



National Lawyers Guild *Review*

Volume: 80

No.1

Summer/Fall 2024



NATIONAL LAWYERS GUILD REVIEW

EDITORIAL BOARD

Editor in Chief

Jenipher R. Jones

Executive Editor

Michael Drake

Layout Editor/Illustrator

Olive Gardenia

Articles Editor

Zane McNeil

Contributing Editors

Alan Clarke Camillo Perez Bustillo
David Gespass Kendra J Muller
Paul Von Blum John Felipe Aceveo
Emily Komp Jack Jackson
Meridith O'Harris Kara Naseef
Max Utschneider Jenipher R Jones
Kylah Clay Karen Bassler
Kat Brausch Michael Podgurski
Joey Chase Shayla Sullivan
Lisa Ledvora Rammya Rajan
Kar Nowakowski Tara Wilson

The opinions expressed in the articles are those of the various authors,
and each article is Copyright © 2024, by the author and
by National Lawyers Guild Review.

Table of Contents

Editor's Preface	3
Resilient Advocacy: A Systems Theory Approach to Trauma Informed & Anti-Racist Advocacy By: Lorilei W.	5
From Pollution to Solutions: Exploring Equitable Remedies for Communities Impacted by Peaker Plants in NYC By: Michael O'Hora	24
Stop Israel's Genocide in Gaza By: David Gesspass & Alan W. Clarke	31
Public Benefits: An Abolitionist Approach to Crime Reduction By: Laya Reddy	37

*“And when we speak we are afraid
 our words will not be heard
 nor welcomed
 but when we are silent
 we are still afraid
 So it is better to speak
 remembering
 we were never meant to survive.”*

Audre Lorde, A Litany for Survival

This issue of the National Lawyers Guild Review (NLGR) represents a significant moment in its history, marking an abundant past and hopeful future in terms of scope and impact. The current publication also represents dual, yet intersecting visions. It seems apropos that the current significant pivotal moment in politics and movement also align with the juncture of NLGR leadership changes. As the new Editor in Chief, I will maintain the rich scholarly tradition of the NLGR, while stabilizing, aligning, and broadening the scope of its work. To evolve, despite our fear, as Lorde says, we must give a present voice to our vision. In many ways, this iteration of the NLGR represents an oasis of dialectic discussion for tender hearts that yearn for liberation. That said, I am grateful to my predecessor Dalia Fuleihan for her leadership in advancing the structure of the NLGR, the consistent publication of materials, and excellent work. I am also grateful for the skilled leadership of current NLGR Executive Editor Michael Drake.

I suspect the content of the NLGR will convey far more than I could ever state about myself. As an introduction, I am a constitutional lawyer primarily focusing on the rights and post-conviction remedies for prisoners, particularly political prisoners using a holistically informed movement approach to the work. I spent time during my legal career teaching and mentoring law students with the same skills. Yet in my time in the legal profession, strewn with documents, text, motion practice, intellectual rigor, and lofty ideas, I have learned that the marrow of the work often involves and is moved by a shared human language, typically unspoken, the symbolic, and the sacred. In this manner, the NLGR represents individual and collective understanding of liberation in technicolor. Within this same vein, the visual artistic work of Layout Editor, Olive Gardenia, adorn the pages of the current and future issues of NLGR. The addition of Zane McNeil to the current executive editorial board staff also presents profound scholarship and creative insight.

A scene from Kushner’s Angels in America:

Roy Cohn : [under the impression that Belize is the Angel of Death] Can I ask you something, sir?

Belize : [going along with it] “Sir”?

Roy Cohn : What’s it like? After?

Belize : After...?

Roy Cohn : This misery ends?

Belize : Hell or heaven?

Roy Cohn : ...heh...

Belize : Like San Francisco.

Roy Cohn : A city! Good! I was worried... it’d be a garden. I hate that shit.

Belize : Mmmm. Big city. Overgrown with weeds, but flowering weeds. On every corner a wrecking crew and something new and crooked going up catty corner to that. Windows missing in every edifice like broken teeth, gritty wind, and a gray high sky full of ravens.

Roy Cohn : Isaiah.

Belize : Prophet birds, Roy. Piles of trash, but lapidary like rubies and obsidian, and diamond-colored cowspit

streamers in the wind. And voting booths. And everyone in Balenciaga gowns with red corsages, and big dance palaces full of music and lights and racial impurity and gender confusion. And all the deities are creole, mulatto, brown as the mouths of rivers. Race, taste and history finally overcome. And you ain't there.

Roy Cohn : And Heaven?

Belize : That was Heaven, Roy.

Belize's prophetic and elegiac vision of abolition, of dismantling systems are a reclamation of "history finally overcome." So too of the NLGR: vision with ultimate objective of liberation is our compass. We seek to create a compendium of our movements, politics, and legal developments to move beyond mere conceptualization, and lean into the mystery of not knowing the ultimate meaning but for the passage of time. We endeavor to quench and nourish our thirst for meaning.

Thus, the NLGR reader can expect it to advance the professional identity formation and continuing legal education of National Lawyers Guild members by advancing scholarship, political education, and illuminating interdisciplinary intersections with the law, such as with arts and culture. The NLGR will tastefully bear cultural and artistic expression within the written legal scholarship the publication will offer. Where appropriate, visual art and music accompany each issue as a companion to synthesize and integrate our intellectual understanding of its content. I am grateful and look forward to this journey with you.

In Solidarity and Revolutionary Love,

Jenipher R. Jones, Esq.

Editor in Chief

National Lawyers Guild Review

RESILIENT ADVOCACY: A SYSTEMS THEORY APPROACH TO TRAUMA INFORMED & ANTI- RACIST ADVOCACY

Lorilei W.^{1*}

Introduction

When I was 22 years old and a second-year law student, one of my first clients handed me her toddler's bloody shirt as evidence of the abuse they endured at the hands of her ex. She was desperate to convince me of the dangers she and her child remained in from her abusive partner. I still remember the color of the shirt, faded white with pale pink sleeves, dotted deep red with dried blood. Working with this client was traumatic for me, as a Korean-American survivor of violence with complex post-traumatic stress disorder. I can only imagine how traumatic it was for her and her daughters to live it day in and day out, as they turned to me seeking safety. She was the first of thousands who would turn to me throughout my career as an immigration attorney.

Direct services legal work²—both nonprofit and private—is steeped in trauma, and legal workers³—both attorneys and non-attorneys—are rarely equipped for it. Our clients come to us at moments of extreme crisis, such as when they are seeking protection from eviction or deportation, wanting to stave off the impending separation of their families by racialized structures. These moments of crisis form predictable cycles of poverty and trauma, resulting in systems that remain largely unchanged, even if there are individuals who manage to win some battles.

There are limits to what legal workers can achieve when striving to be trauma-informed in their practice. We cannot rewrite history and change the outcomes that the systems we work in have produced. We cannot wave a wand and ensure all our funding and policy asks come true and that we have the impact we intend. We cannot

¹ * Lorilei W. (they/them) is a queer, trans abolitionist, artist, and attorney dedicated to teaching legal advocates how to engage in trauma-informed and antiracist advocacy in their individual capacities and collectively as movement advocates. Lorilei's work is rooted in their lived experiences of imperialism—as the child of an American soldier and Korean migrant, and as a stepchild to a Mexican family with deep roots in Michoacán, Mexico.

Their expertise is further informed by over a decade of professional experiences ranging from volunteer to director at numerous nonprofit organizations, including the Southern Poverty Law Center, Legal Services NYC, and various Catholic Charities organizations. Lorilei has been a strategic accomplice to migrants across the nation, including in rural farms in Upstate NY, migrant camps in Tijuana, and multiple detention settings—from unaccompanied minor shelters to rural for-profit mass incarceration facilities in the Deep South. Given their deep expertise in immigration law, Lorilei served as co-faculty for the 2021-22 New York Law School Asylum Clinic. They previously served as the Training Attorney for the Shriver Center on Poverty Law, where they designed and launched a national network of expert race equity legal advocates to lead sessions on racial justice advocacy. They also designed and led sessions in trauma-informed advocacy, community-driven advocacy, structural racialization, systems thinking, practice management, and supervision. Lorilei's experiences building power in local community groups and among colleagues within nonprofit workspaces are the foundation for their approach to building sustainable, collaborative direct services advocacy models.

Lorilei is admitted to the state bars of New York and Texas, the US Court of Appeals for the 2nd Circuit, and the Southern and Eastern Federal District Courts of New York. They are a graduate of Washington University in St. Louis School of Law and the University of Maryland. Lorilei is also an alum of the Robert H. Smith School of Business's Quality Enhancement Systems and Teams (QUEST) Honors Program, a multidisciplinary program through which they studied systems thinking, project management, organizational design, and marketing.

² I will use the terms “direct services legal work” and “direct services” to refer to any type of legal work in which legal workers are working directly with clients impacted by injustice. Most of this work is representing clients in their individual legal matters, such as defense against eviction and appealing public benefits denials, but can also include campaign advocacy, organizing, and other similar work. Moreover, I use these terms regardless of whether the organizational entity is a nonprofit, governmental, solo-practitioner, or private firm.

³ I use the term “legal worker” to refer to any person who is working to support direct services legal work. This includes both attorneys and non-attorneys, such as social workers, paralegals, and legal assistants. This also includes both employees and volunteers, including interns and pro bono counsel.

wish away the evils of all the industrial complexes and -isms that produce the heartbreaking outcomes we must witness. We can, however, make better choices in how we relate with our clients and each other as we try to survive this work another day.

In 2016, Sarah Katz and Deeya Haldar authored the seminal article “The Pedagogy of Trauma-Informed Lawyering,” in which they identify four hallmarks of trauma-informed lawyering: “(1) identifying trauma; (2) adjusting the lawyer-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma.”⁴ As a front-line nonprofit immigration attorney and supervisor, I found their work invaluable in guiding my daily work as I continued to seek ways to be a more effective and sustainable advocate and leader. This article, however, assumes differences in identity and experience between attorneys and the people we represent and for whom we advocate. As an attorney who also has personal experiences with domestic violence, child abuse, child migration, and racism, I find that many frameworks proffered by lawyers fail to address the complications of intersectionality and the frequent differences between those who are directly impacted by injustice and those who advocate on our behalf.

Gaps in privilege, power, and identity impact how legal workers, and in particular lawyers, engage in direct services legal work. According to a 2022 article by the American Bar Association, the profession continues to be dominated by white males. Notably, “[O]nly 4.7% of practicing attorneys are Black, with about 10% of attorneys falling into other racial minority groups.”⁵ Moreover, the legal profession is often inaccessible to people who have experienced injustices such as houselessness, domestic violence, and poverty given the high cost and commitments of university and law school. Thus, lawyers frequently do not know what it means to experience the very injustices they seek to shift.

On a macro level, this results in advocacy that inadvertently creates more problems for directly impacted people. For example, advocacy for cannabis legalization intended to reduce or eliminate criminalization may fail to address the historical and long-term impact of cannabis-related arrests. Oftentimes, this advocacy provides a path forward for revenue growth for cannabis companies largely owned and run by white male executives, while failing to address the disproportionate impact of cannabis-related arrests on Black communities.⁶ To address this, racial and restorative justice initiatives may include opportunities to minimize the harm of past cannabis-related convictions and invest in justice-involved BIPOC’s⁷ ownership of cannabis businesses.⁸

On a micro level, the differences in identity between lawyers and the people they serve can result in lawyers assuming strategies that directly harm their clients. A common example of this occurs in the removal defense of detained migrants. Migrants facing deportation may be detained in atrocious conditions, with poor food, little to no meaningful medical care, and constant exposure to health hazards.⁹ Zealous lawyers frequently assume that their advocacy must include reserving appeal. However, many detained migrants may prioritize their release from

4 Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363 (2016).

5 John Harrity & Samantha Sullivan, *How to Improve Diversity in the Legal Profession*, AM. BAR ASS’N (July 18, 2022), https://www.americanbar.org/groups/law_practice/resources/law-practice-magazine/2022/how-improve-diversity-legal-profession/.

6 Jeremy Berke & Yeji Jesse Lee, *Top Executives at the 14 Largest Cannabis Companies Are Overwhelmingly White Men, an Insider Analysis Shows*, BUSINESS INSIDER (June 30, 2021, 9:30 AM), <https://www.businessinsider.com/cannabis-industry-diversity-executives-are-white-male-insider-inequity-analysis-shows-2021-6>.

7 Terms for communities of color, or the global majority that is not racialized “white” or of predominantly European descent, are in continuous evolution. In this article, I use the term BIPOC which stands for Black, Indigenous, and people of color. I use this term as I write about the American context, which has a history of rendering Black and Indigenous issues especially invisible. I use the term to remind myself to center my awareness not just on people of color generally, but to also emphasize the historic disenfranchisement of Black and Indigenous peoples in the United States of America.

8 Mayor Adams, Department of Small Business Services Announce New Initiatives to Equitably Grow Cannabis Industry in NYC, NYC.GOV (August 22, 2022) <https://www.nyc.gov/office-of-the-mayor/news/611-22/mayor-adams-department-small-business-services-new-initiative-equitably-grow>.

9 For more on the conditions of immigration detention, see Mizue Aizeki, Ghita Schwarz, Jane Shim & Samah Sisay, *Cruel by Design: Voices of Resistance from Immigration Detention*, IMMIGR. DEF. PROJECT & CTR. CONST. RTS. (February 2022), <https://www.immigrant-defenseproject.org/cruel-by-design-voices-of-resistance>.

detention over remaining in the U.S. if defending themselves from removal will result in prolonged or indefinite detention. By reserving appeal, lawyers may inadvertently subject their clients to an additional 30 days of detention because the federal government's policies are to not deport detained migrants during their window of appeal. This may be in direct contradiction to the detained client's wishes to be released from detention as soon as possible, even if that means deportation. Many detained migrants would rather be deported than spend one more night in the detention center, with their physical and mental health at continued risk.

As an attorney with direct experiences that overlap with many clients and communities I have served, these gaps in privilege, power, and identity have always been present and considered in my practice of law. I was acutely aware of many of the harms my clients experienced, and I sought to develop practice management strategies to ensure I collaborated with my clients and adapted strategically to shift justice in their favor. Systems theory has been a critical component of my contributions to the legal practice management frameworks used under these trauma-facing and racialized circumstances.

In May 2020, I developed "ACAT: A Trauma-Informed and Antiracist Approach to Legal Advocacy," later renamed to "Resilient Advocacy: A Systems Theory Approach to Trauma-Informed and Antiracist Advocacy." This training combines my learnings as an antiracist and abolitionist attorney with the resilience I have developed as a student and survivor of trauma. In my presentations, I expand on the critical work of experts before me to propose an antiracist approach to trauma-informed advocacy that names and acknowledges the trauma inherent in structures born from racial violence and empowers legal workers to challenge the very nature of our profession and legal education. I then borrow from other disciplines such as management science, systems theory & design, psychology, neuroscience, sociology, and communications to share tangible frameworks and tools to guide legal workers in their decision-making within their internal organizational systems and within the larger legal and social systems they work in.

I do not believe that I have discovered a magic trick that will suddenly make the work bearable. I have, however, developed frameworks rooted in cross-disciplinary expertise and informed by my unique perspective as a neuroatypical migrant and survivor of violence with experiences in management, systems thinking, psychiatric and epidemiological research, adult education, advocacy, organizing, and race equity efforts. While I will include citations to specific sources throughout the article, I must also acknowledge with gratitude the learnings I have gained from thought leaders like James Baldwin, Angela Davis, Kimberlé Crenshaw, and Dr. Ibram X. Kendi; my colleagues in the Shriver Center on Poverty Law's Racial Justice Institute Network who fight for racial justice across the nation in their own communities; my colleagues in the Southern Poverty Law Center Union to whom I will always be grateful for challenging us all to live our values; my colleagues in journalism who strive to shed light on the darkest corners of humanity; and, above all, the thousands of clients who have sat across a desk, plexiglass, or bars from me, who taught me more than I will ever be able to articulate.

The framework I seek to share is a necessarily complex one. My greatest challenge is to distill the information in a manner that is accessible while still holding the full complexity needed to craft meaningful, systems-oriented solutions. Thus, this article is divided into two parts.

In the first part, I will set the stage by introducing key concepts and language relating to systems thinking, trauma, and racism. This first part is divided into four sections:

- (A) In Section A, I introduce systems theory. This will provide a basis for the theory and analyses to follow and provide context for the frameworks offered.
- (B) In Section B, I introduce foundational concepts and language related to racism to ground the reader in a shared understanding of how racism is being named and discussed within this framework.
- (C) In Section C, I introduce trauma and how it may show up in people who are directly exposed to trauma or complex trauma, and who may be further impacted by intergenerational trauma.

(D) In Section D, I introduce the trauma exposure response—the response we may experience due to our exposure to trauma while providing direct services legal work.

In the second part, I will address my approach to resilient advocacy (affectionately dubbed “ACAT”) by addressing each of the four elements:

- (1) Awareness of trauma, race, and structural racism, including how this can show up for ourselves, our clients, and our colleagues.
- (2) Collaboration with clients and communities in their advocacy, whether it be in direct services, impact litigation, or other forms of creative advocacy.
- (3) Adaptation of legal strategies, often using creative strategies rooted in the lived experiences of the clients we serve.
- (4) Transformation of the trauma exposure response experienced by legal workers into enlightened resilience.

In each of these sections, I will use systems and design thinking tools to demonstrate how one might begin crafting adaptive, systems-oriented solutions that leverage systemic change intentionally and with greater sustainability.

I acknowledge that conversations on trauma and race are continuously evolving. Language and frameworks I use today to the best of my ability may be inadequate to describe our world in the future as our learnings and advocacy continue to deepen. I hope to continue learning and evolving along with these conversations and welcome continued dialogue on these topics.

I. Setting the Stage: Critical Concepts on Systems Thinking, Racism, and Trauma

A. An Introduction to Systems Thinking

*Modern systems theory, bound up with computers and equations, hides the fact that it traffics in truths known at some level by everyone.*¹⁰

Systems theory is the interdisciplinary study of systems. It is used frequently to analyze complex systems and devise solutions that leverage intentional change. For example, ecologists may use systems theory to devise strategies to protect local ecological systems. Alternatively, manufacturers may use systems theory to analyze their systems of production to reduce error and increase revenue. Systems theory applies abstract principles, models, and frameworks to both analyze the system as it is and to devise strategies and solutions to leverage intentional change within the system. Thus, the tools developed by systems theorists can also help lawyers understand the complex legal and social systems we work within and design change that actually shifts systems towards greater equity and fewer injustices. In this subsection, I provide a basic overview of systems theory as applied to the legal profession.

“A system is an interconnected set of elements that is coherently organized in a way that achieves something.”¹¹ An organization is a system, comprised of all its leaders, employees, volunteers, and clients. The criminal legal system is also a system, comprised of courts, jails, prosecutors, law enforcement, defenders, bondsmen, and more. We can intuit many characteristics of systems, such as the subsystems contained within systems and the overall nature of the system. However, systems theory can help us achieve far more than we could ever intuit. Systems thinkers have thus developed a lens through which we can “reclaim our intuition about whole systems . . . : hone our abilities to understand parts, see interconnections, ask ‘what-if’ questions about possible future behaviors, and be creative and courageous about system redesign.”¹²

¹⁰ DONELLA H. MEADOWS, THINKING IN SYSTEMS 3 (2008).

¹¹ Id.

¹² Id. at 6-7.

“A system must consist of three kinds of things: elements, interconnections, and a function or purpose.”¹³ In a legal services organization or law firm, the elements are the people that work within the system, such as paralegals, attorneys, middle managers, senior leaders, governing bodies, and volunteers. These elements are interconnected with each other within the organizational system. Decisions senior leadership make, for example, will impact the work a paralegal might perform with a client because of the interconnections between elements in the system. The true purpose of a system, however, is the actual pattern of behavior that emerges from the system, which may directly contradict the purpose articulated by players within the system. For example, a nonprofit’s stated goal may be to champion the fight for racial justice, and yet simultaneously they fail to hire, promote, and retain BIPOC middle managers, calling into question whether their stated goal is in fact the true purpose of that organization’s system.

