fathers who want to pay support are unable to simply because of obstacles to full participation in the labor market.").

99. *See id.* at 660–73 (suggesting that the more resources a family has the

to provide financially would ultimately feel more pride and efficacy in their role, and be likely to participate more in the familial institution.[100] Combined with investment in programs that educate and support unmarried couples, a restructuring of the child support system is likely to assist at-risk families in fulfilling their institutional roles.[101]

Improving the abilities of at-risk families to effectively develop and socialize children is critical to breaking the cycle of harm illustrated in *The Wire*. Importantly, *The Wire* demonstrates that in the absence of an effective family unit, an individual's access to *other* institutions is a critical factor in determining whether the cycle of harm will continue. In the case of Michael and the Barksdales, the availability and profitability of gang involvement reproduced the corrupt system. Namond, on the other hand, was able to break from this cycle because he could access Bunny Colvin's effective family unit. Therefore, in addition to improving the effectiveness of the family itself, a system-wide reform effort that is conscious of the interlocking effects of other institutions, such as drug policy and education, is necessary to break the cycle of harm.

*Part Two: The War on Drugs*

*I. The War on Drugs*

*A. Introduction*

The War on Drugs has become a central feature in urban America, so much so that it can be viewed as its own institution, with its own politics, laws, and social structures. In *The Wire,* the War on Drugs is almost a character unto itself.[102] From the police

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more likely it is to endure life pressures, avoid conflict, and stay intact).

100.    *See id.* (describing the link between feelings of efficacy in a father and the likeliness of the father to meet child support needs).

101.    *See id.* at 661 (arguing for the benefits of a restructured and modified child support system).

102.    *See* Chaddha & Wilson, *supra* note 1, at 164–65 (describing the role the War on Drugs has in *The Wire*).

who enforce the laws to the gangs who sell drugs, to the politicians who promise change but stick to the status quo, to the children at failing schools counting the days before they can make a name for themselves on the streets, everyone in David Simon's world is shaped by America's War on Drugs.[103] Although the Drug War may have had noble goals, its failures have resulted in structural disparity, and *The Wire* demonstrates that its true targets are poor, black communities.[104]

This section will discuss how the War on Drugs has become an institutional cycle of harm for the urban black community. It will provide examples from *The Wire* as well as real life that highlight how the failures of the War on Drugs are structurally ingrained in the system, preventing good ideas from taking root and halting any attempts at positive change.

## B. The War on Drugs

The War on Drugs refers to a system of drug policies intended to discourage the production, distribution, and consumption of substances classified as illegal. The War's goals are to stop drug trafficking, remove drugs from neighborhoods, and reduce drug consumption and demand. While the media popularized the term after a speech by Richard Nixon in the early 1970s, it was not until Ronald Reagan made the War on Drugs his centerpiece initiative that the effort really took off. Since then, it has grown into a roughly $51 billion annual expenditure by the United States.[105]

While a full discussion of the history and evolution of America's War on Drugs is beyond the scope of this paper, it is important to note that the prohibition against illegal drugs has done little to reduce their potency, availability, or usage rates.[106]

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103. *See id.* (explaining how *The Wire* depicts the centrality that the War on Drugs has in some American communities).

104. *See id.* (discussing the suffering inflicted on poor and black families and individuals in T*he Wire*).

105. *See* Drug Pol'y All., Drug War Statistics (2018), http://www.drugpolicy.org/drug-war-statistics (identifying statistics for War on Drugs) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

106. *See* Michael L. Piccarreta, *Harm Reduction and the Drug Problem*, 33 Ariz. Att'y 9, 10 (1997).

Prices remain high, and criminals who enter the drug game can make large profits.[107] Statistics also show that the War on Drugs has failed to reduce violent crime.[108] There is substantial evidence that drug prohibition itself has empowered vast criminal enterprises, creating a black market economy run by violence.[109]

### *C. The War on Drugs and the Black Community*

Like any war, the War on Drugs has produced significant collateral damage.[110] Its greatest casualty is the urban black community. This section describes how the War on Drugs' enforcement, laws, and cultural institutions have disproportionately affected people of color.[111]

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107.    *See* Gary Becker & Kevin Murphy, *Have We Lost the War on Drugs?* WALL STREET J. (Jan. 4, 2013), http://www.wsj.com/articles/SB10001 424127887324374004578217682305605070 (contemplating the decriminalization of illicit drug use) (on file with Washington & Lee Journal of Civil Rights & Social Justice).

108.    *See id.* ("The cost has been large in terms of lives, money and the well-being of many Americans, especially the poor and less educated.").

109.    *See, e.g.*, *Global War on Drugs a 'Billion-Dollar' Failure*, AL JAZEERA (May 7, 2014), http://www.aljazeera.com/news/europe/2014/05/global-war-drugs-failure-lse-nobel-prize-201456212727317668.html; (describing how the approach to the global war on drugs has created a $300 billion dollar black market) (on file with Washington & Lee Journal of Civil Rights & Social Justice); *see also* Eric Blumenson & Eva Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. CHI. L. REV. 35, 37 (1998) ("[T]he Drug War has been an extraordinary failure. Drugs are more available—at higher purity and lower prices—than they were at the start of the decade."). *See generally* Jeffrey Fagan, *The Social Organization of Drug Use and Drug Dealing Among Urban Gangs*, 4 CRIMINOLOGY 633 (1989).

110.    *See* AL JAZEERA, *supra* note 109 (describing how the War on Drugs has produced collateral damage and precarious results).

111.    *See* Kenneth B. Nunn, *Race, Crime and the Pool of Surplus Criminality: Or Why the War on Drugs Was a War on Blacks*, 6 J. GENDER RACE & JUST. 381 (2002) ("Throughout the drug war, African Americans have been disproportionately investigated, detained, searched, arrested, and charged with the use, possession, and sale of illegal drugs."); Paul Finkelman, *The Second Casualty of War: Civil Liberties and the War on Drugs*, 66 S. CAL. L. REV. 1389, 138990, 1403 (1993) (listing the causalities of the drug war); John A. Powell & Eileen B. Hershenov, *Hostage to the Drug War: The National Purse, the Constitution and the Black Community*, 24 U. C. DAVIS L. REV. 557, 559 (1991) (indicating the victims of the War on Drugs).

### *1. Enforcement and Law*

Enforcement of the War on Drugs has been strikingly unequal across racial groups.[112] Approximately 35 percent of all drug arrests, 55 percent of all convictions, and 74 percent of all people sent to prison for drug possession crimes are black.[113] Nationwide, black men were sent to state prisons for drug offenses 13 times more often than white men.[114] In some states, 80–90 percent of all drug offenders sent to prison are black.[115] Meanwhile, numerous studies show that less than 13 percent of regular drug users are African-American.[116]

In addition to enforcement differences, drug laws contain structural inequalities that many scholars argue is codified racism.[117] A striking example is the historical disparity between mandatory minimum sentencing laws for crack and powder cocaine. Cocaine is the same active drug as crack, but powder cocaine is more expensive and more popular with white users. By contrast, crack cocaine is closely associated with the black community; in 2001, over 80 percent of federal crack defendants

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112. *See* Powell & Hershenov, *supra* note 111, at 609 (stating that law enforcement targets minorities).

113. Daniel Burton-Rose, ed., THE CELLING OF AMERICA: AN INSIDE LOOK AT THE U.S. PRISON INDUSTRY (1998).

114. *See* HUM. RTS. WATCH, *Racial Disparities in the War on Drugs: Key Findings at a Glance*, http://www.hrw.org/legacy/campaigns/drugs/war/key-facts.htm (last visited Nov. 1, 2018) (reporting statistics on racial disparities in the War on Drugs) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

115. *See* Michelle Alexander, *The New Jim Crow: How the War on Drugs Gave Birth to a Permanent American Undercaste*, HUFFINGTON POST (May 5, 2010), http://www.huffingtonpost.com/michelle-alexander/the-new-jim-crow-how-the_b_490386.html ("In some states, African Americans comprise 80%-90% of all drug offenders sent to prison.") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

116. *See* McCabe et al., *Race/Ethnicity and Gender Differences in Drug Use and Abuse Among College Students*, 6 J. OF ETHNICITY IN SUBSTANCE ABUSE 75, 75-95 (2007) (demonstrating results which indicate that the percentage of black users of multiple drugs over a twelve-month period was 10.3 percent).

117. *See* T. Michael Andrews, *Unequal Sentences the Crack and Powder Cocaine Disparity*, 44 ARIZ. ATT'Y 23, 23 (2008) ("Some have even called this disparity racist."); *see also* Powell & Hershenov, *supra* note 111, at 559 (characterizing the war on drugs as "a war on the minority population").

were black. Despite the drugs' similarity, the sentence for possessing crack originally was roughly 100 times harsher than the sentence for possessing an equivalent amount of cocaine. These laws resulted in disproportionately longer prison sentences for black offenders.[118] This disparity was noted in *State v. Russell*, when the Minnesota Supreme Court found there was no rational basis to support the disparate treatment of crack cocaine and powder cocaine.[119]

Despite evidence of bias, the disparity in sentencing laws was not addressed until President Obama passed the Fair Sentencing Act in 2010.[120] Even today, crack still carries a roughly 18 times longer sentence than powder cocaine.[121] When coupled with disparate levels of enforcement, structural inequalities in sentencing laws had led many to conclude that that the War on Drugs is racially biased.[122]

### 2. Community Life

The War on Drugs disproportionately impacts poor communities of color.[123] These communities are exposed to

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118.   *See* Jessica R.F. Grassley, *Federal Cocaine Sentencing Policy Following the 1995 Cocaine Report: Issues of Fairness and Just Punishment*, 21 HAMLINE L. REV. 347, 349 (1998) (explaining that the Anti-Drug Abuse Act of 1986 established a mandatory minimum sentence of 10 years for a drug offense dealing with 5000 grams of powder cocaine and 50 grams of crack cocaine).