Systems theory attempts to analyze systems with the use of models and frameworks to predict the patterns of behaviors and relationships systems produce, so we might make better decisions in the design and redesign of systems. Systems theorists have uncovered several common truths of systems by diagramming all sorts of diverse systems as elements, flows, and feedback loops.

Donella H. Meadows’ *Thinking in Systems* is a powerful overview and introduction to systems theory.¹⁴ I share quotes from her work in each section to ground our approach in systems theory. Here are a few key principles of her work:

- “A system is more than the sum of its parts.”¹⁵
- “Everything we think we know about the world is a model.”¹⁶
- “Our models do have a strong congruence with the world.”¹⁷
- “Our models fall far short of representing the real world fully.”¹⁸
- “Model utility depends not on whether its driving scenarios are realistic (since no one can know that for sure), but on whether it responds with a realistic pattern of behavior.”¹⁹
- “Complex behaviors of systems often arise as the relative strengths of feedback loops shift, causing first one loop and then another to dominate behavior.”²⁰

Systems theory is a deep, complex discipline of which I am merely scratching the surface. However, we can use a foundational understanding of systems theory to guide us in forming solutions to the urgent practice management and advocacy problems we face today. Before we can begin ideating and testing solutions, we must first understand the legal systems within which we work, including the context and history in which our systems operate. Thus, to analyze how we might engage in resilient advocacy, we must begin with developing an awareness of racism and trauma. These factors reveal the context and history from which our current legal systems stem and within which we operate as legal workers.

B. An Introduction to Racism

In the United States, racism is baked into our social and legal structures and greatly impacts legal out-

¹³ Id. at 11.

¹⁴ Id.

¹⁵ Id. at 188.

¹⁶ Id. at 191. Models are the diagrams, flowcharts, and other forms of graphic representation we use to map and analyze systems.

¹⁷ Id. at 191.

¹⁸ Id.

¹⁹ Id. at 48.

²⁰ Id. at 189. Feedback loops occur when changes in a stock of the system affect the flows into or out of the same stock. A stock is the present memory of the history of changing flows within the system. Id. at 25. For example, new cases accepted for representation can be diagrammed as a stock. In immigration law, when there is a new “crisis” such as a sudden and drastic increase in asylum seekers, a reinforcing feedback loop may occur when organizations suddenly and drastically increase their intake availability, thereby increasing the stock of new cases accepted for representation.

comes. The legal profession has recently experienced racial reckonings as legal workers seek to increase their awareness of how race fundamentally impacts justice.²¹ After the 2020 protests following George Floyd's murder, race equity trainers became inundated with sudden, urgent requests for training on racial justice, microaggressions, and bias. One of our biggest struggles as a legal community is that we come from vastly different levels of awareness and language development on racism. In this section, I share a few core concepts that are critical to define to ensure we proceed in our systems analysis with a shared understanding and usage of language.

First, we must define race. Race is a social construct or idea that:

- Has been built over time,
- Continues to evolve and change,
- Has concrete ramifications for people's lives, and
- Has many interconnecting sides or facets.²²

The process of racialization is one way that our society sorts communities and people to allocate resources and access to resources, and to deny the same.²³ For example, in the United States, BIPOC individuals are less likely to be homeowners in wealthy neighborhoods. By directly tying funding for education to homeownership and property taxes, the education system has become racialized, with race frequently being a key factor determining educational, and subsequently employment and economic, opportunities.²⁴

It can be helpful to think of racism as showing up in our lives on four different levels: internal, interpersonal, institutional, and structural.²⁵ As I expand on these levels, I use examples of my personal experience as a Korean-American trans non-binary person, but it is important to listen to and believe the experiences of others who may experience these levels differently, and often in more extreme and harmful ways, due to our societal tendencies towards anti-Blackness and anti-Indigeneity.

The first two levels we consider are on the individual level. Internally, we are impacted by the racialized conditioning we see all around us. For example, due to the United States' history of sexualizing Asian people perceived as femme, such as through the exploitation of Korean femmes by American soldiers, we are conditioned as a society to believe certain stereotypes about people we may perceive as Asian femmes—they are subservient, demure, and modest. Internally, both consciously and subconsciously, as a Korean perceived as femme, I began to strive for these characteristics as ideals even if they came at a personal cost to me. In those that interact with me, this internalized conditioning may subconsciously impact how they engage with me. For example, it can show up in a supervisor who may unconsciously treat me with kid gloves because they think I might not be able to handle the adversarial nature of litigation, as an alleged subservient, demure, and modest Asian femme. Notably, this racialized conditioning intersects with other societal norms, such as cisgender heteronormativity which drives us to assume the gender of others based on their perceived anatomy, thereby rendering the existence of transgender and non-binary people largely invisible and frequently misunderstood.

Interpersonal racism refers to the racism that shows up between individuals. A supervisor's racism, for example, may rise from internal to interpersonal because it is no longer contained internally within them, but

21 Eugene K. Chow, A Racial Reckoning, *FORDHAM LAW* (2021), <https://digital.law.fordham.edu/issue/fall-winter-2021/a-racial-reckoning>.

22 This definition was provided by the Racial Justice Institute at the Shriver Center on Poverty Law, a seven-month national leadership program through which fellows are trained in racial justice strategies in legal work and advocacy. For more information, see Racial Justice Institute Network, *SHRIVER CTR. POVERTY L.*, <https://www.povertylaw.org/advocacy-network/racial-justice-institute-network>.

23 *Id.*

24 Property taxation and school funding are closely linked in the United States and reveal great inequities within our society. See Derek W. Black & Axton Crolley, Legacy of Jim Crow Still Affects Funding for Public Schools, *THE CONVERSATION* (April 15, 2022, 8:12 AM), <https://theconversation.com/legacy-of-jim-crow-still-affects-funding-for-public-schools-181030>.

25 The four levels of racism are borrowed from Race Forward, a nonprofit whose mission is to catalyze movement building for racial justice. For more information on the different levels of racism and other concepts related to racism and bias, see What is Racial Equity?: Understanding Key Concepts Related to Race, *RACE FORWARD* <https://www.raceforward.org/about/what-is-racial-equity-key-concepts>.

instead is showing up interpersonally. An example of this is when a supervisor remarks to an Asian attorney after interviewing an Asian job candidate, “Oh, they [the candidate] are just like you. They’re Asian and speak perfect English,” revealing biased assumptions about race and linguistic ability. Interpersonal racism can show up in a range of ways, from instances of racial microaggressions to expressions of direct violence and harm.

The second two levels we consider are systemic in nature: institutional racism and structural racism. Institutional racism occurs within institutions and entities. A nonprofit, for example, may fail to retain or meaningfully empower BIPOC managers in leadership. A nonprofit may also exhibit institutional racism in its advocacy, if, for example, it has a pattern of only representing Spanish-speaking migrant communities, leaving other migrant communities without access to nonprofit services despite having a large presence in the region and desperate needs for social and legal services. In these examples, institutional outcomes (such as the retention of BIPOC supervisors or the provision of nonprofit services) are racialized. Retention and access to services are more accessible to some, and more restricted for others, based on race. This may be contrary to the intent and wishes of the individual people within these institutions but produces institutional racism, nonetheless.

Structural racism occurs as institutions interconnect and reinforce racialization across systems. Elder law units at legal aid organizations, for example, often have white clients at greater proportions than other units within the same organization. Clients of other units—such as education, immigration, and housing—are often largely BIPOC. A deeper analysis will frequently reveal issues of racialization in access to legal services. For example, perhaps the elder law unit receives all new clients through referrals from Adult Protective Services (APS). If, however, access to APS is racialized (perhaps BIPOC communities in that area perceive APS to be related to law enforcement and thus unsafe for them to ask for help), then that racialization will be compounded as access is further limited to the legal aid organization. Thus, the institutional racism of various organizations within this system work in reinforcing ways to produce structural racism, even if this is contrary to the stated goals of individuals within the institutions.

Our systems and structures are highly racialized in the United States. I encourage the reader to explore our legal, political, and social structures further. Racialization, while sometimes cleanly explained on paper, produces horrific daily harms to people across the nation. Racialization is the fuel of our prison industrial complex, military industrial complex, and modernized imperialism, and leaves countless named and nameless BIPOC bodies in their wake. This necessarily causes a ripple of trauma that impacts us all as humans, including those of us who are legal workers.

C. An Introduction to Trauma

To continue our analysis of the history and context of our legal systems, we must also explore what trauma is and how it impacts individuals within the systems—both clients and legal workers alike—and the systems at large. Trauma is a complex concept that can be difficult to define. Trauma has existed for as long as life; however, as a concept in the Western field of psychology, it remains evolving. Moreover, as a non-medical professional and advocate, my interests in trauma are shaped by my role—not to heal my client, but to communicate more effectively with them and in turn advocate for them in a manner least harmful to them as survivors of trauma. While I will use some medical definitions of trauma, I encourage the reader to see these definitions as offerings of context clues that can empower you to relate to yourself, your colleagues, and your clients more effectively. The purpose of exploring these definitions is not to pathologize others or to presume their medical or social needs; it is to seek a greater understanding of the context and history in which we find ourselves in relationship to clients, colleagues, and communities within legal systems. In this subsection, I share key concepts related to trauma that can help legal workers better understand what clients and communities we serve may experience, and what legal workers themselves may have experienced.

The DSM-V defines trauma as when an individual person is exposed “to actual or threatened death, se-

rious injury, or sexual violence.”²⁶ The American Psychological Association defines trauma as “an emotional response to a terrible event like an accident, rape, or natural disaster.”²⁷ Other experts characterize trauma even more broadly, as “a sudden and forceful event that overwhelms a person’s ability to respond to it, recognizing that a trauma need not involve actual physical harm to oneself; an event can be traumatic if it contradicts one’s worldview and overpowers one’s ability to cope.”²⁸ While these definitions give us a base understanding of what could constitute events deemed to be traumatic, it is important to note that trauma can rise to the level of complex trauma when traumatic events are:

- “(1) repetitive, prolonged, or cumulative
- (2) most often interpersonal, involving direct harm, exploitation, and maltreatment including neglect/abandonment/antipathy by primary caregivers or other ostensibly responsible adults, and
- (3) often occur at developmentally vulnerable times in the [survivor’s] life, especially in early childhood or adolescence, but can also occur later in life and in conditions of vulnerability associated with disability/disempowerment/dependency/age/infirmity, and so on.”²⁹

A number of adversities may cause the development of complex traumatic stress reactions, frequently through a cumulative effect, including poverty, homelessness, incarceration, disenfranchisement for ethno-racial, religious, and/or sexual minority status, displacement/relocation, and exposure to death, dying, and the grotesque in emergency response work.³⁰

Western researchers are also beginning to understand facets of intergenerational trauma, the trauma that passes down from one generation to affect the health and well-being of future descendants. Studies show that the children of parents who had experienced trauma are likely to exhibit higher levels of depressive symptoms, post-traumatic stress, anxiety, and attention deficit, while also being more likely to have experienced emotional abuse and neglect.³¹ While these studies attempt to analyze the impacts of intergenerational trauma using Western scientific methods, indigenous communities around the world have long recognized and honored the devastating impacts of trauma shared by communities across generations. Koreans, for example, have the concept of han, an expression of shared grief, resentment and intergenerational trauma widely recognized in Korean culture and the Korean diaspora as the Korean people have survived devastation through Japanese colonialism, American imperialism, and a literal split in our homeland that continues to this day as a direct result of international intervention and exploitation.³² Similarly, Indigenous scholars in the U.S. have developed the term “soul wound” to refer to the collective trauma experienced by Indigenous communities in North America throughout generations via various forms of genocide, both physical and cultural.³³

Legal workers, thus, are necessarily meeting their clients—who are likely already impacted by shared, intergenerational trauma—during acute moments of adversity that may be triggering, worsening, or causing the development of complex trauma. To even be eligible for most nonprofit services, one must be experiencing a level

26 DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, AM. PSYCHIATRIC ASS’N 271 (5th ed., 2013) (describing trauma within criteria for posttraumatic stress disorder).

27 Trauma, AM. PSYCHIATRIC ASS’N, <https://www.apa.org/topics/trauma>.

28 SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (pt. 3, sec. 1: A Review of the Literature) (2014), <https://www.ncbi.nlm.nih.gov/books/NBK207192> (citing TREATMENTS OF PSYCHIATRIC DISORDERS: A TASK FORCE REPORT OF THE AMERICAN PSYCHIATRIC ASSOCIATION 2065-2082 (Mardi J. Horowitz ed., 1989)).

29 Christine A. Courtois, Understanding Complex Trauma, Complex Reactions, and Treatment Approaches, AM. ACAD. OF EXPERTS IN TRAUMATIC STRESS (2020), <https://www.aacts.org/traumatic-stress-library/understanding-complex-trauma-complex-reactions-and-treatment-approaches>.

30 Id.

31 See Cindy C. Sangalang & Cindy Vang, Intergenerational Trauma in Refugee Families: A Systematic Review, 19 J. IMMIGR. MINOR. HEALTH. 745 (2017); SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 27, at 59-91.

32 Sandra So Hee Chi Kim, Korean Han and the Postcolonial Afterlives of “The Beauty of Sorrow”, 41 KOREAN STUD. 253 (2017).

33 Eduardo Duran, Bonnie Duran, Maria Yellow Horse Brave Heart & Susan Yellow Horse-Davis, Healing the American Indian Soul Wound, in INTERNATIONAL HANDBOOK OF MULTIGENERATIONAL LEGACIES OF TRAUMA 341 (1998).

of adversity high enough to survive the gatekeeping of income eligibility, residency, and migration status, and/or have fallen victim to a legal issue significant enough to have been accorded funding and resources. Nonprofit legal workers are in fact trauma workers. Trauma is not limited to nonprofit legal workers, however, as in many practice areas legal workers at private firms also work tirelessly to serve clients escaping dire circumstances.

Where traumatic stressors occur, we can predict to some degree the changes that are likely to occur in the impacted individual's mind and body. Researchers have identified common experiences and responses to trauma. Survivors generally experience similar initial reactions to trauma, including exhaustion, confusion, sadness, anxiety, agitation, numbness, dissociation, confusion, physical arousal, and blunted affect (they may appear numb or "spaced out").³⁴ Survivors may also experience delayed responses to trauma, such as persistent fatigue, sleep disorders, nightmares, flashbacks, depression, and avoidance of anything that may remind us of the trauma (also known as triggers).³⁵

Dr. Christine Courtois expands our understanding of trauma by offering an additional lens through which to view the impact of complex trauma.³⁶ She lays out seven categories of aftereffects that can impact trauma survivors:

1. Alterations in the regulation of affective impulses, including difficulty with modulation of anger and of tendencies towards self-destructiveness.
2. Alterations in attention and consciousness leading to amnesias and dissociative episodes and depersonalization.
3. Alterations in self-perception, predominantly negative and involving a chronic sense of guilt and responsibility, and ongoing feelings of intense shame.
4. Alterations in perception of the perpetrator, including incorporation of [their] belief system.
5. Alterations in relationship to others, such as not being able to trust the motives of others and not being able to feel intimate with them.
6. Somatization and/or medical problems. These somatic reactions and medical conditions may relate directly to the [trauma] or be more diffused. They have been found to involve all major body systems and to include many pain syndromes, medical illnesses, and somatic conditions.
7. Alterations in systems of meaning. Chronically abused and traumatized individuals often feel hopeless about finding anyone to understand them or their suffering. They despair of being able to recover from their psychic anguish.³⁷

Most survivors can recover from trauma and return to their lives. According to Western researchers, only a small percentage of people impacted by trauma will meet the heightened criteria for trauma-related stress disorders.³⁸ As trauma workers, however, we necessarily work within systems that cause trauma in the first instance. It then follows that our clients may be: (1) currently and actively experiencing trauma directly related to matters we must work with them on; (2) in the immediate aftermath of trauma and impacted by initial reactions to trauma; (3) impacted by delayed responses to trauma; (4) living with symptoms severe enough to meet diagnostic and treatment criteria for trauma-related disorders, likely without adequate medical treatment and support; or, (5) all of the above, because with complex trauma, there may be no beginning, middle, or end to the trauma—it simply always is.

D. An Introduction to the Trauma Exposure Response

Trauma does not just impact the individuals directly exposed to traumatic stressors; it can also greatly affect those who are regularly exposed to trauma in their work. In this subsection, I share what we as legal workers may experience as a direct consequence of our exposure to trauma in our work.

³⁴ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 29, at 59-91.

³⁵ *Id.*

³⁶ Courtois, *supra* note 30.

³⁷ *Id.*

³⁸ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., *supra* note 27, at 59-91.

Given the roles we play as direct service providers, we are necessarily a part of the systems that cause trauma to our clients, regardless of our intent, identities, or personal experiences with trauma. As legal workers, we are frequently not the first professionals to encounter our clients during their moment of need. As an immigration attorney, my clients had frequently already been let down and harmed by government officials, law enforcement, medical professionals, and other nonprofit workers and attorneys. Based on their experiences, I could be someone to help guide them to safety, but I could just as easily be yet another person to cause them pain. Understanding this helped me to extend grace to clients in the most challenging moments of mental anguish. While I was able to extend grace to my clients frequently, years of trauma exposure seemed to drain from me completely the ability to extend grace to anyone who was not a survivor of horrific torture and violence. I began to experience changes in the way I perceive the world and physiological changes because of my exposure to trauma, both directly and indirectly – responses directly stemming from my constant exposure to trauma in my work.

In *Trauma Stewardship*, Laura van Dernoot Lipsky defines the trauma exposure response as “the transformation that takes place within us as a result of exposure to the suffering of other living beings or the planet.”³⁹ Laura warns trauma workers that to heal and continue in our work, we must “realize and re-realize that our trauma exposure response is not going away unless we give it proper attention.”⁴⁰ Our goal as trauma workers must be to consider our trauma exposure response from both a healing and preventive standpoint. In her book, Laura lays out sixteen warning signs of the trauma exposure response:

1. Feeling helpless and hopeless
2. A sense that one can never do enough
3. Hypervigilance
4. Sense of persecution
5. Addictions
6. Anger and cynicism
7. Chronic exhaustion/ physical ailments
8. Dissociative moments
9. Inability to listen/ deliberate avoidance
10. Diminished creativity
11. Inability to empathize/numbing
12. Inability to embrace complexity
13. Grandiosity: an inflated sense of importance related to one’s work
14. Guilt
15. Fear
16. Minimizing⁴¹

In reading *Trauma Stewardship*, it became clearer to me the importance of addressing the trauma exposure response. In law school, I don’t recall a single conversation with any mentor, professor, or colleague about protecting ourselves from trauma exposure; instead, it was expected that one would enter public interest work as if riding into battle. We are to grin and bear each blow our minds and bodies take, for that is the heroic and noble way as the “saviors” of our clients, until we collapse and lay to rest as martyrs for a cause. Using a systems theory approach, the true purpose and patterns of these systems reveal themselves: the systems of oppression that cause our clients harm remain intact, while we join our clients in being left battered and discarded by legal systems that predictably create this pattern year in and year out.

How much of this cycle is impacted by our failure to address our own trauma exposure response? If we are exhibiting predictable and identifiable warning signs such as diminished creativity, grandiosity, fear, and min-

³⁹ LAURA VAN DERNOOT LIPSKY & CONNIE BURK, *TRAUMA STEWARDSHIP: AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS* 41 (2009).

⁴⁰ Id. at 45.

⁴¹ Id. at 47-116.

imizing, we cannot expect to achieve our broader, shared goals—alleviating the harm and suffering of others and actually making the world a better place. It is essential for our collective well-being that we raise our awareness and continuously refine our strategies to account for our own limitations as traumatized trauma workers.

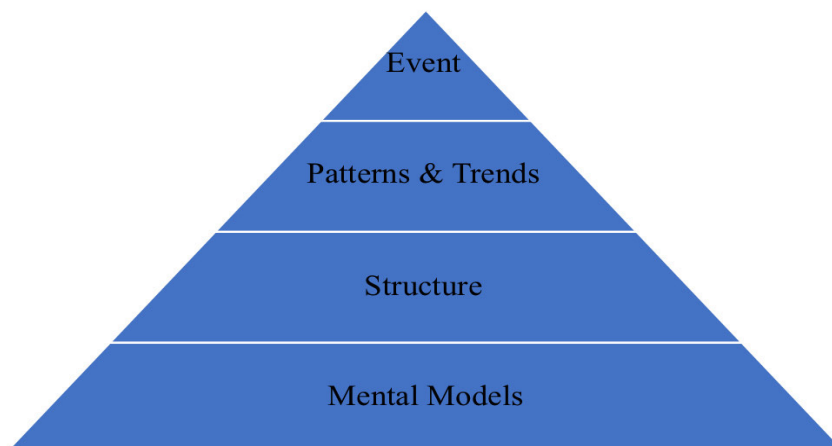
II. ACAT: A Systems Theory Model for Trauma-Informed & Antiracist Legal Advocacy

A. Awareness: Developing Awareness of Trauma, Racialization, and Intersectionality

There are no separate systems. The world is a continuum. Where to draw a boundary around a system depends on the purpose of the discussion.⁴²

The first part of the ACAT Model is to raise our own internal awareness of trauma, racialization, and intersectionality and their impact on ourselves and our clients, colleagues, and communities. We may do this already by seeking trainings to deepen our understanding of concepts related to trauma, racialization, and intersectionality. We can also use systems theory to deepen this awareness, as systems theory is a way to understand what many of us can already intuit about the world—using models that help us dive more deeply into systems beyond what we can understand on surface levels. In this section, I use systems theory and a common pattern in legal services organizations to highlight important opportunities for legal workers to improve our analysis of how trauma, racialization and intersectionality impact our clients and the systems we work within.

One modeling tool loved by systems theorists is the Iceberg Model. While there are many variations on the Iceberg Model, it can generally be summed up in four stages. An iceberg generally has a small portion of it visible above the surface of the water. The bulk of its mass generally lies below the surface, invisible to those on the surface. The Iceberg Model visualizes one level above the surface, and three below.



Above the surface, we see events. These are occurrences that are readily visible to the casual observer. For example, we may observe an intake staff person who quits their job at a legal organization suddenly, citing burnout and feeling overwhelmed as their reasons. In the first level directly below the surface, we find patterns and trends that contributed to the event. Continuing with this example, the organization may discover that there is a pattern of higher turnover and greater reports of burnout from intake staff. Thus, this individual's resignation is indicative of a greater pattern of intake staff experiencing burnout.

As we continue down the iceberg, submerged below patterns and trends is the structure of the system—the tangible processes, policies, and workflows that produce the patterns and trends above. As we analyze the processes, policies, and workflows that impact intake staff, we discover that intake staff receive calls from

⁴² MEADOWS, *supra* note 9, at 97.

people in need and either pass on the callers to the relevant practice area for representation or are tasked with letting callers know that the organization cannot help them. Both intake staff and clients are drained from these interactions, as intake staff ask intrusive questions to determine base eligibility for services and are largely not empowered to provide any positive responses or support to callers. Intake staff have no opportunity to contribute to representation or advocacy, leaving them to serve as messengers of trauma without contributing to work that would make them feel accomplished and helpful.

Finally, the level of the iceberg deepest below the surface is where we find mental models, the intangible culture, beliefs, and practices of individual actors participating in the system. In our example, we uncover that intake staff are more likely to be BIPOC and not attorneys, leaving them to experience an organization's culture negatively. In most legal organizations, white dominant culture persists and those who are not attorneys are frequently devalued and not empowered to contribute meaningfully to organizational design. We thus uncover that these mental models and organizational culture may be significant contributing factors to the burnout of intake staff.

Most organizations may wrongly assume that burnout is directly related to the frequency of interactions with callers and clients, but a deeper analysis reveals other significant contributing factors, such as workplace culture. If workplace culture remains unaddressed, other organizational strategies to prevent the burnout of intake staff may fail. Thus, the Iceberg Model can be a tool helpful for mapping a system's events, patterns, structures, and mental models, and can lead users to develop strategies that produce intended outcomes.

This model and example demonstrate the importance within an organization of mental models and culture, factors which are greatly impacted by our awareness of how trauma, racism, and intersectional oppression show up in our work as legal workers. Thus, the first step to resilient advocacy is to work on developing our collective awareness of how trauma, racism, and intersectional oppression show up in the systems we work in.

B. Collaborate: Strategies for Clients, Communities, and Colleagues

The bounded rationality of each actor in a system may not lead to decisions that further the welfare of the system as a whole.⁴³

Bounded rationality is the logic that leads to decisions or actions that make sense within one part of a system but are not reasonable within a broader context or when seen as a part of the wider system.⁴⁴

Systems theory is filled with learnings reminiscent of fables of childhood. One systems theory fable that teaches us why systems and people behave in seemingly unpredictable ways is that of bounded rationality. Bounded rationality reminds us that decisions individuals make and actions they take are logical to them, even if they confuse or astound the rest of us. We must thus leave space for each other's bounded rationality and seek meaningful ways to communicate and collaborate across differences in identity and trauma exposure.

Examples of bounded rationality in direct services legal work abound. Frequently, a new client may be hesitant to disclose things about their case to their attorney (or may even misrepresent material facts), despite the attorney's best efforts to reassure them that everything they say is protected by attorney-client confidentiality. To the attorney, their client's actions may seem illogical because they actively hinder the attorney's ability to zeal-

⁴³ Id. at 110

⁴⁴ Id. at 187. For example, the leader of an organization may agree to increased funding that requires a high volume of deliverables because the funding would enable the organization to hire new staff. This may be logical to the leader of the organization, but they may also fail to consider delays that occur from using a hiring process that promotes equity, onboarding that promotes adequate training and preparation of new staff, and outreach that may require lengthy periods of relationship-building to bring in new matters associated with the deliverables. The leader's bounded rationality is not reasonable when seen as a part of the wider system of the organization.

ously represent their client. The client, however, is demonstrating their own bounded rationality. Perhaps in the past, legal professionals promised confidentiality, support, and trust but instead left the client in a worse position. Perhaps the client doesn't see the attorney as separate and apart from the legal system the attorney works within and doesn't trust anyone who spends most of their time in courtrooms, regardless of whose side they're on. We now see the client's actions as logical, in ways that make sense based on the client's position within this system, even if they seem unreasonable to the attorney, given the larger context of their circumstances.

Bounded rationality thus teaches us that we cannot assume each actor's experiences within a system, as each actor will be impacted by their position within the system, and their perspectives will be directly impacted by their lived experience within the system. From an academic perspective, this harmonizes with researchers' findings on communication and emotions.

Brené Brown is well-known for her decades-long research on emotions. In her book *Atlas of the Heart: Mapping Meaningful Connection and the Language of Human Experience*, she shares important learnings from her work.⁴⁵ There are a few concepts that I find especially helpful:

- The pain centers in our brains are the same for physical pain and emotional pain from feeling socially excluded, rejected, or isolated.⁴⁶
- Language doesn't just communicate—it shapes actual affect and emotion.⁴⁷
- Emotion consists of four parts: biology (how it shows up in our bodies), biography (how it shows up in our families and communities), behavior (how we respond to emotion), and backstory (the context of the emotion).⁴⁸
- Culture shapes meaning and language—and by extension, emotion.⁴⁹
- We cannot read emotion in other people. We must listen to and believe what others share regarding their emotions.⁵⁰

I find this last point to be especially powerful and reflective of my experiences in lawyering and advocacy. We cannot assume to know what emotions our clients are experiencing, nor can we assume to know what actions they may take within their own bounded rationality. Thus, we must avoid “centering” our clients in ways that may be limited by our own bounded rationality as legal workers. Instead, we must seek to actively collaborate with our clients, colleagues, and communities in ways that respect each other's integrity and autonomy.

There are many tools we can use to collaborate with others, stemming principally from the communications and behavioral sciences fields. While I share just a few tools here, I invite the reader to seek additional tools and resources that will help you engage in deeper collaboration with others.

First, consider using the framework for active listening as you collaborate with others:

1. Begin by paying attention. Do not multitask. Be present with the speaker and devote your attention to them.
2. As you listen to the speaker, withhold judgment. This is especially important when communicating with clients who are sharing experiences with us that are laced in trauma and shame.
3. As you continue listening, reflect back the points the speaker is sharing with you. This helps ensure that you're understanding what they intend to communicate with you.
4. As you reflect back what the speaker shares with you, ask clarifying questions. Many miscommunications can be prevented by ensuring we ask clarifying questions as we go, instead of assuming we understand what's

⁴⁵ BRENE BROWN, *ATLAS OF THE HEART: MAPPING MEANINGFUL CONNECTION AND THE LANGUAGE OF HUMAN EXPERIENCE* (2021).

⁴⁶ *Id.* at 171.

⁴⁷ *Id.* at xxii.

⁴⁸ *Id.* at xxix-xxx.

⁴⁹ See Brené Brown: *Atlas of the Heart* (HBO Max 2022), <https://www.hbomax.com/series/urn:hbo:series:GYivWaAXEZMLDw-wEAAACz>.

⁵⁰ BROWN, *supra* note 44, at 264.

being communicated.

5. Then, summarize what you understand from the speaker's communication.
6. Finally, share an appropriate response to foster connection with the speaker and help ensure they feel heard and seen by you. This last step is also a critical opportunity to engaged in trauma-informed communication with clients by sharing with them how their communication will impact their case, how the legal worker will use it, and what steps lie ahead.⁵¹

While the framework for active listening can be a helpful reminder as we engage in interpersonal communication and attempt to collaborate with each other, it does not help us in addressing the differences that occur because of our political and social power, varying access to privilege, and our positions within systems. The model of power identities can help us to address these differences.⁵²

In the model of power identities, we consider the various aspects of our identities and access to privilege. We hold “power up” identities when we have access to systemic privilege. This may occur with identities we easily understand as integral to ourselves, such as being cisgender male, white, or heterosexual; but this can also occur with aspects of our identities that are temporal or highly dependent on context, such as when we are attorneys (as opposed to non-attorneys) at a legal organization or a supervisor or manager in the workplace. “Power down” identities occur when we lack access to systematic privilege. For example, being transgender or gender non-conforming, BIPOC, or queer. In the context of legal organizations, supervisees, non-attorneys, and clients may hold power down identities.

In interpersonal communication, power identities are important because generally, those with power up identities will focus on their intent at the expense of their impact on power down identities. This is an important reminder that when we find ourselves in moments of tension—which frequently occur when we engage in advocacy and legal representation on behalf of clients and communities who lack the power, privilege, and positionality we may hold as legal workers—we have an opportunity to examine whether we might be focusing on our intent at the expense of the clients and communities we purport to serve.

As legal workers engage in more collaborative communication strategies in our advocacy, many will experience stronger emotions as we make space to honor each other's experiences. We must avoid appropriating others' experiences by taking them on as our own until we are overwhelmed with sadness, fear, helplessness, and hopelessness. Legal workers should instead engage in empathy with boundaries that remind us of our bounded rationality and that we cannot assume each other's emotions and experiences. Legal workers can use the following framework for empathy

1. First, we begin by engaging in diverse perspective taking. Again, we must listen and believe each other as we share our experiences.⁵³
2. Similarly to the active listening framework, we must withhold judgment and remember that we each experience bounded rationality within systems differently.⁵⁴
3. We must recognize the emotion expressed by others and that we experience ourselves. This is critical so that we do not confuse our own emotions with the emotions we perceive others to experience. When listening to a client recount an incident traumatic to them, our own reactions of sadness, despair, and outrage need to be separated from the experiences the client is sharing with us. Their emotions may be different—they may

51 These points are adapted from *How to Use Active Listening Skills to Coach Others*, CENTER FOR CREATIVE LEADERSHIP (Feb. 2, 2023), <https://www.ccl.org/articles/leading-effectively-articles/coaching-others-use-active-listening-skills>.

52 This framing is sourced from Impactive Consulting Group's workshop *Self and Systems*, which is now a part of the Groundwater Institute, an organization focused on training and organizing racial equity advocates, grassroots organizers, strategy consultants, and institutional leaders on addressing root causes of inequities. For more information, see THE GROUNDWATER INSTITUTE, <https://www.groundwaterinstitute.com>.

53 BROWN, *supra* note 49, at 122.

54 *Id.*

instead be experiencing anger, numbness, or even empowerment from recognizing their own resilience and ability to survive.⁵⁵

4. To connect with others in our attempt to engage in empathy, we should then communicate our understanding of their emotions to them.⁵⁶
5. Finally, to take these steps effectively, we must practice mindful self-compassion by engaging in self-kindness, remembering our common humanity by recognizing that everyone makes mistakes and feels pain, and mindfulness by slowing down enough to observe and accept our experiences, emotions, and reactions.⁵⁷

By using tools such as active listening, power identities, and empathy, legal workers will be better able to separate their own experiences from the experiences of their colleagues, clients, and communities, thereby providing a path towards active and authentic collaboration. With this approach, we will be better able to understand the various levels of the systems we engage in and the bounded rationality of their actors, including ourselves.

C. Adapt: Using a Systems Theory and Design Thinking Approach

*The least obvious part of the system, its function or purpose, is often the most crucial determinant of the system's behavior.*⁵⁸

*System structure is the source of system behavior [not necessarily the behavior of individuals]. System behavior reveals itself as a series of events over time.*⁵⁹

Systems theory teaches us that systems are complex and often produce results contrary to the intent of the individual actors in a system. The true purpose of a system is not necessarily its stated purpose, but the patterns and outcomes that are predictably produced by the system over time. This may explain why our quick fixes often produce unintended results. For example, after the protests stemming from George Floyd's murder in 2020 and the inequities revealed by the COVID-19 pandemic, many organizations began expressing commitments to racial justice and equity alphabet soup—justice, equity, diversity, and inclusion (JEDI). At the same time, legal services nonprofits saw an explosion of unionization, demonstrating that despite JEDI efforts, employees at organizations across the nation are frustrated with their workplace conditions. Despite the good intentions of individual actors at these organizations, their organizational systems are producing harmful results. In this section, I introduce the concept of design thinking and discuss how both systems theory and design thinking can be used to help us adapt strategically to the systems problems we confront.

Borrowing from the work of behavioral scientists who study creativity, we can use the process of design thinking as we redesign the structure of systems, both internally at our organizations and externally in our advocacy and litigation. Many of the obstacles we run into in systems design can be considered wickedly difficult⁶⁰—there's no standard that can be followed and no true/false solutions. The design thinking process is a non-linear process that consists of the following steps:

1. First, we begin by empathizing with the individual actors impacted by the system we are re-designing.
2. We then define the parameters of the system we are re-designing and the concerns we hope to address.
3. Next, we begin ideating possible solutions and designs that we wish to implement. During this stage, we also

⁵⁵ Id.

⁵⁶ Id. This point relies on the work of Theresa Wiseman. See Theresa Wiseman, A Concept Analysis of Empathy, 23 J. ADV. NURSING 1162 (1996).

⁵⁷ Id. This point relies on the work of Kristin Neff. See Kristin Neff, Definition of Self-Compassion, SELF-COMPASSION.ORG, <https://self-compassion.org/the-three-elements-of-self-compassion-2>.

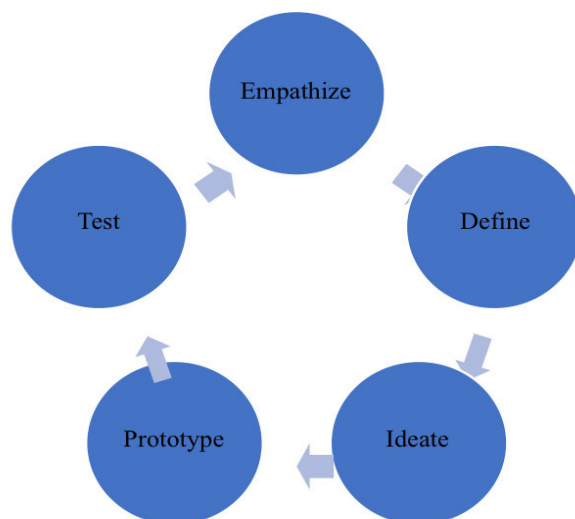
⁵⁸ MEADOWS, supra note 9, at 16.

⁵⁹ Id. at 89.

⁶⁰ “Wicked” problems are defined in design thinking as problems with many interdependent factors that may make them seem impossible to solve. Solving wicked problems requires a deep understanding of the stakeholders involved and an innovative approach provided by design thinking because the factors of the problem are often incomplete, in flux, and difficult to define. Interaction Design Foundation, What are Wicked Problems?, <https://www.interaction-design.org/literature/topics/wicked-problems>.

have an opportunity to think critically about which voices are being included to ensure our designs are effective.

4. We then develop a prototype of the system, process, policy, or other solution we are designing.
5. We then test and evaluate the effectiveness of our design, returning to other phases in the design process as we learn from our designs and continue striving for effective solutions.⁶¹



To illustrate this, I share an example from my own experience. While directing a small unit of immigration attorneys in nonprofit direct services, I used systems theory and design thinking principles to guide us in redesigning our unit's intake process. My goal was to strategically adapt our intake process to empower our unit to increase its impact in the communities we serve while also making our work as sustainable as possible.

First, we used the Iceberg Model to understand our client's experiences within the immigration legal system, including our organization as a component of that system. Through that analysis, we not only explored their experiences with immigration agencies (fears of apprehension, the insular nature of certain migrant communities, long adjudication periods, and legal processes that change often, leaving both migrants and their legal workers confused and frustrated), but also their experiences with social service agencies and other legal systems (fears of eviction, lack of access to transportation, and employment that generally does not offer paid time-off so they may attend appointments and court dates). We included in our analysis the experiences of our attorneys as well, as we were experiencing more frequent burnout under the insidious attacks of the Trump administration.

Our analyses led us to develop a multi-pronged approach to outreach and intake that increased our accessibility to the communities we served while caring and planning for our own capacity and resources as legal workers. We began offering multiple forms of initial screening and intake. Potential clients who did not want to lose a paid day of work had the option of telephonic intake, scheduled in predictable windows for attorneys that enabled us to be more organized and prepared in our work. Potential clients who were wary of sharing personal details over the phone and preferred to meet with attorneys in person were invited to come to our organization on select days for legal screenings following a brief Know-Your-Rights presentation. By creating more predictable flows of new cases, our team had more capacity to also partner with host organizations to offer Know-Your-Rights presentations and brief screenings as events in evenings and on weekends, giving our unit opportunities to strengthen our relationships with various migrant communities.

To ensure our designs were appropriate and continued to reflect the needs of the communities we hoped to serve, we regularly discussed our intake strategies at weekly unit meetings and our annual retreat. This redesign of our unit's intake system led to our ability to meet grant deliverables early within any contract and increased ca-

61 Interaction Design Foundation, What is Design Thinking?, <https://www.interaction-design.org/literature/topics/design-thinking>.

capacity to engage in creative litigation and advocacy strategies, leading us to have a high number of complex cases and contributing to important, system-shifting changes in the legal and political systems impacting the clients and communities we serve.

This is merely one example of how a law practice can adapt strategically to the issues it confronts. There are an infinite number of ways these strategies might be used for any situation legal workers may confront. When confronting complex systems, legal workers should consider how they might analyze their system fully, considering both events and patterns that may be more readily visible and the hidden structures and mental models that may often be taken for granted. As solutions are devised, legal workers should use the design thinking process to remind themselves to empathize with impacted individuals within a system and engage in a cyclical design of solutions that prom

D. Transform: Transforming & Mitigating Trauma Responses Into Multilevel Resilience

*Hierarchical systems evolve from the bottom up. The purpose of the upper layers of the hierarchy is to serve the purposes of the lower layers.*⁶²

*Systems need to be managed not only for productivity or stability; they also need to be managed for resilience.*⁶³

*There are always limits to resilience.*⁶⁴

We have thus laid out three elements critical to resilient advocacy: awareness, collaboration, and adaptation. Systems theory also defines resilience itself for us as “the ability of a system to recover from perturbation [and] the ability to restore or repair or bounce back after a change due to an outside force.”⁶⁵ Systems theory teaches us that we should not limit our foci to the productivity and stability of our systems. We must remember that there are limits to resilience, and design resilience in our systems with this in mind. In resilient advocacy, this means transforming our trauma responses into resilience on multiple systemic levels.