119.   *See* State v. Russell, 477 N.W.2d 886, 891 (Minn. 1991) ("The crack-cocaine distinction also fails because the classification is not relevant to the statutory purpose").

120.   *See* Fair Sentencing Act of 2010, 42 U.S.C. § 841 (intending to restore fairness to federal cocaine sentencing).

121.   *See* Briton K. Nelson, *Adding Fuel to the Fire:* United States v. Booker *and the Crack Versus Powder Cocaine Sentencing Disparity*, 40 U. RICH. L. REV. 1161, 1175–76 (2006) [hereinafter "*Nelson*"] (stating that the Sentencing Commission recognized the greater dangers of crack cocaine within the sentencing structure).

122.   *See id.* at 1179 ("[R]eviewers have found that sentencing reforms have not eliminated unwarranted racial disparities").

123.   *See* Gabriel J. Chin, *Race, the War on Drugs and the Collateral Consequences of Criminal Conviction,* 6 J. GENDER RACE & JUST. 253, 262–64 (2002) [hereinafter "*Chin*"] (describing disproportionate enforcement by noting patterns of black criminal offenses while acknowledging that past and present

criminal activity and societal harms caused by illicit drugs. These factors breed further violence—both from rival gangs and the police.[124] When police target specific groups the effects are felt by entire communities, the guilty and innocent alike.[125] For example, studies show that minority youth are significantly more likely to be stopped by police, breeding distrust and resentment.[126]

Similarly, the War on Drugs paints high-level criminal offenders and non-violent drug users with the same brush, sending both groups to prison by targeting low-level offenders.[127] The effects of these arrests continue after release, as our system makes it difficult to rejoin society.[128] Being in prison impacts an individual's eligibility for public housing, student financial aid, child custody determinations, and immigration status.[129] Individuals with felony convictions may struggle to procure employment due to their status as a felon.[130] Thus, many opportunities are closed to those who need them most. This forces

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racism contributes to this factor).

124. *See Nelson*, *supra* note 121, at 1175–76 ("Researches have also suggested that crack is found in a 'subculture of violence,' and that while crack use is not the cause of violence, crack use and violence are highly correlated.").

125. *See* Brad Heath, *Racial Gap in US Arrest Rates: 'Staggering Disparity'*, USA TODAY, https://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207/ (last visited Nov. 1, 2018) (describing racial disparities found by a USA Today analysis of 1,581 police departments in the United States) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); Christopher Ingraham, *You Really Can Get Pulled Over for Driving While Black, Federal Statistics Show,* WASH. POST, http://www.washingtonpost.com/blogs/wonkblog/wp/2014/09/09/you-really-can-get-pulled-over-for-driving-while-black-federal-statistics-show/ (last visited Nov. 1, 2018) (describing federal statistics on racial disparities in traffic stops) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

126. *See supra* note 125 (outlining studies that have found black youths are more likely to be stopped by police than are non-minority youths).

127. *See Nelson, supra* note 121, at 1174 (stating that the effect of the sentencing guidelines was that low-level dealers were often targeted and subject to the same penalties as high-level kingpins).

128. *See Chin*, *supra* note 123, at 253–61 ("The real sentence comes like a ton of bricks in the form of a series of statutes denying convicted felons a variety of rights.").

129. *See id.* at 259–61 (listing contemporary collateral consequences of a criminal conviction).

130. *See id.* (describing the difficulties that a felony imposes on individuals in finding future employment).

some to turn back to the only available lucrative jobs: Drug dealing. In this way, the War on Drugs traps individuals in a cycle of hardship that makes negative outcomes far more likely, while doing little to provide genuine rehabilitation or support to those who desperately need it.

Youth are especially susceptible to this cycle.[131] In poor neighborhoods, the lack of traditional economic opportunities combined with failing schools and inadequate family structures funnel young teenagers towards the drug trade.[132] The perception that there is money to be made selling drugs makes gang membership attractive.[133] As so many of the successful individuals in poor areas are involved in the drug trade, the youth may often have fewer positive role models.[134]

Since the prohibition on drugs keeps prices high, there is money to be made by those who are willing to put their safety at risk for economic gain and a demand for large-scale criminal organizations.[135] Furthermore, due to prohibition, there is a need for large-scale criminal organizations.[136] These criminal empires survive by recruiting young members in order to increase their ability to distribute drugs, and to leverage violence against others, features inextricably linked to illegal marketplaces.[137]

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131.  *See* Jeffrey Fagan, *The Social Organization of Drug Use and Drug Dealing Among Urban Gangs*, 27 CRIMINOLOGY 633, 633–70 (1989) (stating that adolescent violence has been associated with drug use and drug selling).

132.  *See id.* at 662 ("Social isolation of gangs from legitimate economic opportunity and routine interactions with mainstream society . . . may lead to the development and ossification of gangs . . . .").

133.  *See id.* at 635 *(*describing the economic lure of "drug sales for gang members, relative to other economic opportunities").

134.  *See id.* at 637–38 (describing the social structure of gangs and developmental implications on youth).

135.  *See id.* at 635 (describing the economic lure of "drug sales for gang members, relative to other economic opportunities").

136.  *See* John M. Hagedorn, *Neighborhoods, Markets and Drug Organization,* 20 CRIM. JUST. POL'Y REV. 236, 236–246 (2009) (describing the links between drug sales, violence, and related structures).

137.  *See id.*

## *II.* The Wire *and the Failures of the War on Drugs*

*The Wire* portrays not only how the War on Drugs has failed, but how this cycle of failure continues to damage the urban black community.

### *A. The War on Drugs Traps Those Who Most Need Support*

*The Wire* presents many faces of the drug trade. Promising youth are funneled into the drug trade because they never felt that they had a chance to do anything else.[138] Politicians take advantage of the illicit economies of the drug trade in order to build support and embezzle money; lawyers "play the game" by profiting off defending members of a large criminal organization; policemen make their lives following the status quo, because they are inextricably tied to supporting a clearly broken system.[139] Creator David Simon highlights how the War on Drugs has become entrenched in poor communities, while providing few incentives for individuals to escape lives of crime or to more effectively address the problems of drug use.

At the same time, *The Wire* features several individuals trapped in a system where their only viable option is to become involved in the drug trade. This is evident in the character of Dennis "Cutty" Wise, a mild mannered, but physically intimidating, former gangster, who is released from prison and tries to restart his life on the outside.[140] While Cutty is committed to staying away from illegal activities, he finds that the opportunities for someone with a criminal conviction are extremely limited, and he can only find work as a day laborer.[141] The kingpins recognize the vulnerability of people like Cutty, and exploit this in order to bolster their ranks. When he is released, Avon Barskdale

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138. *See The Wire* (HBO television broadcast 2002–2008) (portraying the wide spread effects of the drug trade in the City of Baltimore).

139. *See The Wire*, Season 2 (HBO television broadcast 2004).

140. *See The Wire: Time After Time*, Season 3: Episode 1 (HBO television broadcast Sept. 19, 2004).

141. *See The Wire: Hamsterdam*, Season 3: Episode 4 (HBO television broadcast Oct. 10, 2004).

sends Cutty a "welcome home" present, which consists of a kilogram of drugs.[142] Furthermore, the Barksdale gang tries to recruit Cutty, arguing that he doesn't know any other trade and will be lost if he doesn't join up with them.[143] While Cutty is able to break free from this cycle through self-determination and personal strength, his story is very much the exception, rather than the rule.

Simon shows how the cycle perpetuated by the drug war entraps those most in need of support from the system. Ambitious young boys like Michael, Namond, Wallace, and Bodie, feel their only way to be successful is to join the drug trade and make a name for themselves with a combination of shrewd business practices and violence.[144] We also see addicts like Bubbles, who are trapped by their addiction. Bubbles makes many attempts to get clean on his own, but finds no support for making and maintaining positive changes in his life. Rather, the system criminalizes his behavior and pushes him farther and farther out of the mainstream, where his problems become nearly insurmountable.

### B. The War on Drugs Punishes Promising Ideas that Do Not Fit with Prohibition

*The Wire* highlights that the status quo of the War on Drugs ends up punishing new ideas and preventing genuine reformation from occurring. An excellent example of this tension occurs when Officer Bunny Colvin sets up an ambitious experiment, nicknamed "Hamsterdam."[145] Hamsterdam is modeled after the commune of Christiania, in Copenhagen, Denmark.[146] In short, it is a safe zone

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142. *See The Wire: All Due Respect*, Season 3: Episode 2 (HBO television broadcast Sept. 26, 2004).

143. *See The Wire*, *supra* note 141 and accompanying notes.

144. *See The Wire: Boys of Summer*, Season 4: Episode 1 (HBO television broadcast Sept. 10, 2006).

145. *See The Wire*, *supra* note 141 and accompanying notes.

146. *See* Ellen Barry, *In Anarchic Corner of Copenhagen, Police and Dealers Play Cat and Mouse,* N.Y. TIMES (2018), https://www.nytimes.com/2018/08/26/world/europe/christiania-freetown-copenhagen.html [hereinafter *"Barry"*] (describing the Christiania Freetown social experiment) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

for drug dealing.[147] This area is monitored by police and has very strict rules; if drug pushers comply with these rules and do not incite violence, then they are allowed to sell drugs free of interference from police.[148]

While this may seem like a way to *de facto* legalize drugs, David Simon demonstrates that good can come from this concept.[149] The first benefit is the dramatic reduction in violence; by forcing everyone into one area, with monitoring by police, Hamsterdam reduces the violence that is inherent in the drug trade.[150] For example, Detective Colvin is able to use the threat of eviction in order to keep the pushers in line.[151] Further, there is a dramatic reduction in crime elsewhere, as the corners are no longer the marketplace for criminals.[152] Community leaders are actually extremely thankful for Hamsterdam, as the reduction in corner violence was especially noticeable for those who are subjected to it every day.[153] The reduction of violence extends to the police. Positive interactions between pushers and policemen in Hamsterdam replace the culture of intimidation, fear, and retribution, which infects so much of police interaction with minority communities.