Within organizations, we can design this transformation on the organizational, team, and personal levels. On the organizational level, this means implementing trauma-informed policies and practices within the ten implementation domains offered by the Substance Abuse and Mental Health Services Administration:⁶⁶

1. Governance & Leadership
2. Policy
3. Physical Environment
4. Engagement & Involvement of organization members
5. Cross Sector Collaboration
6. Screening, Assessment, & Service Provision
7. Training & Workforce Development
8. Progress Monitoring & Quality Assurance
9. Financing
10. Evaluation

⁶² MEADOWS, *supra* note 9, at 85.

⁶³ *Id.* at 78.

⁶⁴ *Id.* at 76.

⁶⁵ *Id.* at 188.

⁶⁶ Trauma and Justice Strategic Initiative, SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach, SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN. 12 (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf>.

In practice, this means ensuring there is equitable and transparent decision-making on behalf of accountable leaders; meaningful and accountable JEDI efforts; clear and strong organizational mission, vision, and values; accountable and supportive working conditions, including meaningful investment in equitable pay, benefits, and culture; and investment in employee success. These goals are always a work in progress at organizations, as they address wicked problems within systems.

Even if we have not yet designed the right structures, policies, workflows, and habits to reach these goals at the organizational level, we also have opportunities to model this within our units and departments, with those we work with most closely on a daily basis. Within our smaller teams, team leaders have opportunities to model strong, supportive relationships among team members that honor boundaries and to invest in quality supervision and support of team members. One critical opportunity for system success on the team level is to also ensure we are connecting the mundane to the essential; in other words, reiterating with each other the importance of seemingly administrative tasks, such as timekeeping, task-tracking, and effective usage of case management systems. These tasks are directly related to our ability to reach our ultimate goals of serving our clients and communities. Without them, we would not have funding to support our work, nor could we ensure compliance with our ethical responsibilities and accountability to our clients for work performed.

Finally, as we collectively work towards organizational and team resilience, we can then incorporate strategies for increased personal resilience. Working towards personal resilience brings us full circle back to the step of awareness. Increasing our awareness on how trauma, racism, and intersectional oppression impacts each other within these systems can be deeply painful. For those with more privilege, we may be wrestling with feelings of guilt or shame when we realize the harms we may have caused in the past and for not having been more aware sooner. For those who experience greater marginalization, we may be wrestling with feelings of hopelessness, helplessness, or shame as our experiences with trauma, racism, and intersectional oppression are highlighted for us as survivors of systemic harms. Regardless of our identities and respective access to power and privilege, engaging in deep personal excavation that raises our awareness is incredibly painful. Thus, we must remember to actively invest in the cultivation of joy, so we may develop personal resilience as we transform our trauma responses.⁶⁷

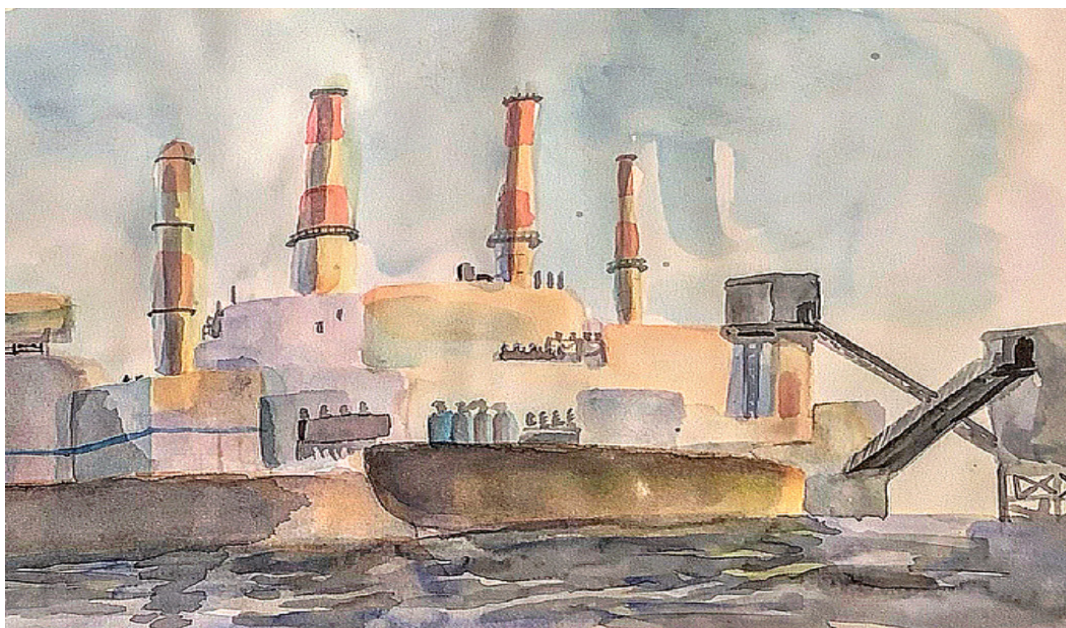
Strategies that may support personal resilience include: developing rituals (such as mindfulness breaks after especially challenging client meetings or hearings); creative outlets that help us wrestle with concepts relating to our trauma and trauma exposure; community support spaces (such as affinity groups, professional associations, and personal friendships); ancestral spiritual practices (such as religion, meditation, and cultural rituals); and, sensory tools (such as essential oils that stimulate olfactory senses or fidget toys that stimulate our sense of touch). We may also develop greater personal resilience by engaging in social justice activities outside of the confines of our employment, unrelated to our income and how we provide for our families. Volunteering for causes that we care about and that use other skills can help connect us to a greater sense of community and support systems that equip us with greater personal resilience in the face of adversity.

By continuously working towards resilience on multiple levels —organizational, team, and personal—we can begin to develop greater sustained resilience to trauma and trauma exposure, empowering legal workers to continue showing up as they engage in incredibly difficult work. With greater sustained resilience, together we will be able to craft more intentional, strategic, and transformative solutions to the complex systems problems we confront in our work.

67 See, e.g., Elaine Nichols, *Black Joy: Resistance, Resilience and Reclamation*, NAT'L MUSEUM AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/explore/stories/black-joy-resistance-resilience-and-reclamation>.

Conclusion

I believe that my approach to resilient advocacy helps to build bridges among legal workers, clients, and communities that then leads to greater, more intentional transformation of systems of injustice. By raising our awareness on trauma, racialization, and intersectionality, we will be better able to communicate and collaborate across differences and through varying degrees of trauma exposure. This alone, however, will not lead to the development of systems transformation. We must be strategic in our advocacy and always remember that as legal workers, we too are parts of the systems that must be analyzed and transformed to design change. Thus, we must also design strategies that move our organizational systems towards greater resilience in the face of trauma. By incorporating these approaches, we can truly engage in the practice of resilient advocacy—improving the resilience of our clients, colleagues, and communities, in addition to our own individual resilience. Together, as resilient advocates, we can transform anything and build the presence needed to abolish systems of injustice.



From Pollution to Solutions: Exploring Equitable Remedies for Communities Impacted by Peaker Plants in NYC

Michael O'Hora

Environmental Justice Seminar

Elisabeth Haub School of Law at Pace University

ABSTRACT

This article focuses on equitable remedies by the New York City government for air pollution sources that disproportionately harm environmental justice communities in New York City, using peaker plants as a case study. Air pollution is a pervasive environmental hazard that affects millions of people worldwide. In New York City, however, the problem of air pollution has taken on a distinctly racial and socioeconomic dimension. While New York City boasts some of the most stringent environmental regulations in the country, the reality is that the most vulnerable communities—namely, people of color, low-income households, and people with disabilities—bear a disproportionate burden of New York City's air pollution. The Climate Leadership and Community Protection Act, signed into law in 2019, effectively mandates the closure of these plants. Though, the communities that suffered from the effects of air pollution, which go beyond health effects, are then left to suffer without any additional support to undo the decades of harm brought upon them by New York City's failure to address air pollution in environmental justice communities as part of a pattern prioritizing capitalist interests over public health and well-being. This article will argue that when peaker plants, and other sources of air pollution, are removed, there needs to be equitable relief in the form of mitigation that offsets or remedies harm suffered.

The Problem: Sources of Poor Air Quality in NYC Environmental Justice Communities and Adverse Effects Beyond Immediate Health Effects

Poor air quality in New York City can be attributed to many factors. This article will focus primarily on Peaker Power Plants, with a brief mention of vehicular air pollution in the Bronx. Both the peaker plants and the vehicle traffic in the Bronx are influenced by both actions taken by the New York City government. The peaker plants are also partly, but not fully addressed by the introduction of the CLCPA, thus leaving the door open for

New York City to introduce additional support for environmental justice communities.

A. Peaker Power Plants: A Case Study on Air Pollution Sources in NYC

In New York City, there is a disconnect between the neighborhoods that use the most electricity and those that face the negative consequences of having energy facilities in their backyards. Manhattan, the whitest¹ and most affluent² of the five boroughs, uses the most electricity by far.³ Despite using the most electricity, Manhattan generates almost none of it.⁴ Instead, Queens, Brooklyn, and the Bronx carry the burden of supplying Manhattan and the rest of New York City with electricity.⁵ New York's energy is generated by many types of facilities,⁶ increasingly renewable sources,⁷ but the most harmful that are still in operation today are called "peaker plants."⁸ These plants are called "peakers" as they switch on and off during peak energy demand, such as when air conditioners turn on during the hot summer months.⁹ The problem with these plants is twofold: the plants are a source of pollution¹⁰, and they are primarily located in vulnerable environmental justice communities.¹¹ The pollutants emitted, in part, are carbon dioxide, nitrogen oxides (a precursor to ozone and smog), and particulate matter.¹² These pollutants have contributed to New York City's high asthma rates in its poorest neighborhoods, often where these peaker plants are located.¹³ Ambient air pollution exposure can cause myriad health problems, such as reduced lung function, respiratory infections, and an increased risk for stroke, heart disease, chronic obstructive pulmonary disease, and cancer.¹⁴ These adverse health effects from power-plant-related pollution do not only exist in the abstract, as studies have shown that preventable premature deaths can be attributed to air pollution (in the form of particulate matter) can be attributed to power plants.¹⁵ More recently, research has shown that exposure to particulate matter from air pollution is correlated with higher mortality rates for Covid-19.¹⁶

What is particularly nefarious about these peaker plants is how they came to be, as New York City made very clear what its priorities were when these were introduced. New York City has obligations to many groups of people, including its businesses, tourists, entertainment, and of course, its residents. Naturally, New York City has to engage in a delicate balancing act of promoting the interests of the various groups without severely impacting others. However, in terms of protecting its residents, especially its most vulnerable populations, from

1 Dynamics of Racial/Hispanic Composition in NYC Neighborhoods 2010 to 2020, NYC DEP'T OF CITY PLANNING (Nov. 10, 2021) (demonstrating that Manhattan is predominantly white), <https://storymaps.arcgis.com/stories/46a91a58447d4024afd00771eec1dd23>.

2 Data Tool, NYC OPPORTUNITY, <https://www.nyc.gov/site/opportunity/poverty-in-nyc/data-tool.page>.

3 Estimated Total Annual Building Energy Consumption at the Block and Lot Level for NYC, QSEL, <https://qsel.columbia.edu/nycenergy/>.

4 See N.Y. INDEP. SYS. OPERATOR, 2018 LOAD AND CAPACITY DATA REPORT 46- 64 (2018), [https://www.nyiso.com/documents/20142/0/2018 Load & Capacity Data \(Gold Book\).pdf/4083d4ea-8647-7330-b0c6-d57a9eedd3d4](https://www.nyiso.com/documents/20142/0/2018+Load+&+Capacity+Data+(Gold+Book).pdf/4083d4ea-8647-7330-b0c6-d57a9eedd3d4).

5 *Id.*

6 See Emily S. Rueb, *How New York City Gets Its Electricity*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/interactive/2017/02/10/nyregion/how-new-york-city-gets-its-electricity-power-grid.html>.

7 *PowerUpNYC*, NYC MAYOR'S OFFICE OF CLIMATE & ENV'T JUSTICE, <https://climate.cityofnewyork.us/initiatives/powerupnyc/>.

8 See, PEAK COALITION, DIRTY ENERGY, BIG MONEY (2020), <https://www.cleangroup.org/wp-content/uploads/Dirty-Energy-Big-Money.pdf>.

9 See N.Y. INDEP. SYS. OPERATOR, THE POTENTIAL FOR ENERGY STORAGE TO REPOWER OR REPLACE PEAKING UNITS IN NEW YORK STATE 3 (2019), https://www.ethree.com/wp-content/uploads/2019/08/E3_The_Potential_for_Energy_Storage_to_Repower_or_Replace_Peaking_Units_in_New_York_State_July_2019.pdf

10 DIRTY ENERGY, BIG MONEY, *supra* note 8.

11 *Id.* at 5-9.

12 *Id.*

13 See Disparities among Children with Asthma in New York City, NYC Health (Sep. 2021), <https://www.nyc.gov/assets/doh/downloads/pdf/epi/databrief126.pdf>.

14 See Air quality and health, WHO, <https://www.who.int/teams/environment-climate-change-and-health/air-quality-and-health/health-impacts>.

15 See Abt. Assoc. Inc., et al., The Particulate-Related Health Benefits of Reducing Power Plant Emissions (Oct. 2000), <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=097b2e9f643554e100ba2b686b850f18852d9136>.

16 Wu et al., Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, 6(45) SCIENCE ADVANCES at 1 (2020).

air pollution, New York City has failed to do so and has chosen to promote capitalistic interests at the expense of environmental justice communities.

One such example of New York City's failure to put the interests of its residents over the interests of capitalism can be found in the peaker power plants. In the early 2000s, New York faced an energy shortage and pushed through a number of power plants in order to meet demand, opening in 2003.¹⁷ The plants were supposed to be a temporary three-year project that would supply New York City with enough energy until a more permanent solution could be worked out.¹⁸ Today, they are still active and profitable for their owners, pulling in \$4.5 billion between 2010 and 2019 despite only being active for a fraction of the year.¹⁹ The New York Power Authority (NYPA), which is a New York state public-benefit corporation,²⁰ showed little regard for the communities it placed these peaker plants in. NYPA failed to complete an adequate environmental review and summarily concluded that there would be "no negative or cumulative environmental impacts" from placing these plants in New York City's environmental justice communities.²¹ NYPA was also deceptive regarding the process of locating the plants. As NYPA's plans for the peaker plants were being discussed, they repeatedly claimed that "all locations chosen by the Power Authority are in industrial areas"²² when NYPA was actually planning to put every single plant in an environmental justice community.²³

The environmental review process was dodged in several ways. First, NYPA cunningly avoided having the peaker plants classified as Major Electric Generating Facilities, which would make them subject to a lengthy and "rigorous" approval process (Article 10 process) that involves public input and steps to ensure environmental and public health laws are followed.²⁴ Today, this approval process for Major Electric Generating Facilities has a minimum generating capacity threshold of twenty-five thousand kilowatts; anything above this is deemed a "major" facility and thus has to complete this process.²⁵ One step of this process involves submitting a "preliminary scoping statement" that contains, among other things, information for the public about potential environmental and health impacts, proposed studies to evaluate those impacts, proposed mitigation measures, and reasonable alternatives to the project.²⁶ When the peaker plants were proposed in 2001, the threshold was higher for "major" facilities at eighty thousand kilowatts or more.²⁷ These facilities, to be placed in pairs, would generate eighty-eight megawatts of power, that would accordingly trigger the above-mentioned review process, but NYPA configured the plants only to produce 79.9 megawatts, and the New York State Board on Electric Generation Siting and the Environment (Siting Board) authorized them without the Article 10 review.²⁸

Additionally, there is evidence to suggest that the plants may not have been necessary, as power con-

17 Kirk Johnson, *New York Turns Into a Lab On the Future of Electricity*, N.Y. TIMES (July 25, 2001), <https://www.nytimes.com/2001/07/25/nyregion/new-york-turns-into-a-lab-on-the-future-of-electricity.html>.

18 E.E Lippincott, *Silvercup Studios Brings Power Plant Saga Into the Limelight*, QUEENS CHRONICLE (Dec. 28, 2000), https://www.qchron.com/editions/western/silvercup-studios-brings-power-plant-saga-into-the-limelight/article_93a542d0-9a76-5b10-8624-85e1f0b42399.html.

19 See PEAK Coalition Campaign to Replace Polluting Power in NYC EJ Communities, <https://www.cleangroup.org/wp-content/uploads/Peak-Coalition-Fact-Sheet.pdf>.

20 Meet NYPA, N.Y. POWER AUTH., <https://www.nypa.gov/about/the-new-york-power-authority>.

21 Rebecca Bratspies, *Renewable Rikers: A Plan for Restorative Environmental Justice*, 66 LOY. L. REV. 371, 392 (2020).

22 Matthew L. Wald, *Power Agency Details Plans For Electric Turbines in City*, N.Y. TIMES (Nov. 22, 2000), <https://www.nytimes.com/2000/11/22/nyregion/power-agency-details-plans-for-electric-turbines-in-city.html>.

23 RICHARD PÉREZ-PENÁ, *State Admits Plants Headed To Poor Areas*, N.Y. TIMES (Mar. 15, 2001), <https://www.nytimes.com/2001/03/15/nyregion/state-admits-plants-headed-to-poor-areas.html>.

24 Article 10, NYSEDA, <https://www.nyserda.ny.gov/All-Programs/Clean-Energy-Siting-Resources/Siting-for-Large-Scale-Renewables/Article-10>.

25 N.Y. PUB. SERV. LAW § 160 (McKinney).

26 Article 10, *supra* note 24.

27 N.Y. PUB. SERV. LAW § 160 (McKinney) (repealed Jan. 1, 2003).

28 N.Y. State Bd. on Elec. Gen. Siting & Env't, *Case 00-F-1934, Declaratory Ruling Concerning Standards For Defining Generating Capacity* (Nov. 16, 2000), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4EC5B-CC5-DBD5-49E7-8128-C2486172FBAF}>.

servation efforts by NYPA could have avoided the blackouts that were feared at the time.²⁹ While NYPA is not controlled by New York City, the peaker plants have to get re-permitted every five years through the New York State Department of Environmental Conservation.³⁰ Only recently has the New York City Council stepped in by contacting the DEC in an effort to stop the re-permitting of one of the plants in the Bronx.³¹ New York City's continued silence is deafening, and its inaction is a direct endorsement of the harms faced by environmental justice communities across the city.

The CLCPA and Peaker Plants

The Climate Leadership and Community Protection Act (CLCPA) offers some hope for environmental justice communities, but as will be discussed, it is only a partial remedy for those communities. In 2019, former New York Governor Andrew Cuomo signed the CLCPA into law, thus enacting New York State's primary legal tool for combating climate change. The primary goal of the act is that it requires the State of New York to reduce greenhouse gas emissions by 40% by the end of the decade and no less than 85% by 2050 (from 1990 levels).³² The CLCPA Scoping Plan establishes a framework for how New York State will achieve its goals and is divided into six distinct strategies, one of which is electricity.³³

Chapter 13 of the scoping plan, "electricity," contains both guidelines for 2030 and 2040 to facilitate a shift away from nonrenewable fossil-fuel energy generation.³⁴ For 2030, the CLCPA requires that 70% of state-wide electricity come from renewable energy sources.³⁵ For 2040, this number increases as the CLCPA requires that the State achieve a zero-emission electricity system, meaning that it must be 100% renewable.³⁶ While 2040 is a way out, the plants are slated to close before that. NYPA had previously committed to closing the plants by 2035³⁷, but the passage of the Build Public Renewables Act (BPRA) will require the plants to close by 2030 as it mandates that all state-owned properties that ordinarily receive power from NYPA are powered by renewable energy by 2030.³⁸ However, this is only a partial victory for New York City's environmental justice communities. The BPRA will create union jobs for renewable energy projects, guarantee pay rate protection, offer re-training, and ensure new positions are filled with non-renewable energy workers affected by the transition.³⁹ However, there is no indication that members of New York City's environmental justice communities would be given any preference for these positions. Additionally, a portion of BPRA that did not make the final provision would have expanded NYPA's board of trustees to include members from environmental justice groups⁴⁰, thus perpetuating the absence of restitution for those who suffered from peaker plant air pollution for the past two decades.