There are also public health benefits, as officials are able to set up needle exchange programs and targeted outreach to addicts.[154] Hamsterdam provides an essential opportunity for outreach. These public health initiatives help deal with the nature of addiction from a medical perspective, offering avenues to get clean, and be safe, rather than merely punishing drug users under a criminal justice model.

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147.  *See id.* ("Denmark has allowed the commune to exist for nearly half a century, in violation of property laws, planning laws and drug laws.").

148.  *See id.* (describing the ability of residents of Christiania to sell "soft" drugs, even though they are in technical violation of Danish drug laws).

149.  *See The Wire: Reformation*, Season 3: Episode 10 (HBO television broadcast Nov. 28, 2004) (demonstrating effects of the experiment).

150.  *Id.*

151.  *Id.*

152.  *See id.*

153.  *See The Wire*, *supra* note 141 and accompanying notes.

154.  *See The Wire: Moral Midgetry*, Season 3: Episode 8 (HBO television broadcast Nov. 14, 2004).

Hamsterdam still has clear problems. There is still the inherent problem that if drug dealing is to move off the streets, it has to go somewhere. While the area of Hamsterdam was in many ways ideal, as it consisted primarily of abandoned buildings, it was not perfect. In the show, there was one elderly woman who lived in the middle of Hamsterdam and was horrified to find that her formerly quiet neighborhood was now the center of the drug trade in Baltimore.[155] There will always be certain individuals who find themselves trapped by the drug trade.

The biggest issue however, results simply from the existence of Hamsterdam. The leniency that the cops show the drug dealers flies in the face of drug laws. This prevents Hamsterdam from being anything more than a hidden experiment since, as Colvin knows, he cannot publicize his efforts.[156] When his superiors eventually find out about Hamsterdam, Colvin's supervisor Officer Rawles accosts him, screaming "You legalized drugs!"[157] This highlights the primary tension that Hamsterdam creates, because even though it made drug dealing safer, less violent, and less problematic, setting up a safe zone did nothing to change the laws classifying drugs as illegal. As such, Hamsterdam put policemen in direct conflict with the laws they were sworn to uphold, making it doomed to fail from the beginning. Indeed, initiatives like Hamsterdam can only be successful if the system is changed to remove the dichotomous trap of legal versus illegal. New strategies are punished in the War on Drugs, standing in stark contrast to many other areas of criminal enforcement and jurisprudence, where new technologies can rapidly change both investigative and adjudicative procedures.[158]

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155. *See The Wire: Homecoming*, Season 3: Episode 6 (HBO television broadcast Oct. 31, 2004) ("You say you've got a program that can place me somewhere else but you ain't got a program for what's outside my door.").

156. *See The Wire*, *supra* note 154 (describing Hamsterdam's discovery by journalists and then by police leadership).

157. *See id.*

158. *See generally* Zachary E. Shapiro**,** *Truth, Deceit, and Neuroimaging: Can Functional Magnetic Resonance Imaging Serve as a Technology-Based Method of Lie Detection*, 29 HARV. J. OF L. & TECH. 528 (2016).

### III. Examples from the International War on Drugs

*The Wire* is such a compelling piece of art because it mimics real life. As a case in point, Hamsterdam is based on a "social experiment" that is still taking place in Copenhagen, Denmark.[159] The major difference is that while the major drug dealt in Hamsterdam was heroin, an extremely addictive and harmful substance, Christiania, the commune in Copenhagen, Denmark, focuses on marijuana and hash.[160]

Christiania began as a social experiment in one of the least diverse countries in Europe: Denmark. [161] Founded in 1971 by a group of young squatters and artists, Christiania is an 84-acre commune on the site of a long abandoned Danish military base.[162] Christiania is the second most popular tourist attraction in Copenhagen, with over one million visitors every year.[163] Christiania's exceptionalism is immediately apparent when one enters the gates, which have a large sign reading "You are now leaving the European Union."[164]

Christiania is unique, in large part, due to its rejection of Danish law, particularly laws regarding drugs.[165] While drugs are illegal in Denmark, in Christiania, soft drugs, such as marijuana

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159. *See* Barry*, supra* note 146 (describing the Christiania Freetown social experiment).

160. *See id*. (highlighting community opposition to the dealing of "hard" drugs in Christiania, as opposed to "soft" ones).

161. *See* Max Fisher, *A Revealing Map of the World's Most and Least Ethnically Diverse Countries,* WASH. POST (May 16, 2013), http://www.washingtonpost.com/blogs/worldviews/wp/2013/05/16/a-revealing-map-of-the-worlds-most-and-least-ethnically-diverse-countries/ (showing that Denmark is one of the most racially and ethnically homogenous countries in the world) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

162. Tom Freston, *You Are Now Leaving the European Union*, VANITY FAIR (Sept. 12, 2013), http://www.vanityfair.com/politics/2013/09/christiana-forty-years-copenhagen (discussing the history of the Christiania commune) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

163. *See id*. (outlining the unlikely but continued success of the area).

164. *See id*. (emphasizing the uniqueness of the Christiania culture as compared to Denmark as a whole).

165. *See id*. (stating that part of Christiania's unique culture stems from the lack of adherence, by both the community members and the police, to soft drug laws that exist in Denmark).

and hash, are openly sold.[166] The main forum for these transactions is called "Pusher Street," which some estimate to be the biggest hash market on the planet.[167] This street has many vendors who set up small stalls and sell marijuana and hash, with police estimating that sales amount to roughly $150 million a year.[168] Christiania has evolved with a very strict set of rules, which are primarily enforced by locals.[169] Christiania allows marijuana and hash, but no other drugs are tolerated.[170] Christiana locals will not allow them to set up their business, and will often summon Danish police.[171]

An examination of the status and statistics related to drugs in Denmark reveals that this "social experiment" has had genuine, positive effects.[172] Drug violence related to marijuana in Copenhagen is nearly non-existent, as pusher street has evolved with its own set of closely guarded rules and customs that put a great emphasis on ensuring that no violence or guns are associated with the drug trade.[173] As Christiania has allowed Copenhagen's

166.    *See id*. ("Cannabis is officially illegal in Denmark but has been tolerated and sold openly in Christiania all along.").

167.    *See id*. ("The main drag is 'Pusher Street,' the biggest hash market on the planet. Some 40 shops there run 24/7, selling 30 to 40 different brands of hashish").

168.    *See id*. (describing the extent of the marijuana and hash business in Christiania).

169.    *See id*. (suggesting that overtime Christiania adopted specific practices to allow the cannabis market to flourish, while still ensuring other, harder drugs, were not permissible).

170.    *See* Kasia Malinowska, *For Safe and Effective Drug Policy, Look to the Dutch*, OPEN SOCIETY FOUND. (July 16, 2013), http://www.opensocietyfoundations.org/voices/safe-and-effective-drug-policy-look-dutch (suggesting that the subculture of Christiania allowed for a soft drug market, but not a market for other drugs) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

171.    *See* Freston, *supra* note 162 and accompanying text (implying that for the success of the cannabis market in Christiania locals would ensure the enforcement of Christiania culture to disallow hard drug sells).

172.    *See* Kim Moeller & Morten Hesse, *Drug Market Disruption and Systemic Violence: Cannabis Markets in Copenhagen,* EUR. J. OF CRIM. (Jan. 21, 2013), http://euc.sagepub.com/content/early/2013/01/10/1477370812467568 (stating that the decision against law enforcement in the cannabis market led to an extremely low level of violence) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

173.    *See id*. at 13 (analyzing statistics to determine the little drug violence

soft drug trade to be entirely confined to one space, many neighborhoods do not suffer the problems associated with pushing drugs on street corners.[174] This actually makes drugs less prevalent amongst the general population,[175] and removes much of the violence that usually goes hand-in-hand with any illegal market.

Through rigorous self-monitoring, and a willingness to involve local law authority when needed, Christiania has also played a role in reducing the incidence of hard drugs.[176] The easy access to soft drugs prevents individuals from being tempted to try harder drugs due to lack of access.[177] Examining the lower incidence of hard drug use in countries like the Netherlands and Denmark supports the idea that access to soft drugs decreases hard drug use in locations that have de-facto legalized certain drugs.[178] Situations like Christiania shine a bright light on the failures of the "gateway drug" theory, that soft drugs like marijuana cause individuals to try harder drugs.[179] Given the extremely low incidence of harder drug use amongst Danish youth,[180] it becomes clear that the gateway hypothesis is actually a result of enforcement strategy, rather than something nefarious about marijuana itself. Under prohibition, individuals who want marijuana are forced to look to

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occurred relating to cannabis until greater police enforcement).

174. *See id.* at 10 (finding that, until a police crackdown, drug sales were largely confined to Christiania).

175. *See* DRUG WAR FACTS, Denmark, http://www.drugwarfacts.org/cms/ Denmark# sthash.7y8cJvpJ.dpbs (last visited Sept. 28, 2018) (stating that Denmark has overall low drug use in the general population) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

176. *See* Malinowska, *supra* note 170 and accompanying text (stating the subculture and cannabis market of Christiania has reduced the availability of hard drugs).

177. *See id.* (suggesting the availability of soft drugs is a deterrent to using hard drugs).

178. *See id.* (discussing the use of drugs in the Netherlands and Denmark).

179. *See id.* (discussing the "gateway drug" theory).

180. *See Country Overview: Denmark*, EUR. MONITORING CTR. FOR DRUGS & DRUG ADDICTIONS, http://www.emcdda.europa.eu/publications/country-over views/dk/data-sheet (last visited Sept. 28, 2018) (showing statistics of low drug usage in Denmark) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

the underworld to obtain the drug.[181] Drug dealers have an incentive to get their clients "hooked" by exposing them to significantly more addictive drugs such as crack, cocaine, and heroine.[182] Due to the regulations of Christiania and its focus against hard drugs, Danes do not face this pressure when purchasing marijuana.[183] Danes do not have to be exposed to a vast criminal underworld and are not put in a position where they are directly exposed to hard drugs.[184] Given little reliable evidence about serious health risks associated with marijuana use for adults,[185] Copenhagen seems to be able to get the benefits associated with legalization, such as reduced violence and lower incarceration rates, without increasing hard drug use rates or inviting widespread public health problems.