B. Equitable Remedies: Exploring Bronx Air Pollution as a Case Study

Peaker Plants will serve as a valuable example for exploring the concept of equitable mitigation remedies as they are already slated to close in the near future. Though, as mentioned earlier, New York City has a slew of air pollution sources that still need to be addressed and would also serve as ideal opportunities for introducing equitable mitigation after they have been addressed (removed) by New York City. One prime example is

29 Id. at 394.

30 Caroline Spivak, Bronx Asthma Alley Protests Plans to Extend Power Plant Permits, CITY LIMITS (Nov. 12, 2015), <https://citylimits.org/2015/11/12/bronxs-asthma-alley-protests-plans-to-extend-power-plant-permit/>.

31 Id.

32 Climate Act, N.Y. State, <https://climate.ny.gov/> (last visited May 4, 2023).

33 New York's Scoping Plan, N.Y. State, <https://climate.ny.gov/resources/scoping-plan/> (last visited May 4, 2023).

34 New York State Climate Action Council, NEW YORK STATE CLIMATE ACTION COUNCIL SCOPING PLAN, ch. 13 (2022).

35 Id.

36 Id.

37 Marie J. French, State budget calls for NYPA to retire small downstate gas peakers by 2030, POLITICOPRO (May 1, 2023), <https://subscriber.politicopro.com/article/2023/05/state-budget-calls-for-nypa-to-retire-small-downstate-gas-peakers-by-2030-00094660?source=email>.

38 Aliya Uteuova, New York takes big step toward renewable energy in 'historic' climate win, The Guardian (May 3, 2023), <https://www.theguardian.com/us-news/2023/may/03/new-york-renewable-energy-public-utilities>.

39 Id.

40 Id.

air pollution from vehicle traffic in the Bronx. This example is relevant to the peaker plants discussion as both pollution sources are preventable in that alternatives were available, and various governmental entities, including New York City, chose the option that gave the least concern to environmental justice communities.

Throughout this section, the Bronx will be referred to as an “environmental justice community.” An environmental justice community can be defined as a community that is predominantly populated by people of color and/or a population that is significantly below the poverty line, and that community is also subjected to a disproportionate burden of environmental hazards when compared to other communities.⁴¹ The Bronx certainly meets the requirements of an environmental justice community. The Bronx, particularly the South Bronx neighborhood, is very diverse and has a minority white population; the borough also suffers from economic insecurity, with the South Bronx being one of the poorest congressional districts in the country.⁴² The borough’s status as an Environmental Justice community is further confirmed by the Disadvantaged Communities Map. The CLCPA tasked the Climate Justice Working Group with the development of criteria to identify disadvantaged communities, which were then displayed on a map that shows a significant portion of the Bronx labeled as a disadvantaged community.⁴³ Generally, the borough suffers from high asthma rates due to poor air quality.⁴⁴ The Bronx neighborhoods with the highest childhood asthma rates, Mott Haven and Hunts Point, are also the neighborhoods with some of the lowest income in the borough.⁴⁵

The borough’s proximity to three major highways, the Major Deegan, Bruckner, and Cross Bronx expressways, is the primary cause of this air pollution.⁴⁶ The Cross Bronx expressway was particularly harmful to the Bronx not only due to the added pollution it brought but because of how it was constructed. The Cross Bronx expressway carved through some of the most racially diverse neighborhoods in the country and displaced over 60,000 people as a result.⁴⁷ The construction and the city’s subsequent divestment from the borough left much of the Bronx without adequate green spaces, further exacerbating air quality issues today.⁴⁸ For example, Mott Haven is located near the expressway and has a tree coverage rate of only seven percent.⁴⁹ Wealthier Bronx neighborhoods like Riverdale can have tree coverage rates over six times that.⁵⁰ The Cross Bronx Expressway and other factors have created an “urban heat island” effect in the Bronx, where certain areas can be hotter than others due to disparities in tree coverage and green spaces.⁵¹ Today, Bronx residents still deal with developments that are harmful to their health, as the city is more concerned with prioritizing the interests of corporations. For example, in 2018, Fresh Direct opened a warehouse in the Mott Haven neighborhood of the Bronx, resulting in about 1,000 diesel trucks being added to Bronx streets.⁵² When the warehouse opened in 2018, it was met with significant pushback from residents and environmental justice organizations, such

41 Emily Welsch, *Environmental Justice Definitions*, UNIV. MICH. (1997) <http://nmhealth.org/eheb/documents/environmental%20justice%20definitions.pdf>.

42 The Bronx, N.Y. UNIV. FURMAN CENTER, <https://furmancenter.org/neighborhoods/view/the-bronx>; Angelina Ruiz, What does sustainability mean in the Bronx?, VOX (Sep. 8, 2021, 9:00 AM), <https://www.vox.com/the-goods/22654323/sustainability-bronx-environmental-racism-zero-waste>.

43 Disadvantaged Communities Criteria, N.Y. CLIMATE JUSTICE WORKING GROUP, <https://climate.ny.gov/resources/climate-justice-working-group/>.

44 Eric Patrick McLoughney, *The Breath of the Bronx: Limited Greenspace and Poor Respiratory Health* (May 10, 2019) (B.A. Thesis, Fordham University).

45 JOVAN GONZALEZ, VERONIQUE LANKAR & YELDA HANGUN-BALKIR, *AIR POLLUTANTS AND CHILDHOOD ASTHMA IN THE BRONX* (2021).

46 *Id.*

47 The Bronx: The Cross Bronx Expressway, SEGREGATION BY DESIGN, <https://www.segregationbydesign.com/the-bronx/the-cross-bronx-expressway>.

48 John Leland, Why an East Harlem Street Is 31 Degrees Hotter Than Central Park West, N.Y. TIMES (Aug. 20, 2021), <https://www.nytimes.com/2021/08/20/nyregion/climate-inequality-nyc.html>.

49 *Environment and Health Data Portal*, CITY OF N.Y., <https://a816-dohbsp.nyc.gov/IndicatorPublic/beta/data-explorer/active-design/?id=2157#display=summary>.

50 *Id.*

51 Leland, *supra* note 48.

52 Gonzalez, *supra* note 45.

as South Bronx Unite.⁵³ These groups noted that the Fresh Direct trucks would primarily serve more affluent communities, such as neighborhoods in Manhattan, and would, therefore, disproportionately pollute Bronx residents by having to drive to and leave the warehouse that is outside the neighborhoods most responsible for the increase in air pollution.⁵⁴ Of course, development and commercial activity are necessary to stimulate the city's economy, but New York City is neglecting its duty to protect its most vulnerable residents from preventable environmental harm.

The Solution: Exploring Equitable Mitigation Remedies for Environmental Justice Communities

Once the peaker plants have been shut down and can no longer harm New York City's most vulnerable residents and communities, there is then the question of how do these environmental justice communities become whole again after decades of harm. The removal of the pollution source is only one part of the remedy. Long-term exposure to air pollution, especially in environmental justice communities, causes generational harm by increasing the risk of chronic health conditions and developmental issues in children, which can have life-long impacts on their health and well-being.⁵⁵ These communities may also face economic and social challenges due to the adverse effects of pollution on local industries and property values, further exacerbating the cycle of disadvantage and inequality across generations.⁵⁶ Therefore, the solution is to implement equitable mitigation remedies that also contain an element of restitution. However, there is no simple definition for what an equitable mitigation remedy is. The concept and definition of an equitable remedy for environmental justice communities can vary depending on the legal approach used, the extent and nature of harm experienced by the affected community, and the type of relief sought by the community. To that end, there is no one-size-fits-all approach. This section will therefore consider general examples of equitable mitigation and restorative justice.

Before providing examples of equitable mitigation, it would be helpful to briefly explore the principles of mitigation and equity separately. Mitigation can be considered a form of restorative injunctive relief. In the context of environmental law, mitigation is used as a remedy to offset the harm done from past violations of environmental law.⁵⁷ Unlike a simple fine used for deterrence, mitigation addresses the harm done to specific communities and attempts to reverse the adverse impacts on human health and the environment.⁵⁸ Equity, although being a distinct principle, would complement any mitigation efforts to provide the best remedy for New York City's environmental justice communities. Historically, courts used equity in situations where a rigid application of the laws would result in injustice or unfairness.⁵⁹ Today, equity is a principle used to preserve or return to the status quo, to return the plaintiff to the condition they were in before the harm occurred.⁶⁰

One way to bring equitable mitigation remedies to New York City's environmental justice communities could come in the form of reparations. Reparations could be provided as a source of funding to be used by environmental justice communities, and could also be non-monetary and instead be support for awareness and education campaigns or other programs.⁶¹ In considering reparations as a remedy for New York City's Environ-

53 Hazar Kilani, 'Asthma alley': why minorities bear burden of pollution inequity caused by white people, *THE GUARDIAN* (Apr. 4, 2019, 2:00PM), <https://www.theguardian.com/us-news/2019/apr/04/new-york-south-bronx-minorities-pollution-inequity>.

54 Id.

55 Health consequences of air pollution on populations, WHO (Nov. 15, 2019), <https://www.who.int/news/item/15-11-2019-what-are-health-consequences-of-air-pollution-on-populations>.

56 Rourke L. O'Brien et al., Prenatal exposure to air pollution and intergenerational economic mobility: Evidence from U.S. county birth cohorts, 217 *Soc. Sci. & Med.* 92-96 (2018) (this study found that those who were born in counties with higher air pollution have significantly less intergenerational economic mobility for those who also grew up in low-income households).

57 John C. Cruden & Bruce S. Gelber, Federal Civil Environmental Enforcement: Process, Actors and Trends, 18 *NAT. RES. & ENV'T* 10, 14 (2004).

58 EPA, Securing Mitigation as Injunctive Relief in Certain Civil Enforcement Settlements (Nov. 14, 2012), <https://www.epa.gov/sites/default/files/2021-04/documents/usingallappropriateinjunctiverelieftoolsincivilenforcementsettlement0426.pdf>

59 Jurisdiction: Equity, *FED. JUD. CTR.*, <https://www.fjc.gov/history/work-courts/jurisdiction-equity>.

60 See *Liu v. SEC*, 140 S. Ct. 1936, 1943 (2020).

61 Catherine Millas Kaiman, Environmental Justice and Community-Based Reparations, 39 *SEATTLE U. L. REV.* 1327, 1358 (2016).

mental Justice communities, it is important to view reparations as a form of reconciliation and one part of the healing process rather than simply paying a debt owed for environmental injustices suffered.⁶² One suggested framework for incorporating environmental justice reparations involves a series of steps that begins with recognizing the environmental injustice, acknowledging the affected community, incorporating that community in discussions, and then enacting reparations based on those discussions.⁶³ Examples of reparations for environmental injustices are limited, but the concept itself is still being used. For example, California has recently approved recommendations from a task force on reparations to “compensate and apologize to Black residents for generations of harm caused by discriminatory policies.”⁶⁴ The Biden Administration’s Justice40 initiative, although not a form of reparations, at least provides similar support to environmental justice communities and is designed to “confront decades of underinvestment” though the success in community stakeholder engagement will determine the overall success of the program.⁶⁵

An alternative method for seeking a remedy could be in the form of litigation, such as a citizen suit via the Clean Air Act. Though it should be cautioned that pursuing litigation may involve significant costs and a substantial time commitment and may not produce an ideal remedy. A lawsuit challenging the EPA’s enforcement of the Clean Air Act for peaker plants in New York City would not be viable because the EPA has established emissions standards for peaker plants and has the authority to enforce those standards.⁶⁶ Additionally, New York has passed laws to phase out the use of peaker plants by 2030 and transition to cleaner sources of energy in the form of the CLCPA.⁶⁷ As a result, it would be difficult to argue that the EPA’s enforcement of the Clean Air Act for peaker plants is arbitrary or capricious, which is the standard for challenging agency actions in court. However, in other cases of environmental injustice in the form of air pollution, the Clean Air Act can still be used as a tool to achieve equitable mitigation remedies. The purpose of the act is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.”⁶⁸ Cases involving Clean Air Act violations have held that mitigation components support the purpose of the act and “comports with the Acts’ tenets to protect and improve the quality of our air and water.”⁶⁹ Notably, there is no language within the acts that would preclude mitigation or equitable remedies, as Congress only limits the equitable authority of courts by the “clear[est] ... command” or “inescapable inference.”⁷⁰

Reflecting on the necessity and urgency for equitable solutions, it becomes increasingly evident that addressing environmental injustices is not only a matter of environmental concern but an urgent call for social justice. Environmental injustices suffered by environmental justice communities in New York City and elsewhere do more harm than just cause preventable illnesses and other adverse health effects. One such example is how children exposed to air pollution can have drastically affected futures. Beyond inflicting preventable illnesses and adverse health effects, these injustices represent a form of oppression that perpetuates systemic inequalities and demands immediate action to restore justice and safeguard the well-being of vulnerable communities. A ‘pollution-to-prison pipeline’ is created by exposing children who live in these communities to additional forms of air pollution. Children exposed to pollutants develop asthma and other illnesses;⁷¹ air pollution-caused ill-

62 Id. at 1359.

63 Id. at 1369.

64 California’s plan for reparations to Black residents: what you need to know, *THE GUARDIAN* (May 8, 2023), <https://www.theguardian.com/us-news/2023/may/08/california-taskforce-reparations-explainer>.

65 Justice40, *THE WHITE HOUSE*, <https://www.whitehouse.gov/environmentaljustice/justice40/>.

66 Power Plants and Neighboring Communities, EPA, <https://www.epa.gov/power-sector/power-plants-and-neighboring-communities>.

67 Climate Act, *supra* note 32.

68 42 U.S.C. § 7401(b)(1).

69 Sara A. Colangelo, Forging Complete Justice: Equitable Relief in Environmental Enforcement, 46 *HARV. ENVTL. L. REV.* 315, 338 (2022).

70 Id. at 340.

71 The Links Between Air Pollution and Childhood Asthma, U.S. EPA (Oct. 22, 2018), <https://www.epa.gov/sciencematters/links-between-air-pollution-and-childhood-asthma>.

nesses are one of the leading causes of poor school attendance.⁷² Poor attendance is one of the leading factors in children later becoming involved with the criminal justice system⁷³, thus drastically affecting their future. This phenomenon also occurs as the same environmental justice communities where the pollutants exist are often the same neighborhoods that are over-policed by the NYPD,⁷⁴ which increases the likelihood that someone will have an interaction with law enforcement. The pervasive nature of environmental injustices and their profound impact on vulnerable communities necessitate immediate and comprehensive action. By addressing these injustices, we not only prioritize the well-being and future prospects of affected children but also challenge the systemic inequalities and oppression that perpetuate these injustices.

Conclusion

Addressing the air pollution crisis in New York City's environmental justice communities, mainly caused by peaker plants, requires more than just closing these pollution sources. The disproportionate burden of pollution faced by marginalized communities demands equitable mitigation remedies and restitution. While the CLCPA offers some hope for reducing greenhouse gas emissions and closing peaker plants, it falls short of providing comprehensive relief for the communities affected. Equitable solutions must encompass not only the removal of pollution sources but also efforts to address the long-term health, economic, and social impacts on these communities. By acknowledging environmental injustices as a form of oppression and prioritizing social justice, New York City can take meaningful steps toward restoring justice and safeguarding the well-being of its most vulnerable residents. It is crucial to address this issue comprehensively and ensure that future environmental policies prioritize the health and rights of all communities.

72 Brian Maffly, Research shows school absences rise with air pollution, *THE SALT LAKE TRIBUNE* (Oct. 10, 2020), <https://www.sltrib.com/news/environment/2020/10/10/research-shows-school/>.

73 Education and Public Safety, Justice Policy Institute (Aug. 30, 2007), https://justicepolicy.org/wp-content/uploads/2022/02/07-08_rep_educationandpublicsafety_ps-ac.pdf.

74 Emily Widra and Nick Encalada-Malinowski, Where people in prison come from: The geography of mass incarceration in New York, *PRISON POLICY INITIATIVE* (July 2022), <https://www.prisonpolicy.org/origin/ny/2020/report.html>.

Stop Israel's Genocide in Gaza

David Gespass
&
Alan W. Clarke¹

Philosopher of law, David Luban, calls the word ‘genocide’ “a legal false friend,” a word that means one thing to ordinary people, and quite another to lawyers.² People typically use the word without regard to its legal definition. Ordinarily, this causes few problems. Our cocktail party chit chat, heated discussions at the coffee shop, or even in the rarefied halls of a college classroom, are of little consequence. However, there are risks in loosening the definition. It may diminish, thereby cheapening, what is among the most serious of crimes in international law. Governmental policies need to be based upon, and compliant with, international law. To effectively argue that the U.S. must cease its complicity with Israeli genocide, one must be able to persuasively demonstrate that genocide, in its strictest legal sense, is being committed and that U.S. complicity with, and failure to prevent, genocide violates international law. This essay will sketch out a path towards effectively making that case.

It is critical, in the context of international relations generally and Gaza in particular, to start with the legal definition of genocide and apply it to the facts. We do this to determine whether Israel has violated its state obligations under international law, and whether any of its leaders are guilty of the crime of genocide. Assuming Israeli violations of international law, and specifically genocide, are established, we can turn to U.S. complicity, and its duty under the Convention to prevent genocide. Only by doing so, can we effectively argue that U.S. policy towards Israel and the Gaza genocide must change. The starting point in the analysis then, is the Convention on the Prevention and Punishment of the Crime of Genocide.³

Article One of the Convention emphasizes that genocide is a crime whether committed in peace time or in time of war or armed conflict.⁴ While many would dispute that Israel is formally engaged in a war in Gaza, that is immaterial to whether it is committing genocide.

Article Two first requires that actions taken must be “with intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (emphasis added). That means it is not enough to carry out the objective acts that might constitute genocide, but that the subjective intent of doing them is to destroy a protected group. However, the intended destruction need not be complete obliteration.⁵ So, for example, destroying the Palestinian population in Gaza may not mean the complete destruction of the Palestinian people writ large, but it is more than sufficient to meet the Convention’s definition.

¹ David Gespass is a past president of the National Lawyers Guild, past editor-in-chief of this journal and a semi-retired civil rights and civil liberties lawyer. Alan W. Clarke, is a Guild member, Professor Emeritus at Utah Valley University, and Adjunct Professor of Political Science at Memorial University of Newfoundland.

² David Luban, *Calling Genocide by Its Rightful Name: Lemkin’s Word, Darfur, and the UN Report*, 7 CHI. J. INT’L L. 303 (2006).

³ Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 9, 1948, 78 U.N.T.S. 277, (entered into force Jan. 12, 1951, U.S. ratification Nov. 11, 1988), https://treaties.un.org/doc/Treaties/1951/01/19510112%2008-12%20PM/Ch_IV_1p.pdf [hereinafter Genocide Convention or Convention].

⁴ While the Genocide Convention uses the word “war” the Rome Statute of the International Criminal Court (ICC) uses the phrase “armed conflict.” The latter is a broader term that circumvents the problem of determining whether or not a state of war exists as a matter of international law. We will continue to use the word “war” for such phrases as “war crimes” and will use the phrase “armed conflict” when referring to Israel’s attacks on Gaza or the West Bank. Rome Statute, 2187 U.N.T.S. 90 (passim.)