Christiania still faces the central problem that "Hamsterdam" faced in *The Wire*;[186] namely there is still a constant tension between the lifestyle of Christiania and the laws of Denmark.[187] While the Copenhagen City Council approved legalization of marijuana, the justice ministry rejected this measure.[188] The activities of Pusher Street are still illegal, and Danish police will

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181. *See* Christopher Gatto, *European Drug Policy: Analysis and Case Studies*, NORML (1999), http://norml.org/component/zoo/category/european-drug-policy-analysis-and-case-studies#christiana [hereinafter "NORML"] (suggesting that a separation between soft drug use and hard drug use is necessary to protect individuals who are solely soft drug users) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

182. *See id.* (stating that the Christiania Experiment allowed for soft drug users to be removed from hard drug markets).

183. *See* Malinowska, *supra* note 170 (emphasizing the divide between the subculture of hard drugs and the subculture of cannabis use).

184. *See id.* (stating that "coffee shops" were implemented to protect cannabis users from harder drugs).

185. *See* Kathleen Doheny, *Recreational Marijuana: Are there Health Effects?*, WEBMD (Dec. 11, 2012), http://www.webmd.com/smoking-cessation/news/20121207/recreational-marijuana-health-effects (stating few reliable health sources link major health issues with marijuana usage) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

186. *See The Wire: Hamsterdam*, Season 3: Episode 4 (HBO television broadcast Oct. 10, 2004) (emphasizing the tension between the lifestyle of the illustrative Hamsterdam as compared to overall laws of the country).

187. *See* Freston, *supra* notes 162–69 and accompanying text (noting the non-adherence to Denmark's laws in Christiania).

188. *Id.*

still occasionally conduct raids in Christiania or set up sting operations to catch unwitting visitors who do not understand the intricacies of Danish law. [189]

A true testament to the success of Christiania occurred during a rising period of tension in the 2000s, when a more conservative government came into power in Denmark and began cracking down on the drug trade in Christiania.[190] This period involved some of the first outbreaks of violence in Christiania, as police raids became constant and locals pushed back against what they perceived as a politically based power grab.[191] As violence was rising in Christiania, local police began to observe a dramatic rise in drug crimes and drug related violence in many neighborhoods of Copenhagen that had experienced no such crime while Christiania was active.[192] This rise in crime was a direct result of the repositioning of the drug dealers, who, when they could not rely on the safety and organization of Christiania went back to the streets.[193] Without Christiania, dealers returned to the violence that is normally associated with drug operations.

In 2012 after mounting pressure on the government, the crackdown ended and Christiania resumed its activities as normal.[194] As Christiania returned to business as normal, street pushing and drug related violence fell to new lows.[195]

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189.  *See* NORML, *supra* notes 181–82 (stating that although the police presence has fluctuated in recent years, police raids of the area still occur).

190.  *See* Peter Stanners, *Christiania's Resurgent Cannabis Trade Marred by Violence and Intimidation*, THE COPENHAGEN POST (June 6, 2012, 10:12 AM), http://cphpost.dk/news/christianias-resurgent-cannabis-trade-marred-by-violence-and-intimidation.1833.html (suggesting that the new government increasing drug law enforcement in Christiania had negative effects) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

191.  *See id.* (emphasizing the tension that existed between the Christiania locals and the police that quickly escalated violent crime throughout the area).

192.  *See id.* (addressing the expansion of drug related crimes into many areas of Copenhagen during this time frame).

193.  *See* Moeller & Hesse, *supra* notes 172–74 and accompanying text (concluding that rise in crime occurred directly after the crack down on cannabis use in Christiania).

194.  *See* Moeller & Hesse, *supra* notes 172–74 and accompanying text (explaining the history of the government's crackdown).

195.  *See* Moeller & Hesse, *supra* notes 172–74 (analyzing violent and drug-related crime statistics after the heavy police enforcement was stopped).

*IV. Moving Forward*

As experiments like Christiania and shows like *The Wire* make clear, alternative solutions are necessary to address the failures of the War on Drugs. While a full discussion of the issue is beyond the scope of this paper, one lesson is obvious: In order to create lasting change, the system itself must be restructured. In the case of the War on Drugs, that system is drug classification and sentencing laws. Most are outdated, relics from times when there was little scientific understanding of different substances.[196] Some were passed using misinformation and racial propaganda.[197] These laws often demonstrate little regard for true valuations of addictiveness or the harmful nature of the substance, and criminalize individuals who could benefit from a public health oriented approach to addiction and drug management.[198]

This is *not* to say that full legalization of drugs is the answer. Indeed, there are many substances that are truly harmful, and should not be freely available in society. Instead this paper advocates for a critical evaluation of our drug laws, to tailor our approach to do good rather than continue the cycle of harm. This will involve examining successful initiatives abroad as well as studying illegal substances themselves, so that scientific evidence informs our drug policy.

Another promising way to move forward is by adopting a scientific mindset and using public health principles to address America's drug problem. There are numerous benefits to a public health view. First, studying drugs allows us to better understand them biologically and physically, which will permit us to make medically informed decisions about the true risks of consuming

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196. *See* Susan Stuart, *War as a Metaphor and the Rule of Law in Crisis: The Lessons We Should Have Learned from the War on Drugs*, 36 S. ILL. U.L.J. 1, 3 (2011) (suggesting that many drug sentencing laws were draconian).

197. *See* Judge Frederic Block, *Racism's Hidden History in the War on Drugs*, HUFFINGTON POST (Jan. 3, 2013, 2:44 PM), http://www.huffingtonpost.com/judge-frederic-block/war-on-drugs_b_2384624.html (suggesting the policy ground for most drug laws was not scientific but based on societal fear) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

198. *See* Stuart, *supra* note 196 (stating the focus of many laws is solely criminalization with no public health education on addiction and drug usage).

different substances.[199] Secondly, by studying drug use and behavior, we can tailor interventions to address different subsets of the problem, rather than employing a "one-size fits all" criminalization strategy.[200] This will allow for better resource allocation.[201] Thirdly, a public health approach will allow more users to seek treatment without fear of prosecution, meaning that fewer individuals are likely to fatally overdose.[202] Adopting a public health mindset can allow individuals to tackle long-standing problems with a novel perspective, and adopting a public health framework can enable unconventional solutions to long-standing problems.[203] In this case, a public health approach allows us to address drug problems without overfilling our prisons with non-violent offenders.[204] Applying a public health approach to the War on Drugs finds broad support amongst community leaders, scientists, doctors, and social workers, all of whom understand the failures of our current approach.[205]

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199.  *See* Thomas F. Babor, *The Public Health Impact of Drug Policies*, *in* RETHINKING THE "WAR ON DRUGS" THROUGH THE US-MEXICO PRISM 73 (Ernesto Zedillo & Haynie Wheeler eds., Yale Center for the Study of Globalization 2011) (stating generally the benefits of making decisions on drug policies from a position of medical information).

200.  *See* Christopher Ingraham, '*You Will Not Be Arrested for Using Drugs': What a Sane Drug Policy Looks Like*, WASH. POST (December 2, 2014), http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/02/you-will-not-be-arrested-for-using-drugs-what-a-sane-drug-policy-looks-like/?tid=sm_fb (suggesting a broad policy of blanket criminalization of drugs is not the most effective strategy for prevention) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

201.  *See id.* (concluding a health policy based on drug use and behavior is a better allocation of resources).

202.  *See* Maia Szalavitz, *New York State Passes 'Good Samaritan' Law to Fight Overdose*, TIME MAGAZINE (July 29, 2011), http://healthland.time.com/2011/07/29/new-york-state-passes-good-samaritan-law-to-fight-overdose/ (explaining that good Samaritan laws encourage reporting, which leads to fewer overdose fatalities) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

203.  *See* e.g., Christine Baugh & Zachary E. Shapiro, *Concussions and Youth Football: Using a Public Health Law Framework to Head-Off a Potential Public Health Crisis*, 2 JOURNAL OF LAW & BIOSCIENCES 449 (2015).

204.  *See* Szalavitz, *supra* note 202. (suggesting that good Samaritan laws protect citizens that are concerned with public health over penalizing their actions).

205.  *See* Virginia Berridge, London School of Hygiene and Tropical Medicine,

However, adopting a public health approach to drugs will be inadequate if laws do not change as well. Without changes to the law, public health efforts will face the same tension that held back Christiania and Hamsterdam, and the cycle of failure will be doomed to continue.[206]

*Part Three: The War on Schools*

*I. Public Education: The War on Schools*

*A. Introduction*

According to the philosopher Ivan Illich, the greatest myth of institutionalized education is that it can "convert rags to riches" for all those who are willing to work hard enough.[207] In an idealized America, public schools are the embodiment of that myth. Designed to be the great equalizer, public education is a promise.[208] All children, regardless of race, gender, disability, or socioeconomic status are supposed to have equal access to an education that allows them to enjoy the freedoms and exercise the responsibilities of democratic citizenship.[209]

This is not the case in David Simon's *The Wire*.[210] In *The Wire*, school is an institution like any other, complete with society's

Second Stanier Lecture, *Illicit Drugs, Infectious Disease and Public Health: A Historical Perspective* (Nov. 5 2002), *in* 16 CANADIAN J. OF INFECTIOUS DISEASES & MED. MICROBIOLOGY 193, 196 (Shawna Bourne ed. 2005) (stating the broad community of experts agree that a public health approach to the War on Drugs would not lead to the failures in the current system).

206.    *See* Freston, *supra* notes 162–69 and accompanying text (suggesting that the tension experienced in Christiania will occur elsewhere if laws do not match police practice).

207.    *See* Erin E. Buzuvis, *Illich, Education, and* The Wire, 34 W. NEW ENG. L. REV. 363, 364 (2012) (explaining that institutionalized education is not all that we assume it is).

208.    *See id.* ("[I]nstitutionalized education is the great equalizer . . . .").

209.    *See* George Wood, *Introduction, in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 9 (Deborah Meier & George Wood eds.) (2004) (describing the great promise of America's public school system).

210.    *See The Wire*, Season 4 (HBO television broadcast 2006) (portraying the inequality present in the education system).

power structures, stratifications, and inequalities.[211] No child in *The Wire* is "saved" by their education.[212] In fact, Simon portrays Baltimore's public school system as hurting more children than it helps—test scores and "juking school stats" take precedence over innovative programs and teaching methods.[213] The system forces educators and administrators to manufacture the appearance of success rather than effectuate actual change.[214] "You don't teach Math," one teacher tells another. "You teach the test."[215]

The teacher is not referring to just any test, but to statewide standardized testing.[216] *The Wire'*s fourth season aired in 2006, just four years after Congress passed the No Child Left Behind Act (NCLB).[217] The NCLB links federal funding to standardized test scores, mandating yearly testing for grades K-8.[218] Even as early as 2006, the Act garnered significant criticism.[219] The NCLB not only failed its stated goal of closing the racial achievement gap, but its perverse incentives reduced education quality, fueled drop-out rates, and increased school segregation.[220] Just as outdated policies have undermined the War on Drugs and punitive child

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211. *See id.* (showing the realities of public schools).

212. *See id.* (demonstrating the struggles children face in school).

213. *See The Wire: Know Your Place*, Season 4: Episode 9 (HBO television broadcast Nov. 12, 2006) (demonstrating how test scores are more important than teaching style).

214. *See id.* (showing the negative effects of testing on the system).

215. *See The Wire: Corner Boys*, Season 4: Episode 8 (HBO television broadcast Nov. 5 2006) (demonstrating the effect of standardized tests on teacher's teaching style).

216. *See id.* (demonstrating the negative effects of standardized testing).

217. *See* Wood, *supra* note 209, at 10 (describing the NCLB as the 2002 reauthorization of the Elementary and Secondary Education Act).

218. *See id.* (discussing the mandates of the NCLB).

219. *See id.* at 11 (questioning why only two years later educators, legislators, and even entire states were in revolt over NCLB).

220. *See* Regina Ramsey James, *How to Mend A Broken Act: Recapturing Those Left Behind by No Child Left Behind*, 45 GONZ. L. REV. 683, 684 (2009) (discussing the detrimental consequences of NCLB); *see also* Linda Darling-Hammond, *From "Separate but Equal" to "No Child Left Behind": The Collision of New Standards and Old Inequalities*, *in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 26, 26 (Deborah Meier & George Wood eds., 2004) (discussing NCLB).

support laws have destabilized families, statistics-driven education reform has weakened the public school system.[221]

This section will discuss the negative effects of America's growing reliance on standardized tests as "objective" indicators of success. Part I discusses the shift toward standards-based education in the 1990s, culminating in NCLB and its statistics-as-progress approach to school reform. Part II examines the problematic effects of this approach, both in *The Wire* and in real classrooms across America. Finally, Part III discusses alternatives to NCLB, using the pan-Canadian system of elementary and secondary education as a case study.


### B. NCLB: History and Context

Since the first free system of public education was established, America has struggled to realize the democratic promise of a fair and equal public school system.[222] Equal access began with *Brown v. Board of Education*, after which public attention shifted to the promise of equal *success*—namely, closing the achievement gap between rich, white students and poor students of color.[223] Programs like Head Start and ESEA stood for the premise that given enough resources and incentive, schools could close the gap themselves.[224] NCLB is the latest incarnation of that belief.[225] Signed into law in 2001, NCLB promised that by 2014 every child would score "proficiently" or above on statewide standardized tests, closing the achievement gap once and for all.[226] Before

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221.   *See* James, *supra* note 220, at 693 (discussing how the disincentives and penalties for schools failing to demonstrate adequate progress undermines the purpose of the act, weakening the system).

222.   *See generally* Brown v. Bd. of Educ., 347 U.S. 483 (1954) (demonstrating inequality in the public-school systems).

223.   *See id.* at 495 (stating segregation in public education violates the Fourteenth Amendment).

224.   *See* Wood, *supra* note 209, at 9 (discussing the premise of Head Start and ESEA).

225.   *See* Robert A. Garda, Jr., *Coming Full Circle: The Journey from Separate But Equal to Separate and Unequal Schools*, 2 DUKE J. CONST. L. & PUB. POL'Y 1, 32 (2007) (stating that an express goal of the act was to eliminate the achievement gap between races).

226.   *See id.* at 33 (stating the Act's goal of one hundred percent proficiency by

addressing the NCLB, it is first necessary to discuss how standardized test rose to their current popularity.

### C. A Brief History of Standards-Based Education in America

In 1983, the Department of Education issued a report that dramatically altered the path of education reform.[227] Entitled *A Nation at Risk*, the report painted a bleak picture of American public schools, which ranked last among industrialized nations on seven of nineteen achievement tests.[228] According to the Department, an estimated 23 million adult Americans were "functionally illiterate," and student achievement levels had declined sharply from 1963 to 1980.[229] Based on these findings, the Department recommended that public schools adopt more "rigorous and measurable standards" for academic performance in order to turn back the "rising tide of mediocrity that threaten[ed] [America's] very future as a Nation."[230]

As Robert Garda writes, it is difficult to overstate *A Nation at Risk*'s influence.[231] The report redirected America's attention from "educational inputs" like "money, teachers, facilities, and racial composition," to educational outputs as measured by test scores.[232] Pre-1983, school desegregation and financial reform dominated the education debate; post-1983, concern had shifted to increasing student performance at all costs.[233] Reformers decided to

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2014).

227.  *See id.* at 22 ("In 1983 the Department of Education published *A Nation at Risk*, which criticized public schools for setting their sights too low . . . .").

228.  *See id.* ("The report showed that American students ranked last in comparison to students in other industrialized countries in seven of the nineteen achievement tests . . . .").

229.  *See* NAT'L COMM'N ON EXCELLENCE IN EDUC., A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM 5, 8 (1983) (listing examples of the educational dimensions of risk).

230.  *Id.* at 3–4, 24.

231.  *See* Garda, *supra* note 225, at 24 ("The influence of *A Nation at Risk* on the education reform movement cannot be understated.").

232.  *Id.* at 24–25.

233.  *See id.* at 3–4 ("[S]eparation is now voluntary instead of state sanctioned, and equality now encompasses both resource equality and educational outcome equality, and the liberty resulting from school choice is accepted as a remedy for

incentivize schools to improve via two avenues: Internal accountability through achievement testing and external competitive pressure created by "school choice."[234]

The new, post-1983 era of achievement testing was premised on the idea of standards-based accountability, which measures students against concrete, universal academic standards.[235] These standards prescribe the level of skill and knowledge every student must achieve at a given grade level.[236] Regular testing holds teachers and schools accountable by determining whether students are above or below the target standard.[237] Within a few years of *A Nation at Risk*'s publication, almost all states had adopted some form of statewide, standards-based testing.[238]

While achievement tests create internal accountability, reformers also sought to expose schools to external market forces by allowing parents greater latitude to select which schools their children attended.[239] If public schools were forced to compete for students with charter schools and private school vouchers, reformers believed schools would improve.[240] Previously barred by desegregation and mandated racial balancing,[241] these "school

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inequity.").

234.   *See id.* at 23–24 (discussing the movement towards standards-based accountability and school choice).

235.   *See* Garda, *supra* note 225, at 23 (explaining the high education goals of standards-based accountability).

236.   *See id.* (explaining in the infant years of the accountability movement, students had to pass "high stakes" tests in order to advance to the next grade or graduate).

237.   *See id.* (stating that there are rewards or punishments for students, teachers, and administrators depending on whether the goals are being achieved).

238.   *See id.* ("Within a few years after publication of *A Nation at Risk*, nearly all fifty states had adopted some form of minimum competency standards for students.").

239.   *See id.* at 24. (stating that *A Nation at Risk* "promoted the application of market principles to education and school choice as remedies for educational problems").

240.   *See id.* ("Public schools would improve, it was thought, if they had to compete for students . . . with public charter schools and private schools through voucher programs.").

241.   *See* Green v. Cty. Sch. Bd., 391 U.S. 430, 440 (1968) (noting that if "school choice" plans allowing residents to choose between public schools failed to undue segregation, "other means must be used to achieve this end").

choice" plans enjoyed a resurgence in the 1990s.[242] In 1992, America's first charter school opened,[243] and by 1995 Congress had allocated six million dollars to charter schools as part of the Improving America's Schools Act.[244] Voucher programs, previously a tool of conservatives, began to be endorsed by civil rights groups.[245] Suddenly, "school choice" was no longer limited to those who could afford private schools.[246]

By 2000, school choice and standards-based accountability were firmly entrenched, forming the backbone of modern education reform in America.[247] NCLB sought to harness the power of both to achieve the ultimate goal: Closing America's achievement gap.[248]

## D. The NCLB Act

The No Child Left Behind Act (NCLB) was designed with the express goal of eliminating the racial achievement gap.[249] The Act requires that states establish "'challenging' academic standards in reading, math, and science and test all students" yearly to ensure they meet proficiency.[250] Schools are evaluated not only by their aggregate test scores, but by the scores of certain in-school

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242. *See* Garda, *supra* note 225, at 16 (discussing how the Supreme Court began interpreting *Brown* as "a formalistic rule of non-discrimination" rather than an affirmative order to integrate, allowing schools segregated by "voluntary" residential patterns to remain unintegrated).

243. *See id.* at 29 ("[T]he nation's first charter school opened in 1992.").

244. *See id.* at 30 (stating that in 1995 the federal government allocated six million dollars to charter schools).

245. *See id.* at 29 ("African American leaders pushed for vouchers despite their racist pedigree because it was their children's only escape from dysfunctional schools.").