⁵ “The International Court of Justice has observed that genocide can be committed within a geographically limited area and ‘it is not necessary to intend to achieve the complete annihilation of a group from every corner of the globe. The area of the perpetrator’s activity and control are to be considered.’ Thus, it is not necessary for the perpetrator of genocide to intend to destroy all of a group wherever it may be found. The specific intent to destroy a substantial part of a protected group combined with at least some prohibited acts suffices, even though the protected group is not in fact destroyed in whole or in substantial part.” LAURELYN WHITT & ALAN CLARKE, *NORTH AMERICAN GENOCIDES: INDIGENOUS NATIONS, SETTLER COLONIALISM, AND INTERNATIONAL LAW*, 80 (2019) (citations omitted).

Article Two then details the specific acts which, if done with the requisite intent, constitute genocide:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.

With the exception of (e)⁶, it can hardly be gainsaid that Israel's actions in Gaza do not meet the objective criteria. Israel has certainly killed tens of thousands of Gazans who were not members of Hamas and who were not combatants, including thousands of children too young to fight. It has certainly caused serious bodily and mental harm, as it has herded Gazans further and further south, cramming them into an ever-shrinking part of what was already among the world's most densely populated areas.⁷ Tens of thousands have been forced to move on multiple occasions, with each move placing them in more dire circumstances. It has leveled their homes, leaving many buried under the rubble. It has prevented necessary aid to get into Gaza leading to the threat, and the reality, of mass starvation. Indeed, non-Palestinian, non-combatant aid workers have been killed by Israeli forces.⁸ It is no answer that it is now allowing more aid into the area because that does not change what it previously did and is cold comfort to those who have survived but have seen friends and family starve to death.⁹ It has destroyed hospitals, rendering care for expectant mothers impossible and causing many to lose children who should have been born alive and healthy. Nor can anyone say that these actions were not deliberate, carried out with the knowledge of their consequences.

What is left is the question of whether there is evidence of intent to destroy a protected group in whole or in part, which is essential to proof of the crime. Of course, intent can rarely be proven with direct evidence. Rather, as with proof of intent for almost any crime, one must determine the requisite intent circumstantially. We will not undertake an exhaustive catalogue of evidence of intent, but will provide a few examples. Prime Minister Netanyahu routinely refers to the Occupied Palestinian Territories as "Judea and Samaria," a term Zionist settlers use to refer to areas they want for themselves.¹⁰ Netanyahu's use of the term may be a political ploy to gain support or he may also wish to expand Israel by driving out or otherwise eliminating, in whole or in part, the Palestinian population. In any event, one could argue that there is no fundamental difference since, if he is only seeking support, he must deliver to maintain it. And his tolerance, if not encouragement, of more and more settlements, as well as appalling human rights violations and war crimes in the West Bank certainly reflects intent. Moreover, the ethnic cleansing perpetrated on the West Bank provides additional evidence of intent to commit genocide¹¹ as

6 The UN Special Rapporteur's report on Gaza found acts a, c, and d but not b to have reasonable grounds to believe that genocide has been committed in Gaza. However, her report, at paragraphs 27-33 clearly makes a plausible factual case for all the first of four of the five acts of genocide. One can only suppose that the Special Rapporteur was exercising caution in her report in omitting b (causing serious bodily or mental harm to members of the group). Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, Human Rights Council, Fifty-fifth session, 26 February–5 April 2024, Agenda item 7, Human Rights situation in Palestine and other occupied Arab territories <https://www.un.org/unispal/document/anatomy-of-a-genocide-report-of-the-special-rapporteur-on-the-situation-of-human-rights-in-the-palestinian-territory-occupied-since-1967-to-human-rights-council-advance-unedited-version-a-hrc-55/>.

7 Zionists have disputed the oft-repeated claim that Gaza, or Gaza City, is the most densely populated area in the world, but no one disputes that it is among them and lacks the high rises and parks that other cities have. The World Bank provides a reasonably reliable snapshot of Gaza and the West Bank. <https://data.worldbank.org/indicator/EN.POP.DNST?locations=PS>.

8 <https://www.nytimes.com/2024/04/25/dining/jose-andres-wck-workers-gaza.html>

9 It appears that Israel is now preventing most, if not all, aid. <https://www.nrc.no/news/2024/september/israels-siege-now-blocks-83-of-food-aid-reaching-gaza-new-data-reveals/>

10 "United with Israel," an avowedly pro-Israeli organization, happily reported one example from 2017. <https://unitedwithisrael.org/netanyahu-judea-and-samaria-will-forever-belong-to-israel/>.

11 "Acts not in themselves genocidal may be taken into account in inferring genocidal intent. In particular, ethnic cleansing, the forced removal and displacement of a protected group, the destruction of religious or cultural monuments or artifacts, destroying homes, and the preventing of a decent burial in accordance with religious customs - acts which are especially relevant to and encountered

do hypothetical plans to ethnically cleanse the Gaza strip.¹²

Benjamin Netanyahu is certainly his father's son. Benzion Netanyahu, and his Likud party, called for a "Greater Israel" that stretched across not only the West Bank but even across what is today Jordan, land regarded as promised to the Jews in the view of Revisionist Zionism, the movement behind Likud.¹³

Other members of the Israeli government have been equally, if not more, overt in their advocacy. Itamar Ben-Gvir has been convicted of incitement to racism and support of a terrorist organization. His idol was Meir Kahane who scoffed at the idea of Israel being democratic, called for the "immediate transfer of the Arabs," referred to Palestinians as "dogs" and said they "must sit quietly or get the hell out."¹⁴ On the other hand, Ben-Gvir is not a member of the "war cabinet," he is "merely" Israel's Minister of National Security.

The U.S. appears to be well aware of Israeli human rights violations and violations of international humanitarian law — violations of international criminal law that, while not in themselves constituting genocide, are evidence of the intent to commit genocide.

According to reports in the Israeli media, US state department officials have confirmed they are preparing to impose sanctions on the IDF's Netzah Yehuda battalion, which has been accused of serious human rights violations against Palestinians. The highly significant move, which would be the first time the US government has targeted an IDF unit, prompted immediate anger among Israeli political leaders who vowed to oppose it.¹⁵

Thus, the U.S. is belatedly considering sanctioning an entire unit of the Israeli Defense forces (as well as other units and individuals) for serious violations of international human rights and international humanitarian law with respect to the West Bank.¹⁶ However, this late and inadequate action raises the question as to why the U.S. is not doing more to stop the serious genocide occurring on the Gaza strip. Moreover, Israeli leadership's unqualified defense of the battalion, from Netanyahu and his chief rival, Benny Gantz, on down is striking evidence of the intent prong of the crime of genocide.

The problem then seems simple, but conceals complexities. It is clear that, in addition to war crimes and crimes against humanity,¹⁷ Israel has committed acts of genocide. However, as we noted, prosecuting the legal crime of genocide requires both a genocidal act, and proof of the additional mental element of the specific intent

in settler colonial contexts - have all been held to constitute evidence of specific intent when combined with other acts of genocide. "Although forcible transfer (ethnic cleansing) can be relied upon as evidence of intent, 'forcible transfer does not constitute in and of itself a genocidal act,' and atrocities can be widespread and remain insufficient 'to establish reasonable grounds to believe that the perpetrators acted with specific intent to destroy the targeted group.' As the ICJ put it in *Croatia v. Serbia*, 'forced displacement [can be] a significant factor in assessing whether there was an intent to destroy the group, in whole or in part.'" (citations omitted) Whitt & Clarke, *supra*. note 5 at 85.

12 Leaked Document Fuels Concern Israel Plans to Push Palestinians from Gaza, Israel says 'concept paper' isn't policy, but Palestinians fear ethnic cleansing, CBC NEWS, Nov. 1, 2023, <https://www.cbc.ca/news/world/israel-gaza-palestinians-concept-paper-1.7015576>.

13 Karl Vick, Received Wisdom, How the Ideology of Netanyahu's Late Father Influenced the Son, TIME, May 2, 2012, <https://world.time.com/2012/05/02/received-wisdom-how-the-ideology-of-netanyahus-late-father-influenced-the-son/>

14 Ruth Margalit, Itamar Ben-Gvir, Israel's Minister of Chaos, THE NEW YORKER, Feb. 27, 2023, <https://www.newyorker.com/magazine/2023/02/27/itamar-ben-gvir-israels-minister-of-chaos>

15 See, e.g., Peter Beaumont, US Poised to Impose Sanctions on IDF Unit Accused of Violations in West Bank, THE GUARDIAN, Apr. 21, 2024, <https://www.theguardian.com/world/2024/apr/21/us-poised-impose-sanctions-israel-defense-force-netzah-yehuda-battalion>.

16 Id.

17 Gaza: Israeli Strike Killing 106 Civilians an Apparent War Crime, Governments Should Suspend Arms to Israel, ICC Probe, HUMAN RIGHTS WATCH, Apr. 4, 2024, <https://www.hrw.org/news/2024/04/04/gaza-israeli-strike-killing-106-civilians-apparent-war-crime>; Damning Evidence of War Crimes as Israeli Attacks Wipe Out Entire Families in Gaza, AMNESTY INTERNATIONAL, Oct. 20, 2023, <https://www.amnesty.org/en/latest/news/2023/10/damning-evidence-of-war-crimes-as-israeli-attacks-wipe-out-entire-families-in-gaza/>; A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, HUMAN RIGHTS WATCH, April 27, 2021, <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>.

to destroy a protected group in whole or substantial part. If so, for purposes of individual criminal liability we can ask: does the evidence establish proof beyond a reasonable doubt? (To establish state liability, which is apart from individual liability, the issue is whether the evidence of criminal intent is fully conclusive). It's not enough for purposes of legal liability to say that someone has probably committed genocide — Israel and its leaders clearly meet this standard. One can also confidently say that Israel's leaders have committed the separate and lesser crime of inciting genocide. But to convict individuals for the crime of genocide, the issue is: does the circumstantial evidence exclude every other reasonable possibility of a non-genocidal intent? Perhaps not. However, that is not the end of the inquiry; reasonable people, acting in important and difficult matters do not wait to act until the evidence is beyond a reasonable doubt; nor do governments wait so long before acting. Proof beyond a reasonable doubt is the criterion for establishing guilt in a criminal trial. One would not expect a country to wait until after a trial conviction to act on the evidence it has.

The United Nations uses the “reasonable grounds to believe standard in reports by its Commissions of Inquiry assessing alleged genocides, crimes against humanity and violations of international humanitarian law, a standard ordinarily used in fact-finding inquiries of this sort. A standard which reasonable people are expected to act upon in serious matters seems an appropriate minimum standard for evaluating” whether or not nations should cease complicity with [Israel's genocide].”¹⁸

Thus, in assessing Israel's (and its leaders') genocidal intent, it suffices to assess the evidence using a “reasonable grounds to believe” approach .

United Nations Special Rapporteur, Francesca Albanese has found “reasonable grounds” that Israel is committing genocide in Gaza.¹⁹ She reported:

Following nearly six months of unrelenting Israeli assault on occupied Gaza, it is my solemn duty to report on the worst of what humanity is capable of, and to present my findings,”

*. *. *

Specifically, Israel has committed three acts of genocide with the requisite intent: causing . . . serious bodily or mental harm to members of the group, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part, and imposing measures intended to prevent birth within the group,²⁰

South Africa has sought to invoke state responsibility for genocide by prosecuting a case before the International Court of Justice (ICJ). That court, has issued a provisional order finding plausible evidence that Israel is committing genocide in Gaza. South Africa has also gone further and obtained provisional orders from the ICJ requiring Israel to permit delivery of food, water and other supplies to the starving Palestinians in Gaza. That court's preliminary opinion, authored by Presiding Justice Joan E. Donoghue, found that “at least some of the acts and omissions alleged by South Africa to have been committed by Israel in Gaza appear to be capable of falling within the provisions of the [Genocide] Convention.”²¹

Recently, 600 British international lawyers and jurists, including three former members of the British Supreme Court, citing grave breaches of international law, have called upon Great Britain to cease sending arms to Israel.²² They argue that the likelihood that genocide is occurring in Gaza puts the United Kingdom at risk for complicity in genocide and is also in breach of its obligation to prevent genocide. This in turn would put the UK in direct violation of the Genocide Convention. Nation States have an obligation to take steps to prevent genocide and

¹⁸ WHITT & CLARKE, *supra* note 5, at 84.

¹⁹ James Joseph, *Explainer: Why a UN Special Rapporteur Believes the Israel-Hamas Conflict Constitutes Genocide*, JURIST, Mar. 29, 2024, <https://www.jurist.org/features/2024/03/29/explainer-why-un-special-rapporteur-believes-israel-hamas-conflict-constitutes-genocide/>.

²⁰ Rights Expert finds ‘reasonable grounds’ genocide is being committed in Gaza, UN NEWS, GLOBAL PERSPECTIVE HUMAN STORIES, Mar. 26, 2024, <https://news.un.org/en/story/2024/03/1147976>.

²¹ Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel) Order (26 Jan. 2024), <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf>.

²² UK Judges’ and Lawyers Open Letter Concerning Gaza, (Ap. 3, 2024), <https://lawyersletter.uk/>.

complicity in genocide is a mode of responsibility under the genocide convention.

In a similar vein, Nicaragua brought a case before the ICJ against Germany asserting that, as a result of its arms aid to Israel, Germany is in violation of both the Genocide and Geneva Conventions.²³ Nicaragua's suit alleges that Germany has been and is complicit with Israeli violations of international criminal law with respect to its actions against Gaza. This has implications not only for Israel and Germany but also for the United States.

International pressure to force an end to complicity in Israel's flouting of international law continues to grow, this time by targeting those nations that appear to be complicit with Israel's international crimes in Gaza. The US does not recognize the ICJ's jurisdiction in matters such as this,²⁴ and that may be the reason it was not included as a defendant in this case. Perhaps Nicaragua had the US in mind when it filed this case. A decision against Germany would have, had it gone forward,²⁵ at a minimum, been an embarrassment to the U.S. in that its posture is nearly identical to Germany's with respect to Israel's assault on Gaza. It would have placed the US in an uncomfortable position. If, in an attempt to influence the court's decision, it joined the case on Germany's behalf, it would then be bound by the decision. But, by staying out and doing nothing, it risked an embarrassing adverse decision that, by implication, would have put it on the wrong side of not only international law (no small thing in itself) but fundamentally at odds with an emerging consensus that Israel has gone far beyond the bounds of self-defense and is becoming an international pariah. To put it simply: if Germany had been declared to be complicit in Israel's international crimes, then by implication, the US would also necessarily be complicit. While the case was unsuccessful, it illustrates Israel's and the US's growing isolation.

The logic of these moves to hold nations accountable for their complicity in genocide applies to all other nations assisting Israel in its armed conflict in Gaza (are you hearing this President Biden?). Every nation supplying arms and assistance to Israel is on notice that it is at risk of complicity in genocide. The U.S. has not been brought before the ICJ for its arms deliveries to Israel since the U.S. does not automatically accept ICJ jurisdiction and thus cannot, without its consent, be brought before that court. However, it is a party to both the Genocide and Geneva Conventions and is therefore legally responsible for breaching those treaties.

The efforts of the Special Rapporteur, South Africa, Nicaragua, the ICJ and the above-mentioned British lawyers and jurists, deserve considerable respect and consideration. Cumulatively they make a powerful case that we may be seeing genocide in Gaza. Moreover, they demand action of us, and our respective governments, irrespective of whether or not evidence of the crime of genocide is presently provable.

These actions are an important first step. Serious people and serious countries can responsibly act on such "reasonable grounds." It suffices to require countries like the US and UK to cease complicity with Israel's declared "war." Genocide is not the sole reason why nation states should cease to support Israel in this. Israeli war crimes and crimes against humanity²⁶ also make a compelling moral and legal case for ending complicity with Israel's illegal war fighting.

As we write, International Criminal Court prosecutor Karim Khan is investigating war crimes and crimes against humanity with respect to both Hamas and Israel,²⁷ and he is explicitly calling on Israel to end the block-

23 Alleged Breaches of Certain International Obligations in respect of the Occupied Palestinian Territory (Nicaragua v. Germany, Press Release, International Court of Justice, 9 April 2024, <https://www.icj-cij.org/sites/default/files/case-related/193/193-20240409-pre-01-00-en.pdf>.

24 The fact that the US refuses to subject itself to the jurisdiction of the ICJ, as well as the ICC makes a mockery of its advocacy for a rules-based international order and its claim to be a leading force for human rights internationally, but that is beyond the scope of this essay.

25 Laura Gozzi, ICJ rules it will not halt German Arms to Israel, BBC, Ap. 30, 2024, <https://www.bbc.com/news/world-europe-68929873>.

26 Complicity in crimes against humanity is a mode of criminal responsibility under international customary law. Lafarge case, Court of Cassation, Appeal No. 19-87.367, Sept. 7, 2021 (France).

27 Karim Khan has filed an application with the ICC Pre-Trial Chamber for arrest warrants for President Benjamin Netanyahu, and Israeli Defence Minister Yoav Gallant, and Hamas officials, Yahya Sinwar, Mohammed Diab Ibrahim Al-Masri, and Ismail Haniyeh. Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine, May 20,

ade on water, medicines, food and electricity to the Gaza strip; thus, he implicitly sees the blockade, which is constricting the essentials of life, as potentially involving violations of international humanitarian law.²⁸ In fact, he has now sought arrest warrants against Netanyahu and Israeli defense minister, Yoav Gallant. He cannot be viewed as an anti-Israeli activist since he also sought warrants against Hamas leaders.²⁹ In addition to violations of the Genocide Convention and customary law of genocide, Israel's actions appear to seriously breach international law. Moreover, because the blockade stems directly from policies plainly attributable to Netanyahu and his government, it should be possible for legal liability to attach to the highest levels of the Israeli government.

Even though Israel is not a party to the Rome Statute creating the ICC, Palestine is. Jurisdiction under that statute, at least for war crimes, crimes against humanity and genocide (but not the crime of aggressive war) can be imposed on non-State Parties where those non-State Parties commit such crimes on the territory of State Parties. There is no statute of limitations for these crimes, they are *jus cogens* (peremptory norms) and *erga omnes* (applicable to all), and the ICC has a long memory. Israeli war crimes and crimes against humanity provide a powerful additional reason to call upon the U.S. to change course.

Israel has certainly committed crimes in Gaza and is likely committing genocide and we do not say this lightly without considering the legal definition and requirements of proof. The evidence is sufficient for reasonable people to act and for responsible governments to cease complicity with war crimes, crimes against humanity, incitement to genocide, and most importantly, probable genocide. We, as citizens, must call upon our respective governments to cease assisting genocide and to honor their duty to take measures to prevent the scourge of genocide.



2024, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state>.

28 Statement of ICC Prosecutor Karim A.A. Khan KC from Cairo on the situation in the State of Palestine and Israel, Oct 30, 2023, <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-khan-kc-cairo-situation-state-palestine-and-israel>.

29 <https://apnews.com/article/icc-khan-netanyahu-070941d21ccd1f2b9611032b88527575>

Public Benefits: An Abolitionist Approach to Crime Reduction

By Laya Reddy*

I. INTRODUCTION

Crime rates in the United States have generally decreased in the past few decades, contrary to the beliefs of most Americans.¹ Analysts have credited reductions in crime to several different factors, ranging from changes in policing and prosecution to economic growth for individuals.² Theories that highlight societal and economic factors, like the latter, point to the possibility of decreasing crime by improving such factors. Abolitionist theory, in particular, advocates for addressing social, economic, and political issues by creating and bolstering social institutions that would make incarceration unnecessary.³ This theory argues that prisons are used as a “surrogate solution” to social problems related to racism and poverty, emphasizing the relationship between inequalities, crime, and responses to crime.⁴ Indeed, people who enter the criminal legal system are overwhelmingly poor, and adults in poverty are three times more likely to be arrested than adults who are above the poverty line.⁵

While these statistics raise questions about discriminatory policing, they also provide support for abolitionist theory by suggesting that increased support for people in poverty could reduce crime. By addressing both the criminalization of poverty and the byproducts of living in dire economic situations, abolitionist theory offers its own theory of crime that demands greater societal support for individuals and communities.⁶ Increasing access to public benefits could supply the additional support necessary to effectively decrease crime.⁷ Expanding welfare payments, food assistance programs, housing, and medical care would provide people with greater institutional support and reduce crime rates.⁸

This paper begins with a note on scope to acknowledge the limits and potential for further research in this area. It then offers a brief overview of abolitionist theory as a lens through which to understand the issues and proposed reforms. It next presents research that analyzes the relationship between crime rates and access to specific public benefits: welfare payments, food assistance programs, housing, and medical care. These sections assess the breadth of research about each public benefit, highlighting the arguments and nuances in existing scholarship on the topic. Finally, the paper offers solutions consistent with abolitionist theory, arguing for both increased access to public benefits and decreased institutional violence, among other systemic changes, to reduce crime rates.

1* Laya Reddy is a third-year law student at Northwestern Pritzker School of Law, and will be working in public interest after graduating. She would like to thank Professor Meredith Rountree, Senior Lecturer at Northwestern Pritzker School of Law, for her thoughtful feedback on this paper.

U.S. Crime Rates and Trends - Analysis of FBI Crime Statistics, BRENNAN CENTER FOR JUSTICE, Oct. 16, 2023, <https://www.brennancenter.org/our-work/research-reports/us-crime-rates-and-trends-analysis-fbi-crime-statistics>; Jeffrey M. Jones, More Americans See U.S. Crime Problem as Serious, Gallup, Nov. 16, 2023, <https://news.gallup.com/poll/544442/americans-crime-problem-serious.aspx>.

2 Karen Zamora, Ari Shapiro, & Courtney Dorning, Violent Crime is dropping fast in the U.S. - even if Americans don't believe it, NPR, Feb. 12, 2024, <https://www.npr.org/2024/02/12/1229891045/police-crime-baltimore-san-francisco-minneapolis-murder-statistics>; Lauren-Brooke Eisen, What Caused the Crime Decline?, BRENNAN CENTER FOR JUSTICE, Feb. 12, 2015, <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline/>.

3 Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. REV. 1556, 1172 (2015); See discussion *supra* Part II.B for primer on abolitionist theory.

4 Angela Y. Davis & Dylan Rodriguez, The Challenge of Prison Abolition: A Conversation, 27 SOC. JUST. 212, 212 (2000).

5 The Relationship between Poverty & Mass Incarceration, Center for Community Change, https://www.masslegalservices.org/system/files/library/The_Relationship_between_Poverty_and_Mass_Incarceration.pdf (last visited Mar. 8, 2024); Tara O'Neill Hayes & Margaret Barnhorst, Incarceration and Poverty in the United States, AMERICAN ACTION FORUM, Jun. 30, 2020, <https://www.americanactionforum.org/research/incarceration-and-poverty-in-the-united-states/>.

6 Davis & Rodriguez, *supra* note 4, at 213.

7 Anna Terwiel, The Revolutionary Politics of Abolition, 55 POLITY 662, 671 (2023).

8 *Id.*

A. Scope

Public benefits, also known as government benefits or welfare programs, span a wide range of projects intended to help individuals pay for basic living expenses.⁹ While the term “public benefits” covers a broad array of programs, this paper focuses on four of the largest programs in the country.¹⁰ Comparable analysis of the impact of other programs on crime rates would also be useful in assessing the broader effect of public benefits.

Also, this paper does not analyze the impact of employment on crime rates, as public benefits generally do not encompass employment programs.¹¹ A wide range of research, however, points to an inverse relationship between employment and crime rates.¹² Although employment is not usually a public benefit itself, one can readily recognize a relationship between public benefits and employment. Mitigating homelessness and providing medical care, for example, can in turn help people to secure and maintain their employment.¹³ The existing research indicates that strengthening access to public benefits may also increase opportunities for employment, which could help decrease crime rates, as a result.¹⁴

Furthermore, this paper relies on research that studies and reports crime rates through the use of the National Incident-Based Reporting System (NIBRS), the National Crime Victimization Survey (NCVS), other reporting systems, or some combination of the various reporting methods. While the researchers strive to accurately present crime rates in their studies, there are certainly still gaps in reporting that may create inaccuracies in the statistics. Indeed, crime rates can be over or underrepresented as a result of mistrust of the police, lack of faith in the criminal legal system, and political pressures for police to report a certain number of arrests, among other reasons.¹⁵ Consistent with the existing practices in criminological research, however, this paper assumes the statistics are generally accurate.

Finally, this paper focuses primarily on the reasons people commit crimes, without questioning as much why certain acts are considered crimes in the first place. It acknowledges that many states and cities across the United States have laws that criminalize potential acts of poverty, such as homelessness, failure to pay child support, and inability to pay fines.¹⁶ Although the researchers discussed in this paper generally assume that actions labeled as crimes are justifiably designated so, the solutions section of this paper affords more attention to this

9 Government Benefits, <https://www.usa.gov/benefits> (last visited Mar. 9, 2024).

10 About Program Income and Public Assistance, UNITED STATES CENSUS BUREAU, <https://www.census.gov/topics/income-poverty/public-assistance/about.html> (last visited Mar. 9, 2024); Improving Access to Public Benefits, URBAN INST., <https://www.urban.org/projects/improving-access-public-benefits> (last visited Mar. 9, 2024); Joy Moses, The Facts About Americans Who Receive Public Benefits, THE CENTER FOR AMERICAN PROGRESS, Dec. 16, 2011, <https://www.americanprogress.org/article/the-facts-about-americans-who-receive-public-benefits/>.

11 Government Benefits, *supra* note 9; Family & Support Services, CHICAGO, https://www.chicago.gov/city/en/depts/fss/provdrs/senior/svcs/benefits_checkup.html (last visited Mar. 9, 2024).

12 Robert Apel & Julie Horney, How and Why Does Work Matter? Employment Conditions, Routine Activities, and Crime Among Adult Male Offenders, 55 CRIMINOLOGY 307, 308 (2017); Aaron Chalfin & Steven Raphael, Work and Crime, THE OXFORD HANDBOOK OF CRIME AND CRIMINAL JUSTICE, 444, 444 (Oxford 2011); Karin Edmark, Unemployment and Crime: Is there a Connection?, 107 SCAND. J. ECON. (2005).

13 Maureen Sarver, Why Is It So Hard for People Experiencing Homelessness to “Just Go Get a Job?”, URBAN INST., Nov. 3, 2023, <https://www.urban.org/urban-wire/why-it-so-hard-people-experiencing-homelessness-just-go-get-job>; Josh Bivens, Fundamental health reform like ‘Medicare for All’ would help the labor market, ECONOMIC POLICY INST., Mar. 5, 2020, <https://www.epi.org/publication/medicare-for-all-would-help-the-labor-market/>.

14 *Id.*

15 James P. Levine, The Potential for Crime Overreporting in Criminal Victimization Surveys, 14 CRIMINOLOGY 307 (1976); Donald J. Black, Production of Crime Rates, 35 AM. SOCIOLOGICAL REV. 733 (1970); Keshia S. Moore, Ryan Tom, & Jackie O’Neil, The Truth Behind Crime Statistics, LEGAL DEFENSE FUND, <https://www.naacpldf.org/the-truth-behind-crime-statistics/> (last visited Mar. 9, 2024); John Gramlich, What the data says (and doesn’t say) about crime in the United States, PEW RESEARCH CENTER, Nov. 20, 2020, <https://www.pewresearch.org/short-reads/2020/11/20/facts-about-crime-in-the-u-s/>; L G Center & T G Smith, Crime Statistics - Can They Be Trusted, 11 AM. CRIM. L. REV. 1045 (1973).

16 Hayes & Barnhorst, *supra* note 5.

issue and advocates against the criminalization of poverty.

B. Primer on Abolitionist Theory

Abolitionist theory advocates for both dismantling institutions such as prisons and jails and building societal methods to support collective success and harm reduction.¹⁷ This paper focuses on the latter goal, namely considering how society can effectively reduce harm and increase collective well-being. Abolitionist theory supports “public solutions to public problems” through improved access to resources and services for all people.¹⁸ Specifically, it aims to reallocate government funding from police and prisons and invest it in housing, jobs, education, and health to target underlying crime-breeding wealth and opportunity inequalities.¹⁹ Through structural improvement of societal factors, abolitionist theory seeks to reduce community harm; through the elimination of prisons, it seeks to reduce systemic harm.²⁰

III. RESEARCH

A. Welfare Payments

Overview of welfare payments programs

The government provides cash assistance to impoverished individuals and families through welfare payments.²¹ These payments take many different forms and are provided through various government programs, primarily Temporary Assistance for Needy Families (TANF) and Supplemental Security Income (SSI).²² In 1996, TANF replaced Aid to Families with Dependent Children (AFDC), which provided more support to families in poverty because the federal government, at a minimum, matched funds for every dollar that states spent.²³ TANF, in contrast, is a federally-funded and state-run program through which the federal government provides a fixed block grant to states, which then decide on their own allocation system.²⁴ States can create their disbursement program with flexibility so long as the assistance goes to “needy families with children” and meets at least one of four purposes:

(1) assisting families in need so children can be cared for in their own homes or the homes of relatives; (2) reducing the dependency of parents in need by promoting job preparation, work, and marriage; (3) preventing pregnancies among unmarried persons; and (4) encouraging the formation and maintenance of two-parent families.²⁵

Most states require income levels to be “far below” the federal poverty line in order to qualify for funding, limiting eligibility even among people in poverty.²⁶ Beyond these restrictions, federal law also bans states from using TANF to help some immigrants and people with drug felony convictions, among other communities.²⁷ Through these limitations, along with discretionary state allocation, many families are left without TANF assis-

17 abolitionjournal, If You’re New to Abolition: Study Group Guide, ABOLITION J., Jun. 25, 2020, <https://abolitionjournal.org/study-guide/#Introduction>.

18 Nine Perspectives for Prison Abolitionists, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/scans/instead_of_prisons/nine_perspectives.shtml#:~:text=The%20abolitionist%20response%20seeks%20to,all%20people%20in%20the%20society (last visited Mar. 9, 2024).

19 Bill Keller, What Do Abolitionists Really Want?, THE MARSHALL PROJECT, Jun. 13, 2019, <https://www.themarshallproject.org/2019/06/13/what-do-abolitionists-really-want>.

20 Beth Potier, Abolish prisons, says Angela Davis, THE HARVARD GAZETTE, Mar. 13, 2003, <https://news.harvard.edu/gazette/story/2003/03/abolish-prisons-says-angela-davis/>.

21 Public Welfare Expenditures, URBAN INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/public-welfare-expenditures> (last visited Mar. 9, 2024).

22 Id.

23 Id.

24 Id.; Policy Basics: Temporary Assistance for Needy Families, CENTER ON BUDGET AND POLICY PRIORITIES, Mar. 1, 2022, <https://www.cbpp.org/research/family-income-support/policy-basics-an-introduction-to-tanf>.

25 Id.

26 Id.

27 Id.

tance. In fact, in 2020, only 21 out of every 100 families in poverty got TANF benefits.²⁸ Thus, TANF is not widely accessible to the families that need them, leaving many of them in need of greater cash assistance.

SSI, the other major welfare payment program, is even more restrictive than TANF because of its heightened requirements for eligibility.²⁹ The eligibility requirements for SSI include: “1) [l]ittle or no income, [] 2) little or no resources, and 3) a disability, blindness, or are age 65 or older.”³⁰

In addition to these requirements, SSI recipients must be citizens or qualifying noncitizens.³¹ SSI, like TANF, receives federal funding - in this case, from the U.S. Treasury.³² Unlike TANF, however, the federal government also manages SSI distribution; all applicants must meet the government’s “stringent” financial and “rigorous” medical criteria, resulting in the rejection of most applications for SSI disability benefits.³³ Indeed, only about 30 percent of SSI applicants are ultimately accepted and receive benefits.³⁴ As a result of strict requirements for both TANF and SSI, welfare payments are not broadly distributed, leaving many people in poverty in need.

The relationship between welfare payments programs and crime

Researchers have studied the impact of welfare payments on crime at length, analyzing general welfare payments, AFDC, TANF, and SSI. While AFDC is no longer used, its impact is still valuable in observing the relationship between welfare payments and crime. James DeFronzo published one of the earliest studies on welfare payments, aiming to observe their impact on crime rates.³⁵ He found that AFDC assistance, adjusted for cost-of-living, had significant negative effects on homicide, rape, and burglary rates.³⁶ An increase of \$10 in AFDC assistance per family member in 1970, he found, correlated with a decrease of 1.38 in the homicide rate, 5.50 in the rape rate, and 105 in the burglary rate per 100,000 people.³⁷ Studying nearly 40 standard metropolitan statistical areas (SMSAs), DeFronzo found that region was not significantly positively related to violent crime rates, and was even significantly negatively related to robbery rates.³⁸

A similar study of AFDC payments that did not adjust for cost of living observed an inverse relationship between payments and urban homicide rates, but no relationship with the crimes of rape or burglary.³⁹ Other studies, using comparable methodologies, have also shown an inverse relationship between welfare benefits and homicide rates.⁴⁰ DeFronzo’s subsequent 1997 study, for example, indicated that AFDC payments per recipient were negatively associated with homicide rates.⁴¹ Another researcher analyzed the impact of AFDC payments on homicide rates between 1989 and 1990, finding the same connection between higher welfare payments and lower homicide rates.⁴² Many of these researchers point to strain and control theories to explain this relationship, theorizing that poor people with more welfare assistance experience less strain and frustration, and are less likely to

28 Id.

29 Supplemental Security Income (SSI), <https://www.ssa.gov/ssi> (last visited Mar. 9, 2024).

30 Id.

31 Supplemental Security Income (SSI) Overview, <https://www.ssa.gov/ssi/text-over-ussi.htm> (last visited Mar. 9, 2024).

32 Id.

33 USAFacts Team, What is the approval rate for Social Security Disability Benefits?, USA FACTS, Dec. 12, 2023, <https://usafacts.org/data-projects/disability-benefit-process>.

34 Id.

35 James DeFronzo, Economic Assistance to Impoverished Americans, 21 CRIMINOLOGY 119, 132 (1983).

36 Id. at 130.

37 Id. at 129-130.

38 Id. at 130.

39 Steven Messner, Geographic mobility, governmental assistance to the poor, and rates of urban crime, 9 CRIME JUSTICE 1 (1986).

40 James DeFronzo, Welfare and Homicide, 34 J. RES. CRIME & DELINQUENCY 395 (1997); James DeFronzo & Lance Hannon, Welfare Assistance Levels and Homicide, 2 HOMICIDE STUD. 31 (1998); Lance Hannon, AFDC and Homicide, 24 J. SOCIOL. SOC. WELF. 125 (1997).

41 DeFronzo, *supra* note 40, at 403.

42 Hannon, *supra* note 40, at 129, 134.

commit crimes as a result.⁴³ Some have also relied on social disorganization theory as a basis for this correlation, noting that welfare payments alleviate community disorganization and create conditions that foster less crime.⁴⁴

To be sure, not all studies point to an inverse relationship between welfare payments and crime rates. A 2007 study of various counties in California suggested that there was little to no relationship between the two.⁴⁵ John Worrall, in his paper, admitted the contradictions between his research and the long line of scholarship before him, crediting part of the differences to the fact that his study only covered one state and analyzed a span of time less than a decade.⁴⁶ He also removed several counties from his study in an attempt to minimize the effect of outliers, but it is unclear if all of the excluded counties would have necessarily been inconsistent with the collected data.⁴⁷ While Worrall downplayed these limitations, his research is notably one of the only studies to suggest a lack of relationship between welfare payments and crime.⁴⁸ Further, California is likely not representative of the entire country, given that it has one of the highest public welfare state expenditures per capita.⁴⁹ Thus, the counties in the state, overall, receive more in welfare payments than counties in other states.⁵⁰ This might diminish the effects of differences in AFDC payments between counties in comparison to between states, which have greater disparities in welfare payments.⁵¹ Worrall's research, as a result, may well be an outlier in the long line of scholarship that demonstrates an inverse relationship between AFDC welfare payments and crime rates.⁵²

Researchers have also found an inverse relationship between crime rates and TANF, the program that replaced AFDC. Scott Liebertz and Jaclyn Bunch observed that welfare restrictiveness appeared to correlate with increases in crime.⁵³ As a state enforces more limiting policies in distributing TANF payments, they concluded, violent crime increases.⁵⁴ The researchers studied the effect of the restrictiveness of state policies governing access to TANF benefits from 1996 to 2012, specifically focusing on the state's employment requirements, lifetime limits, punishments for compliance failures, and restrictions on family caps.⁵⁵ They did not find a significant impact of strict policies on property crime, and considered it a potential consequence of not controlling for "states' propensity to provide certain levels of welfare when given the authority to do so," comparing the results to models with weighted propensity scores.⁵⁶ They did, however, find that increasing welfare restrictiveness had a substantial positive impact on violent crime; in other words, restricting welfare support correlated with an increase in violent crime.⁵⁷

Explaining these results, the researchers hypothesized that increased work requirements for TANF eligibility may leave children more vulnerable to gang activity and recruitment.⁵⁸ Also, stricter requirements are positively associated with drug use and arrests, which put people more at risk of engaging in violent criminal behavior.⁵⁹ Furthermore, as welfare benefits decrease, principles that promote crime replace the communal actions

43 DeFronzo, *supra* note 40, at 403, 396; Hannon, *supra* note 40, at 126.

44 *Id.*

45 John L. Worrall, *Reconsidering the Relationship Between Welfare Spending and Serious Crime: A Panel Data Analysis with Implications for Social Support Theory*, 22 JUST. Q. 364, 385 (2005).

46 *Id.*

47 *Id.* at 382.

48 Hannon, *supra* note 40, at 126.

49 Public Welfare State Expenditures Per Capita in 2021, USA STATES IN PROFILE, https://www.statsamerica.org/sip/rank_list.aspx-?rank_label=censgovtre_exp_1_c&item_in=040&ct=S06 (last visited Mar. 10, 2024).

50 Worrall, *supra* note 45, at 372.

51 *Id.*

52 Hannon, *supra* note 40, at 126.

53 Scott Liebertz & Jaclyn Bunch, *Examining the Externalities of Welfare Reform: TANF and Crime*, 35 JUST. Q. 477, 498 (2018).

54 *Id.*

55 *Id.* at 489.

56 *Id.* at 493.

57 *Id.* at 494.

58 *Id.* at 495.

59 *Id.*

and values that might reduce it.⁶⁰ The researchers pointed to social disorganization and social support theories to explain this relationship: without public benefits, society prioritizes market-based institutions which erode norms of trust, respect, and mutual cooperation.⁶¹ Thus, the stricter the restrictions on TANF eligibility, the less individuals can rely on social support, which results in increased criminal behavior.

Another study observed the impacts of both TANF and the Earned Income Tax Credit (EITC) on property crime. The EITC, a lesser known welfare program, provides federal tax credit for working people with moderate and low incomes.⁶² To be eligible for EITC, families with children must make below about \$50,000 and adults without children must make below around \$17,000.⁶³ The amount of EITC an individual receives depends on their income, number of children, and marital status.⁶⁴ In 2018, the EITC helped to bring around 5.6 million people out of poverty.⁶⁵ Despite its success, however, it has rarely been included in research.⁶⁶ One researcher examined the impact of EITC and TANF on violent crime and property crime rates across the country from 1997 to 2006.⁶⁷ She found that the EITC was more effective than TANF in lifting working-poor families from poverty and was significantly negatively related to property crime.⁶⁸ In fact, she went so far as to state that it is possible that the EITC is the “most effective federal social support program.”⁶⁹ Any beneficial impact on crime from welfare payments, she reasoned, is proportional to the effectiveness of the program in bringing people out of poverty; thus, she found that the EITC was more successful than other welfare programs in reducing crime rates.⁷⁰ While the study primarily found an inverse relationship with regards to EITC, and not TANF, the results still complicate the conclusions of Liebertz and Bunch by suggesting that welfare payments, in general, have an inverse impact on property crimes, and not just violent crimes.