246. *See id.* ("Vouchers . . . [became] a method preferable over integration to assist minorities in achieving equal educational opportunity.").

247. *See* Garda, *supra* note 225, at 31 (stating that by 2000 thirty-seven states had active accountability systems).

248. *See id.* at 32 (stating that the NCLB sought to accomplish that goal through the standards-based accountability and freedom of choice reforms).

249. *See id.* (stating that an express goal of the act was to eliminate the achievement gap between races).

250. *See id.* at 33 (highlighting some of the Act's requirements).

subgroups, including disabled students, English as a second language students, and students from "all major racial, ethnic, and income groups."[251] By separating out the achievement scores of the Act's intended beneficiaries, NCLB sought to hold schools directly accountable for their success.[252] No longer would school districts be able to disguise the failure "of those federal funds were meant to target."[253] The Act promised 100 percent proficiency for all students by 2014.[254]

Together with other indicators like graduation rates and attendance, test scores determine whether a school is making "adequate yearly progress" (AYP).[255] Schools that make AYP receive increased federal budgets, but if any subgroup within the school fails, the whole school fails.[256] Failing schools are deemed "in need of improvement," and face escalating sanctions for each consecutive year they fail to make AYP.[257] After two years, failing schools must pay for bussing to transfer their students to better schools.[258] After three years, tutoring and other supplemental education services must be offered to students who do not leave.[259] After four years, the school must implement corrective measures, including replacing staff and appointing education advisors.[260] Finally, after five years, schools must restructure, either by state takeover, charter school conversion, reconstituting, or

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251.  *Id.*

252.  *See id.* (stating that test scores and other school indicators are then used to determine schools' progress).

253.  Wood, *supra* note 209, at 11.

254.  *See* Garda, *supra* note 225, at 33 (stating the Act's goal of one hundred percent proficiency by 2014).

255.  *See* Garda, *supra* note 225, at 34 (discussing how adequate yearly progress is determined and how much is sufficient).

256.  *See id.* at 35 (describing what happens when schools fail, and what happens when they succeed).

257.  *See id.* at 34 (stating the sanctions failing schools receive).

258.  *See id.* (stating what happens when a school fails to make AYP for two consecutive years).

259.  *See id.* at 35 (stating what happens when a school fails to make AYP for three consecutive years).

260.  *See id.* (stating what happens when a school fails to make AYP for four consecutive years).

privatization.[261]As conceived, the Act was a search-and-destroy mission, consistent with the rhetoric surrounding the War on Terror.[262] If there were failing schools in America, NCLB would "smoke them out."[263]

Over a decade later, NCLB fell short of its lofty goals.[264] It not only failed to close the achievement gap, but its perverse incentives reduced the quality of education, fueled drop-out rates, and increased school segregation.[265] In fact, the Act was so polarizing that many speculated that it was a Republican "Trojan horse," designed to pave the way not for public school improvement but for wide-scale failure, ultimately leading to privatization.[266] *The Wire* helps illustrate what went wrong.[267]

## II. Teaching the Test: The Wire *and NCLB's Failures*

Season four of *The Wire*, which focuses on Baltimore's public school system, dramatizes the consequences of NCLB's statistics-as-progress approach to school reform. The section examines two different classrooms at *The Wire*'s Tilghman Middle, Prez's math class and Colvin's special pilot program. Both contain examples of situations that parallel the real-life failings of NCLB.

### A. *"Juking the Stats" at Tilghman Middle*

When Roland "Prez" Pryzbylewski arrives to teach math at Tilghman Middle, he quickly learns what matters: Standardized

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261.  *See id.* (stating what happens when a school fails to make AYP for five consecutive years).

262.  *See* Zeus Leonardo, *The War on Schools: NCLB, Nation Creation and the Educational Construction of Whiteness*, 10 RACE, ETHNICITY & EDUC. 261, 268 (2007) (comparing the Act to the War on Terror).

263.  *Id.*

264.  *See* James, *supra* note 220, at 683–84 (stating that the Act has failed to achieve its goals).

265.  *See id.* at 684 (explaining how the Act has failed); *see also* Darling-Hammond, *supra* note 220, at 26) (explaining how the Act failed).

266.  *See* Wood, *supra* note 209, at 11 (comparing the Act to a "Trojan horse").

267.  *See generally The Wire*, supra note 210 (portraying the weakness of the public education system).

test scores. "You don't teach math," says a colleague, "you teach the test," advocating that Prez "spoon-feed" the Leave No Child Behind curriculum to his students.[268] Another colleague tells Prez test scores are the difference between the state "taking over the school or not."[269] Tilghman Middle has clearly failed to make AYP multiple years in a row. As a failing school, it must raise its scores or face restructuring.

Six weeks before the test, Assistant Principal Marcia Donnelly announces that all teachers must teach Language Arts sample questions in addition to their given subject area since Language Arts was Tilghman's lowest-scoring subject the previous year.[270] Prez is forced to teach the repetitive new material, even though he had been making progress teaching his students probability via craps games. Previously interested, his students are now bored and unengaged. "I don't get it," Prez tells a colleague, expressing his frustration that teaching to the test does not asses a student's ability to learn or the retain material. "If we're teaching them the test questions [straight out], what is it assessing in them?"[271] His colleague explains that higher test scores allow the district to claim that the schools are improving.[272] Prez compares the practice of teaching to the test to "juking" crime statistics to make them appear artificially low.[273] Although both tactics manufacture the outward appearance of success, they improve nothing internally.

Tilghman Middle "jukes" their NCLB statistics in two additional ways: Via artificial attendance rates and a zero-tolerance policy that keeps potentially low-performing students out of school. The school hires "freelance" truant officers

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268. *See The Wire: Misgivings*, Season 4: Episode 10 (HBO television broadcast Nov. 19, 2006) (showing the impact of standardized testing on curriculum).

269. *Id.* (demonstrating how standardized testing influences teachers).

270. *See id.* (providing an example of drastic methods a school might implement to improve standardized test scores).

271. *See id.* (portraying how teachers might struggle to teach with standardized testing taking precedent in classrooms).

272. *See id.* (showing that standardized tests incentivize schools to change curriculum).

273. *See id.* (exemplifying the gravity of standardized testing by comparing the attempt to procure test results to that of manipulating crime statistics in order to improve appearances).

to round up students and artificially inflate attendance when attendance numbers are reported to the state for funding purposes.[274] Both the students and the officers are shown to understand this purpose, and the truant children only need to attend once a month for the first two months of the year to be part of the school's headcount.

More insidious, but less emphasized, is the school's zero-tolerance policy for minor school infractions. Randy Wagstaff, one of Prez's eighth grade students, lives in fear of the policy. Randy, a foster child, spends the majority of the season afraid that getting in trouble at school will result in his re-institutionalization at a group home.[275] When he lands in trouble with Assistant Principal Marcia Donnelley, Randy tries to bargain with her by giving up information about a drug-related murder.[276] Unfortunately for Randy, his snitching causes local drug lord Marlo Stanfield to take notice, and his house is firebombed.[277]

Schools use zero-tolerance policies as another stat-altering tool. Schools can remove individuals who are likely to underperform on standardized tests, resulting in better test scores, by funneling "problem" students into the juvenile justice system.[278] Randy appears aware of these "one-and-done" consequences for school infractions and wants to avoid them at all costs.

Tilghman Middle "jukes" its stats in ways that mirror real-life school responses to NCLB's stringent testing requirements.[279]

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274. Buzuvis, *supra* note 207, at 369; *see The Wire: Refugees* (HBO television broadcast Oct. 1, 2006) (painting a picture of how schools might alter data).

275. *See* Buzuvis, *supra* note 207, at 368 (explaining the problems with zero-tolerance policy from a child's perspective).

276. *See The Wire: Refugees*, Season 4: Episode 4 (HBO television broadcast Oct. 1, 2006) (demonstrating the use of the zero-tolerance policy).

277. *See The Wire,* Season 4, Episode 13 (2006)*: Final Grades* (HBO television broadcast Dec. 10, 2006) (demonstrating the negative effects of a zero-tolerance policy).

278. Alfie Kohn, *NCLB and the Effort to Privatize Public Education*, *in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 103, 110 (Deborah Meier ed., Beacon Press 2004).

279. Although not discussed at length in this paper, it is worthwhile to note that achieving 100 proficiency on norm-reference tests—the kind of testing most broadly adopted by the states—is a mathematical impossibility since 50 percent of students must score below the median. *See* Linda Darling-Hammond, *From "Separate but Equal" to "No Child Left Behind": The Collision of New Standards*

"Teaching the test," a practice *The Wire* portrays as repetitive and disengaging, is increasingly common, especially in schools in danger of failing to meet APT.[280] Curriculum-narrowing is also typical of schools attempting to meet AYP. Real-life schools are devoting more and more time to tested subjects, just as Tilghman Middle required all teachers regardless of subject area to teach language arts sample questions. NCLB tests only math, language arts, and science, forcing schools to narrow their curriculum at the expense of untested subjects like social studies, music, art, and shop.[281] Recreational activities are on the decline, too: Kindergartens in Gadsden, Alabama lost their naptime and elementary schools in Galveston, Texas lost recess.[282] Schools are phasing out field trips and gym.[283] Finally, there is a national trend toward zero-tolerance policies that criminalize minor school infractions, pushing out low-performing students to improve schools' overall test scores.[284] Scholars have observed that teachers' priorities shift when test scores threaten their classroom autonomy, pay, and job security.[285] The idea of removing problem children becomes more attractive when it is beneficial to teachers and not just the administration. Teachers are frequently forced to choose between the school as a whole, which will have its funding

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*and Old Inequalities*, *in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 26, 33 (Deborah Meier ed., Beacon Press 2004).

280.    *See* James, *supra* note 220, at 691 (noting the commonality of "teaching the test").

281.    *See id.* at 701 (offering insight on the effects of standardized testing on course diversity).

282.    George Wood, *A View from the Field: NCLB's Effects on Classrooms and Schools*, *in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 57, 66 (Deborah Meier ed., Beacon Press 2004) (discussing the changes in recreational activities in schools).

283.    *See id.* (same).

284.    *See School-to-Prison Pipeline*, ACLU, https://www.aclu.org/school-prison-pipeline (last visited Nov. 12, 2018) (arguing that the behaviors criminalized by zero-tolerance policies should be handled inside the school) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

285.    Kohn, *supra* note 278, at 116 (explaining that schools that prioritize the students instead of test scores will have more substantive real-world outcomes).

cut as a result of low scores, and the individual child.[286] Most choose the school.

## B. "Warehousing" at Tilghman Middle

The second classroom suffering the effects of NCLB in *The Wire* is an experimental education classroom designed to intervene in the lives of at-risk students. Run by Professor David Parenti and former police major Howard "Bunny" Colvin, the class is made up of the ten most troubled students at Tilghman Middle. The class is a pilot program, intended to keep at-risk youth out of gangs using isolation and radical teaching methods.[287] Many of the children involved are already "corner boys," the lowest rung of the drug trade.[288] Before Colvin's program, they could either be found disrupting their regular classrooms or out on the streets due to frequent suspensions.[289] Suspensions are yet another zero-tolerance tool. Teachers can maximize test preparation for students who have a chance of performing well by removing disruptive children from the classroom entirely.[290]

In Colvin's class, suspension is not an option.[291] Students are kept in school, where their problematic behavior is addressed directly.[292] Because of this, the class quickly begins to make progress. Since the students are never suspended, they spend more time in a classroom environment and less time on the streets. Colvin appears to be reaching some of them, especially Namond Brice, by engaging the class in topics directly relevant to their

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286.   *See* Wood, *supra* note 209, at 57 (noting that students in Philadelphia spend less time readings books because they are focused on test scores and that schools in Oregon are cutting foreign language and music classes).

287.   *See* Buzuvis, *supra* note 207, at 370 (explaining the NCLB).

288.   *See The Wire: Refugees*, Season 4: Episode 4 (HBO television broadcast Oct. 1, 2006) (displaying the purpose of the fictional experimental program).

289.   *See id.* (highlighting the activities of the youth in the NCLB before the program's inception).

290.   *See* Wood, *supra* note 209, at 116 (demonstrating one potential drawback of zero-tolerance policies).

291.   *See The Wire: Alliances*, Season 4: Episode 5 (HBO television broadcast Oct. 8, 2006) (showing the bounds of suspension within the show).

292.   *See id.* (examining the impact of non-suspension penalties).

lives.[293] Unfortunately, the school district cancels the pilot program, which closely resembles "warehousing" to withstand public scrutiny.

"Warehousing" is the practice of segregating children by ability in order to better teach test preparation.[294] Frequently, children in the bottommost group lose out, since they become the lowest priority. In fact, schools can avoid reporting the test scores of low-performing subgroups entirely—NCLB only requires subgroup scores to be counted separately if there are enough students in the subgroup to yield "statistically reliable information."[295] Since states determine what number comprises a statistically reliable subgroup, more and more are refusing to count large subgroup scores separately, instead mixing the scores in with the general school population.[296] Thus, subgroup scores that would cause a school to fail if counted alone can be dispersed and neutralized, allowing schools to continue making AYP.[297] The ten students in Colvin's class are too few to comprise a subgroup, meaning Tilghman Middle could avoid teaching them test curriculum entirely and suffer few consequences. The school district wants to avoid the perception that Colvin's class has been left behind at the expense of other children's success.

Additionally, learning how to succeed on standardized tests is not helpful to Colvin's class. At-risk children often need specialized intervention that does not transfer into higher test scores. Colvin's class is not truly being left behind, since Colvin and Parenti are trying to rehabilitate the students and address their specific needs.[298] If Parenti's pilot study had been allowed to succeed, it

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293.    *See id.* (portraying Colvin's attempts to positively impact students).

294.    *See* Alfie Kohn, *NCLB and the Effort to Privatize Public Education*, *in* MANY CHILDREN LEFT BEHIND: HOW THE NO CHILD LEFT BEHIND ACT IS DAMAGING OUR CHILDREN AND OUR SCHOOLS 103, 127 (Deborah Meier ed., Beacon Press 2004) ("The federal No Child Left Behind Act demands that schools show proficient test scores for every student. One approach to achieve that, some argue, is to tailor instruction in groups of similarly skilled students." (citing Laura Pappano, *Grouping Students Undergoes Revival*, BOSTON GLOBE*,* Dec. 14, 2003)).

295.    20 U.S.C. §§ 6311(b)(2)(C)(v)(II), (b)(3)(C)(xiii) (2006).

296.    *See* Garda, *supra* note 225, at 71 (explaining how states are inappropriately mixing in scores).

297.    *See id.* (same).

298.    It is worth noting that real-life schools frequently do not have the

presumably would have been expanded to more schools, targeting wider groups of at-risk youth and keeping them out of gangs. But, as the show makes clear, the Baltimore public school system does not measure success by how many children are kept out of gangs. It measures success by test scores. The pilot program is cancelled because the benefits to Colvin's class are too intangible to fit into NCLB's statistics-as-success regime.

## III. Alternatives to NCLB

Reform is necessary, and lately, experts have begun looking outside America for inspiration.[299] This section proposes that Canada's education system provides a useful source of comparison.

Like the United States, Canada is a federation that constitutionally divides power between a central government and ten provincial governments that "stretch from the Pacific to the Atlantic coasts."[300] Canada is very diverse, featuring one of the largest and most-varied immigrant populations in the world.[301] It is the second largest country in the world with one of the lowest population densities, 3.5 persons per square kilometer.[302] These factors present formidable challenges to the public school system, which must deliver services to widely-dispersed citizens with varied needs.[303] Nevertheless, Canadian students consistently

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resources to employ such specialized programs. Instead, at-risk children truly *are* left behind. Schools either remove them from the classroom using zero-tolerance policies and suspensions, or warehouse them so they cannot interfere with their classmates' performance. *See generally* Wood, *supra* note 209, at 116.

299. Mark Phillips, *Transporting Finland's Education Success to the U.S.*, WASH. POST (Oct. 22, 2011), https://www.washingtonpost.com/blogs/answer-sheet/post/transporting-finlands-education-success-to-us/2011/10/20/gIQAb21z3L_blog.html?utm_term=.4fc88b1494f3 (looking at Finland's education system as a possible alternative to the American system) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

300. Jennifer Wallner, *Looking North of the 49th Parallel: P-12 Education in Canada*, 87 PEABODY J. OF EDUC. 593, 597 (2012) [hereinafter *Looking North*].

301. *See id.* at 580 (discussing immigration from the Caribbean, Asia, South America and increasing Africa).

302. *Id.*

303. *See id.* at 597 (highlighting the various challenges that come with such a sparsely populated area)

score highly on the Programme for International Student Assessment (PISA), a worldwide education study conducted by the Organisation for Economic Co-operation and Development (OECD).[304] By comparison, American students produce average to below-average PISA scores.[305] More importantly, Canada's PISA scores reveal the country is close to achieving education equality, as different minority groups perform similarly to their white and wealthy counterparts.[306] Thus, Canada has realized the American dream of closing the achievement gap. Furthermore, students' performance is largely unrelated to the school in which they are enrolled.[307] OCED itself declared that "parents in [Canada] can be less concerned about school choice . . . [since there are] high and consistent performance standards across schools in the entire education system."[308] What, if anything, can the United States learn from its northern neighbor?

### A. Canada: A Case Study

Before examining the Canadian public school system's strengths, it is worthwhile to note its various limitations. Despite Canada's PISA equality score, certain minority populations continue to underperform relative to other groups, including Francophone students who live outside Quebec[309] and recent

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304.     *See* KATHRYN O'GRADY ET. AL, MEASURING UP: CANADIAN RESULTS OF THE OECD PISA STUDY 33 (2015) (discussing Canada's results in math, exceeded only by Korea, Japan, and Switzerland).

305.     *See* PBS NEWSHOUR, *How Does American Education Measure Up To Schools Around the Globe?* (December 3, 2013), https://www.pbs.org/newshour/show/how-american-schools-measure-up-to-schools-around-the-globe#transcript (showing America's PISA scores overall were in the "middle of the pack") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

306.     O'GRADY ET AL., *supra* note 304, at 24 (showing Canadian science scores demonstrate equity).

307.     *See Looking North*, *supra* note 300, at 596 (explaining that using the OECD measure of "between-school variation" Canada's variation is one tenth of the average).

308.     *Id.*

309.     Despite being an officially bilingual country, the vast majority of Canada's French-speaking population is concentrated in the province of Quebec, which is 80 percent Francophone. *See id.* at 597 (explaining that Canada's

immigrants.[310] Furthermore, although Canada is ostensibly a secular society, Canadian Catholic schools receive public funding.[311] Thus, some provinces have three independent public schools systems—French public schools, English public schools, and Catholic public schools.[312] Catholic children are thus at an advantage, having greater school choice then their non-Catholic schoolmates.[313] Nevertheless, Canadian public schools have instituted notably similar policies, creating a de facto "pan-Canadian" education framework.[314]

As compared to the United States, the Canadian public school system differs in two main ways: Its organization, and its low-stakes standardized testing. This section examines both differences in detail.

### 1. Canada's Public Schools: Both More Centralized and Decentralized Than America's

Unlike in the United States, where the federal government uses statutes like NCLB to direct states' education policy, the Canadian public school system is completely free of federal government intervention.[315] Education responsibilities fall entirely to the provinces, which exercise almost complete legal, administrative, and financial responsibility for their public schools.[316] The Canadian system is so decentralized as to be an

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bilingual status and recent influx of immigration cause unique challenges).

310. *See id.* (highlighting the performance of various subgroups).

311. *See* Sarah Boesveld, *Pay for It Yourself: Canadian Catholics Fighting Renewed Push for Single Publicly Funded School System*, NAT'L POST, April 12, 2014 (discussing that despite their religious nature, Catholic schools in Canada receive public funding as a constitutionally protected right).

312. Sometimes subdivided into French Catholic and English Catholic. *Id.*

313. *See id.* (discussing how non-Catholic children must travel further to get to school and may be forced to leave their district entirely).

314. *See* Jennifer Wallner, *Political Structure, Social Diversity and Public Policy: Comparing Mandatory Education in Canada and the United States*, 47 COMP. POL. STUD. 850, 852 (2012) [hereinafter *Comparing Mandatory Education*] (discussing the effect of the decentralization of the Canadian educational system).

315. *See id.* (explaining that Ottawa remains "shut out" of educational decisions).

316. *See id.* at 852 (explaining the Canadian educational system).

international anomaly: Of all the industrialized countries in the world, Canada alone has no national department of education.[317]

However, authority at the provincial level is highly centralized.[318] Unlike the American public school system, where authority is fragmented across multiple levels of state and local government, Canadian provinces retain control at the highest level.[319] For instance, each province has a Minister of Education who oversees all policy decisions.[320] Furthermore, Canada's system of parliamentary democracy encourages centralization and consensus, meaning that the transaction costs of implementing change at a sub-provincial level are low.[321] Unlike Madisonian checks and balances, parliamentarianism concentrates authority, meaning that when Canadian provinces decide to pursue policy change, they have the capacity to do so rapidly and uniformly.[322]

Despite being constitutionally permitted to pursue education goals independently of each other, the provinces have frequently preferred to cooperate.[323] In 1967, the provinces established the Council of Ministers of Education, Canada (CMEC), an organization which facilitates intra-provincial discussion.[324] Despite the fact that its decisions are nonbinding, the CMEC has successfully implemented multiple national programs, including a nationwide achievement-testing program, common learning goals for science and math, an intra-provincial student transfer guide, Canada's participation in PISA, and programs for minority

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317.    *See id.* (same).

318.    *See id.* (explaining that removed from the federal level, the provinces have centralized control over education).

319.    *See id.* at 856. (contrasting the American and Canadian educational bureaucracy).

320.    *See Looking North*, *supra* note 300, at 600 (explaining that a province's minister of education is "vested" with "strong authority").

321.    *See Comparing Mandatory Education*, *supra* note 314, at 856 (explaining that Canada's centralized educational system allows for easier implementation of changes as opposed to the United States).

322.    *See id.* at 855 (explaining that Canada's parliamentary system revolves around the idea of strong centralization).

323.    *See id.* at 856 (explaining that Canadian provinces will cooperate in order to avoid losing their authority over educational matters).

324.    *Id.* at 859.

language education.[325] Thus, education policy, and consequently school quality, remains consistent across the provinces.

Canadian school funding is also far more centralized than in the United States. Eight Canadian provinces have instituted a full-state funding model, meaning that the provinces themselves are responsible for all education costs.[326] This model both maximizes provincial authority and severely curbs the autonomy of local school boards, who are dependent on provincial grants for funding.[327] School boards must fall in line with provincial guidelines, or risk being cut-off.[328] This funding centralization explains why the CMEC successfully implements nationwide programs—provided each of the ten provincial ministers agrees with a given policy, it is relatively easy to implement in their home provinces.[329]

Full-state funding also generates remarkable school equality, since all communities, regardless of the relative wealth of the local tax base, are guaranteed to receive equal resources from the province.[330] Instead of wealth remaining concentrated in one or two school districts, as is common in the United States, it is redistributed throughout the province.[331]

Thus, although the Canadian provinces ostensibly function independently of one another, strong centralization at the provincial level coupled with informal intra-province cooperation has created a de facto pan-Canadian education system.[332]

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325.   *See id.* (highlighting the success of the CMEC).

326.   *See Looking North*, *supra* note 300, at 601 (explaining that this model completely centralizes education finance despite the administrative arrangements in place).

327.   *See id.* (describing this model as "maximum state intervention").

328.   *See id.* (discussing how without control over their finances, local boards must follow provincial guidelines).

329.   *See Comparing Mandatory Education*, *supra* note 314, at 858 (showing the effect of centralization on the policymaking of education).

330.   *See Looking North*, *supra* note 300, at 601 (explaining that by centralizing funding, local school boards do not have control over their own funding).

331.   *See id*. (contrasting the wealth distribution of the Canadian educational system to the American one).

332.   *See id*. at 606 (discussing how although Canada does not have a national school system, centralization ensures the provinces act as one).

Canadian public schools are remarkably uniform. Two schools on Canada's opposite coasts are more likely to be teaching the same curriculum with similar levels of funding than two American schools in the same state.[333]

### 2. Canada's Low-Stakes Educational Assessments

It is not enough to simply note that Canadian schools are uniform; why Canadian students succeed under this particular uniform model must be explored. Specifically, this section explores two differences between Canadian public school curriculum and the American model. First, Canadian curriculum is outcome-based, not standards-based, and second, Canada has implemented low-stakes achievement tests that differ markedly from the NCLB.[334]

Like standards-based accountability, outcome-based education is premised on the idea that all students should obtain certain learning outcomes at the conclusion of a particular program of study.[335] However, outcome-based education allows for considerably more teaching flexibility. An "outcome" is merely a general expectation of what needs to be accomplished by the end of particular course, with no specified style of teaching or assessment.[336] Thus, although Canadian public schools expect their students to achieve uniform outcomes, each individual teacher has a certain amount of autonomy in determining how those goals are achieved. By contrast, a "standard" is a quantifiable measure of student performance, like a specific grade on a uniform achievement test. Frequently, standards-based accountability requires teachers to adhere to specific test-based

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333.   *See id.* at 603 (explaining that "students from coast to coast are expected to acquire commensurate skills").

334.   *See id.* at 604 (showing that typically results of tests in the Canadian system have less effect on students' grades than in the United States).

335.   *See id.* at 603 (discussing the goal of outcome-based education).

336.   *See id.* at 602 (explaining that the concern is "pursuable targets" and "determining the *ends* of a particular course").

curriculum in order to meet the standard,[337] as is required of Prez in *The Wire*.

Because outcome-based education does not require uniform assessment, Canada relies far less on standardized testing than America. First, Canada has no equivalent of the SATs. Although all Canadian provinces have implemented some form of graduation exam, these exams vary considerably in both scope and importance.[338] For instance, New Brunswick and Ontario simply require that all students pass a basic literacy test to graduate from high school, leaving the ultimate decision to the schools.[339]

Secondly, although Canada does conduct nationwide testing in Grades 3, 6, and 9 to monitor public school quality,[340] these tests are low-stakes for teachers, schools, and school boards alike. Their results do not influence school funding or teacher merit pay, and in some provinces do not even affect the individual test takers themselves.[341] For example, in Ontario, a child's standardized test scores do not count toward in-school grades, and do not influence grade advancement.[342] In fact, most children never know their own scores.[343] As a result, Canadian achievement testing is a diagnostic tool.[344] Provinces use the data to determine which of their education policies are succeeding, and which need to be restructured.[345] The schools themselves remain unaffected.[346]

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337. *See id*. at 604 (explaining that traditionally, tests would be used as a measure of student progress).

338. *See id*. at 603 (explaining that some provinces have only one or two mandatory exams to graduate, while others institute more requirements).

339. *See id*. at 605. (explaining the graduation exam requirements of the various Canadian provinces)

340. *See id*. at 604 (explaining that tests in those grade levels do contribute to student's final grades).

341. *See id*. (explaining that these tests are used for evaluation but not for grading of the students or to review teachers' skills).

342. *See id*. (same).

343. *See id*. (explaining the secrecy of the test results).

344. *See id*. (discussing how testing is used primarily to gauge student progress rather than for grading purposes).

345. *See id*. (explaining how the test data is used).

346. *See id*. (explaining that test results do not impact a school's funding).

### *B. Lessons from Canada*

While it is possible to learn from Canada's successful education policies, some differences are irreconcilable. For instance, Canada's centralized parliamentary system, which allows each province to rapidly implement internal policy changes, is obviously not compatible with America's Madisonian checks and balances. Secondly, the Canadian provinces' full-state system of school funding is unlikely to ever be implemented in America. America currently follows a shared cost model, splitting funding between local property taxes, state funding, and federal grants, with state and local sources contributing the vast majority.[347]

Lowering the stakes of standardized testing, especially the financial stakes, is an important first step for American public schools. If standardized testing was used as a diagnostic tool rather than a punishment, these problems would abate. Indeed, the Canadian model suggests that less-frequent testing does not affect student performance. Canadian students, who take markedly fewer standardized tests than their American counterparts, nevertheless score higher on international achievement assessments like PISA. This suggests that more tests do not equal better-educated students. In fact, as stated above, too much testing may decrease the overall quality of education as teachers are forced to conform their curricula to test subjects year after year. American public schools should decrease statewide standardized tests to every second, or every third year.

Canada shows that shifting away from standards-based accountability toward a more flexible outcome-based education model would likely be beneficial. More teacher autonomy means that curricula can be tailored to meet the needs of more students, like Prez was able to teach his class probability via craps. Since the two systems are so similar, such a shift would require minimal classroom restructuring.

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347.   *See id.* (discussing America's educational model).

## *Conclusion*

An examination of the family, the War on Drugs, and the public school system as portrayed in David Simon's *The Wire* demonstrates what happens when social reform efforts calcify. All three institutions are shown to suffer at the hands of failed policy initiatives. Whatever the original intentions behind welfare policy, drug sentencing guidelines, and standardized testing, their ultimate effect has been to harm poor communities of color. Change is necessary. However, as *The Wire* demonstrates, effecting that change is no easy task. It cannot be undertaken by one individual, and it cannot be limited to one social institution. Professor William Julius Wilson states that *The Wire* "has done more to enhance our understandings of the challenges of . . . inequality than any other media event or scholarly publication."[348] This paper submits that we must move beyond enhanced understanding and take action.

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348. William J. Wilson, Statement at Harvard University Forum on *The Wire* (Apr. 4, 2008).