The impacts of SSI on crime rates are similar to those of both TANF and EITC. Conducting a natural experiment of SSI removal from young people as a result of a 1996 welfare reform law, a study found that the removal increased criminal charges by 20 percent over two decades.⁷¹ As young people with disabilities lost SSI, it observed, some engaged in legal employment to recover the lost SSI income, but a larger portion responded by pursuing illegal income-generating activity, including burglary, theft, prostitution, and fraud.⁷² The study noted that children who lose SSI, as people with disabilities who are at or below the poverty line, “may not have the skills to succeed in formal employment and might face discrimination” in the labor market, which influences their turn to illegal activity.⁷³ While SSI is less far-reaching than TANF because of the additional requirement of disability for eligibility, it, too, has a demonstrated impact on crime rates.

Another researcher, C. Fritz Foley, offered a more granular analysis of the impacts of TANF and SSI on crime rates. He found that in many large U.S. cities where more than 10 percent of the population receives food stamps, criminal activity increased as more time passed since welfare payments occurred.⁷⁴ This relationship could reflect that people who receive support from welfare payments consume it quickly and then try to supple-

60 Id.

61 Id. at 479.

62 Policy Basics: The Earned Income Tax Credit, CENTER ON BUDGET AND POLICY PRIORITIES, <https://www.cbpp.org/research/policy-basics-the-earned-income-tax-credit> (last visited Mar. 10, 2024).

63 Id.

64 Id.

65 Id.

66 Jessica Brown, Social Support and Crime: A State-Level Analysis of Social Support Policies, 43 J. SOCIOLOG. SOC. WELF. 135, 139 (2016).

67 Id. at 141.

68 Id. at 150.

69 Id.

70 Id.

71 Manasi Deshpande & Michael Mueller-Smith, Does Welfare Prevent Crime? The Criminal Justice Outcomes of Youth Removed from SSI, 137 Q. J. ECON. 2263, 2263 (2022).

72 Id. at 2304.

73 Id. at 2294.

74 C. Fritz Foley, Welfare Payments and Crime, 93 REV. ECON. STAT. 97, 110 (2011).

ment it with income from crime.⁷⁵ Thus, more frequent payments might reduce crime by providing individuals with consistent income so they avoid criminal activity. This study also highlighted differences between the general populations of those who commit crimes and those who receive welfare.⁷⁶ Women made up 57 percent of SSI recipients and 60 percent of TANF recipients, but only 30 percent of people arrested for financially-motivated crimes.⁷⁷ Additionally, many of the boys and men who received TANF benefits were young children, while crime rates are highest among people in their late teens and early twenties.⁷⁸ The study bridged this gap in data, however, by noting that many women who receive welfare payments share their resources with men, often not reporting the relationships to welfare providers.⁷⁹ This sharing of resources across gender might be consistent with sharing across age, as well. Thus, while the demographic with the highest offending rate is not usually the primary recipient of welfare payments (although adult men are eligible to receive benefits), they still benefit from them. A change to the welfare system would consequently also impact their ability to receive these benefits.

In sum, research overwhelmingly indicates that welfare payments have an inverse relationship with crime rates. Programs like TANF, EITC, and SSI have all proven to decrease crime, with varying levels of success. While one may debate about which program is most wide-reaching and effective, each seems to have a significant impact on crime rates. Also, while some researchers disagree about whether these programs impact property crimes and violent crimes in the same way, many studies consistently show an effect on both; regardless, a decrease in even one crime category would be beneficial. Further research in this area could explore both the difference in welfare payment programs as well as the impact of the programs on specific crimes. Researchers could also continue to analyze the disparities in this relationship between counties and states to offer proposals to decrease crime rates across the country.

B. Food Assistance

Overview of food assistance programs

Of the several different food assistance programs in the United States, the primary one is the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp program.⁸⁰ SNAP provides nutritional assistance to low-paid working families, low-income adults, and people with disabilities living on fixed incomes.⁸¹ The federal government funds SNAP, but splits the cost of administering it with the states, which operate it.⁸² Additionally, a majority of SNAP recipients are in families with children.⁸³ The federal government generally sets SNAP eligibility rules and keeps them uniform across the country; the standards for eligibility are lower than many other welfare programs and are broadly accessible to households with low incomes.⁸⁴ In order to qualify for SNAP benefits, households must meet three criteria:

[a]) Its gross monthly income generally must be at or below 130 percent of the poverty line, or \$2,379 a month (about \$28,550 a year) for a three-person household in fiscal year 2022. Households with a member who is age 60 or older or has a disability need not meet this limit[;]

[b]) [i]ts net monthly income, or income after deductions are applied for items such as housing costs and child

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.; Magnus Lofstrom, Brandon Martin, & Deepak Premkumar, Are Younger Generations Committing Less Crime?, PUBLIC POLICY INST. OF CALIFORNIA, Sept. 2023, <https://www.ppic.org/publication/are-younger-generations-committing-less-crime/#:~:text=One%20of%20the%20most%20robust,20s%2C%20and%20then%20continually%20decreases.>

⁷⁹ Id.

⁸⁰ Policy Basics: The Supplemental Nutrition Assistance Program (SNAP), CENTER ON BUDGET AND POLICY PRIORITIES, Jun. 9, 2022, <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap>.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

care, must be less than or equal to the poverty line (\$1,830 a month or about \$21,960 a year for a three-person household in fiscal year 2022)[;:]

[and c)] [i]ts assets must fall below certain limits: in fiscal year 2022 the limits are \$2,500 for households without a member who is age 60 or older or has a disability and \$3,750 for those with an older or disabled member.⁸⁵

In 2021, the federal government spent around \$111 billion on SNAP, and SNAP recipients, on average, received about \$127 per month per person.⁸⁶ As of April 2023, about 12.5 percent of the total U.S. population received SNAP benefits.⁸⁷

Another major food assistance program, although less widespread than SNAP, is the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).⁸⁸ WIC, as its name suggests, is targeted at babies and pregnant people to ensure that children are well-nourished in their early childhood.⁸⁹ With its narrower scope, WIC is only available to “[p]regnant, postpartum, and breastfeeding individuals, infants, and children up to age [five]” who have a gross household income at or below 185 percent of the federal poverty level and are determined to be at “nutritional risk.”⁹⁰ Those who qualify for WIC are eligible for benefits for up to six months after childbirth; those who breastfeed their child beyond six months can receive WIC benefits for up to a year after birth.⁹¹ Young children receive the benefits for up to a year, and then their eligibility is redetermined.⁹² Over three-quarters of people approved for WIC benefits also receive other benefits, like SNAP or TANF.⁹³ WIC, like SNAP, receives federal funding, between \$5 and \$6 billion each year.⁹⁴ State agencies administer the program and distribute the funding to individuals.⁹⁵ In 2021, WIC provided an average of \$56.90 in food each month per participant.⁹⁶ Although 12 million people were eligible to receive WIC benefits, only about six million actually participated in the program.⁹⁷

Finally, there are some other minor food assistance programs available to specific communities. These programs include the Senior Farmers’ Market Nutrition Program (SFMNP) and the Commodity Supplemental Food Program (CSFP), which are available to adults 60 and older; the National School Lunch Program, the School Breakfast Program, and the Special Milk Program, which are for children in school; and the Food Distribution Program on Indian Reservations (FDPIR), which is intended for Native Americans.⁹⁸ Although there are several different food assistance programs, this paper primarily studies SNAP, as it is widespread and one of the most effective programs in reducing hunger.⁹⁹

85 Id.

86 Id.

87 Drew Desilver, What the data says about food stamps in the U.S., PEW RESEARCH CENTER, Jul. 19, 2023, <https://www.pewresearch.org/short-reads/2023/07/19/what-the-data-says-about-food-stamps-in-the-u-s/>.

88 Policy Basics: Special Supplemental Nutrition Program for Women, Infants, and Children, CENTER ON BUDGET AND POLICY PRIORITIES, Oct. 5, 2022, <https://www.cbpp.org/research/policy-basics-special-supplemental-nutrition-program-for-women-infants-and-children>.

89 Id.

90 Id. (Applicants are required to attend a certification appointment in which a professional assesses if they are at “nutritional risk”).

91 Id.

92 Id.

93 Id.

94 Id.

95 Id.

96 Id.

97 National and State Level Estimates of WIC Eligibility and Program Reach in 2021, FOOD AND NUTRITION SERVICE, [https://www.fns.usda.gov/research/wic/eligibility-and-program-reach-estimates-2021#:~:text=Key%20Findings,in%202020%20\(52.0%20percent\)](https://www.fns.usda.gov/research/wic/eligibility-and-program-reach-estimates-2021#:~:text=Key%20Findings,in%202020%20(52.0%20percent)) (last visited Mar. 12, 2024).

98 Food assistance programs for older adults, <https://www.usa.gov/senior-food-programs> (last visited Mar. 12, 2024); School meals and food programs for children, <https://www.usa.gov/school-meals> (last visited Mar. 12, 2024); Food assistance for Native Americans, <https://www.usa.gov/native-american-food-programs> (last visited Mar. 12, 2024).

99 Ty Jones Cox, SNAP Is and Remains Our Most Effective Tool to Combat Hunger, CENTER ON BUDGET AND POLICY PRIORITIES, Feb. 14, 2023, <https://www.cbpp.org/blog/snap-is-and-remains-our-most-effective-tool-to-combat-hunger>.

The relationship between food assistance programs and crime

The effects of food assistance programs on crime rates are largely similar to those of welfare payment programs. In fact, Foley, in his study of TANF and SSI, also analyzed the impacts of food stamps on crime, and found a consistent inverse relationship for all three. He observed that in large U.S. cities where more than 10 percent of the population receives food stamps, criminal activity increased as more time passed since food stamp payments occurred each cycle.¹⁰⁰ Furthermore, not all crimes increased, but those that were likely to be financially motivated did.¹⁰¹ As with his findings regarding TANF and SSI, he noted that individuals first consumed the public benefits they received, and then turned to criminal activity to supplement their losses.¹⁰²

Foley discussed the importance of the timing of food stamps in relation to crime, which another study expanded on, finding that a more dispersed schedule of SNAP benefits helped reduce crime.¹⁰³ Specifically, the study noted that when the staggered period of disbursement was longer than 15 days - so recipients received benefits more than 15 days apart - property crimes fell.¹⁰⁴ It also found that when SNAP benefits were disbursed on the first day of the month, crime increased at the end of the month.¹⁰⁵ The study credited this effect to the fact that SNAP benefits coincided with paycheck issuance, so recipients were more likely to spend their money immediately, run out of food by the end of the month, and turn to crime to find food.¹⁰⁶ Interestingly, the study also suggested that consistent dates in the disbursement schedule led to a higher theft rate, but did not affect other rates for other crimes.¹⁰⁷ It similarly explained this by noting that continuous disbursement likely leads people to continuously purchase food and get concerned about the availability of stock at grocery stores, leading to higher rates of theft.¹⁰⁸ Thus, the research points to the possibility of maximizing the inverse impact of SNAP on crime by altering the timing of its disbursement.

A North Carolina study found that each additional year of food stamp availability in early childhood reduced the likelihood of criminal conviction in adulthood by three to four percent.¹⁰⁹ The researchers used data for convicted people in North Carolina between 1972 and 2015.¹¹⁰ Pointing to prior work that identified a positive relationship between early health intervention and later health, labor market, and educational outcomes, they tested the impact of food stamps on adult crime rates.¹¹¹ They found that food stamps improved both neonatal health and health during childhood, leading to a reduction in crime.¹¹²

The researchers offered a few theories to explain why increased food stamp programs decreased crime. For one, increased nutrition improvements in childhood led to improvements in intermediate outcomes - like better health - which raised the opportunity cost of committing crime.¹¹³ Additionally, improvements in childhood nutrition impacted psychology by improving self-control and decreasing aggression and violent behavior, which in turn decreases crime.¹¹⁴ These explanations are helpful in explaining the relationship between food stamps and

¹⁰⁰ Foley, *supra* note 74.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Licheng Xu, Timing of SNAP disbursement and crime rate in the United States, DEPT. OF AG. & APPLIED ECONOMICS, U. OF WISCONSIN-MADISON 1, 15 (2020).

¹⁰⁴ *Id.* at 13.

¹⁰⁵ *Id.* at 16.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 15.

¹⁰⁸ *Id.* at 16.

¹⁰⁹ Andrew Barr & Alex Smith, Fighting Crime in the Cradle: The Effects of Early Childhood Food Stamp Access, 58 J. HUM. RES. 1, 29 (2017).

¹¹⁰ *Id.* at 2.

¹¹¹ *Id.* at 5.

¹¹² *Id.* at 6.

¹¹³ *Id.* at 11-12.

¹¹⁴ *Id.* at 12.

crime, especially considering that children are among the largest categories of food assistance recipients.

Finally, the researchers found that food stamp availability had particularly strong effects on violent and felony offenses, crimes with the highest costs to society.¹¹⁵ This research points to the potential of increased food assistance programs to decrease crime, particularly with regards to violent crime. Food assistance programs are instrumental in shaping natal and early childhood health, which significantly impact criminal behavior later in life. This study is consistent with a long line of research that suggests that proactive approaches to improving adolescence could help curb future crime.¹¹⁶

Food stamps may also contribute to criminal desistance. Cody Tuttle found that denying people convicted of drug offenses SNAP benefits increased their likelihood of recidivism.¹¹⁷ He identified a natural experiment in Florida, where he could study recidivism rates after August 23, 1996.¹¹⁸ People convicted of drug trafficking offenses prior to this date had access to SNAP, while people convicted after the date did not.¹¹⁹ Tuttle observed that people subject to the ban were nine percent more likely to return to prison than people convicted of drug trafficking who had access to SNAP.¹²⁰ Specifically, the crimes that drove recidivism had monetary motives, such as property crimes.¹²¹ Notably, Tuttle also observed that people subject to the ban did not immediately return to drug trafficking once released from prison, suggesting that they might have attempted to avoid further collateral consequences from drug trafficking, despite already experiencing a ban on SNAP.¹²²

Tuttle explained this relationship between SNAP access and recidivism rates with two theories. First, he noted the possibility that there was an “increase in the illegal labor supply of ex-offenders,” since they have a “high attachment” to illegal labor or difficulty entering the legal labor market.¹²³ Second, he highlighted the possibility that people not subject to the ban were deterred from committing crime by the potential of losing access to SNAP if they committed a drug trafficking offense.¹²⁴

Research on food assistance programs, similar to that on welfare payments, strongly suggests that increasing access to these benefits would decrease crime. Foley’s study demonstrates an inverse relationship between food stamps and crime rates, and Tuttle’s scholarship furthers this by highlighting a similar relationship between food stamps and recidivism rates, as well. Other researchers offer an explanation for this relationship by establishing that food assistance positively impacts both natal and early childhood health, which then reduces the likelihood of criminal convictions in adulthood.¹²⁵ Another study provides a nuanced approach to the existing research by highlighting how even disbursement schedules of food stamps have an effect on crime rates, due to the dire need for food from low-income communities.¹²⁶ This research individually and collectively establishes the potential for increased access to food assistance programs to decrease crime rates, particularly as they relate to financially-motivated offenses. Research has generally focused on SNAP since it is the largest food assistance program in the United States, but further scholarship could study other programs, like WIC or CSFP, as well.

115 *Id.* at 29.

116 Robert Agnew, Timothy Brezina, John Paul Wright, & Francis T. Cullen, *Strain, Personality Traits, and Delinquency: Extending General Strain Theory*, 40 *CRIM.* 43 (2002); Robert J. Sampson & John H. Laub, *A Life-Course View of the Development of Crime*, 602 *ANN. AM. ACAD. POL. & SOC. SCI.* 12 (2005); David Garland, *The Current Crisis of American Criminal Justice: A Structural Analysis*, 6 *ANNUAL REVIEW OF CRIM.* 43 (2022).

117 Cody Tuttle, *Snapping Back: Food Stamp Bans and Criminal Recidivism*, 11 *AM. J. ECON.* 301, 324 (2019).

118 *Id.* at 302.

119 *Id.*

120 *Id.*

121 *Id.*

122 *Id.* at 316.

123 *Id.* at 303, 322.

124 *Id.*

125 Barr & Smith, *supra* note 109.

126 Xu, *supra* note 103.

C. Housing

Overview of housing assistance programs

Three federal programs primarily provide housing assistance to individuals in need: housing choice vouchers, public housing, and section 8 project-based rental assistance.¹²⁷ The Housing Choice Voucher Program serves as the country's largest source of rental assistance for individuals.¹²⁸ The federal government funds the program, but the Department of Housing and Urban Development (HUD) and state and local public housing agencies administer it.¹²⁹ Eligibility rules may vary by housing agency, but generally, 75 percent of new households admitted to the program each year must have "extremely low incomes," which are at or below the poverty line or 30 percent of the local median (whichever is higher).¹³⁰ Families can use vouchers to help pay the rent for their current or new unit, as long as the housing agency verifies that the unit meets federal housing quality standards and has a reasonable rent.¹³¹ Generally, families with vouchers must contribute either 30 percent of their income or a minimum rent of up to \$50 for rent and utilities (whichever is higher), and the voucher covers the rest of the costs.¹³² The Housing Choice Voucher Program assists just over five million people across the country.¹³³

Public housing, another well-known program, provides affordable housing to nearly two million people across the country.¹³⁴ About half of public housing units are in areas with high poverty, and are generally concentrated in racially segregated and under-resourced neighborhoods.¹³⁵ In order to qualify for public housing, families must have a "low income," which is defined as less than 80 percent of the local median income; additionally, at least 40 percent of new families must have "extremely low incomes."¹³⁶ Housing agencies generally charge tenants 30 percent of their income for rent and utilities.¹³⁷ The federal government funds public housing, through the Public Housing Operating Fund and the Public Housing Capital Fund, but local housing agencies administer it.¹³⁸

Section 8 project-based rental assistance (PBRA) is a combination of public housing and the voucher program. PBRA helps more than two million people in the United States by providing them with PBRA housing and covering most of the rental cost.¹³⁹ A family or individual must have a "low income" to live in PBRA housing, and each PBRA housing development must provide at least 40 percent of its subsidized units to families with "extremely low incomes."¹⁴⁰ Tenants in PBRA housing pay 30 percent of their income, and the PBRA subsidy covers the remaining cost.¹⁴¹ While Congress provides funding to renew PBRA contracts, property owners, who are either public housing agencies or private owners in agreements with HUD, administer PBRA.¹⁴² The main difference between PBRA and vouchers is that PBRA tenants are generally not permitted to move without losing their rental assistance; vouchers, however, allow tenants to move to new locations without this loss.¹⁴³

127 Policy Basics: Federal Rental Assistance, CENTER ON BUDGET AND POLICY PRIORITIES, Jan. 11, 2022, <https://www.cbpp.org/research/policy-basics-federal-rental-assistance>.

128 Policy Basics: The Housing Choice Voucher Program, CENTER ON BUDGET AND POLICY PRIORITIES, Apr. 12, 2021, <https://www.cbpp.org/research/policy-basics-the-housing-choice-voucher-program>.

129 Id.

130 Id.

131 Id.

132 Id.

133 Id.

134 Policy Basics: Public Housing, CENTER ON BUDGET AND POLICY PRIORITIES, Jun. 16, 2021, <https://www.cbpp.org/research/policy-basics-introduction-to-public-housing>.

135 Id.

136 Id.

137 Id.

138 Id.

139 Policy Basics: Section 8 Project-Based Rental Assistance, CENTER ON BUDGET AND POLICY PRIORITIES, Jan. 10, 2022, <https://www.cbpp.org/research/policy-basics-section-8-project-based-rental-assistance>.

140 Id.

141 Id.

142 Id.

143 Id.

The relationship between housing assistance programs and crime

Research has established a positive relationship between homelessness and reported crime rates. A study of Los Angeles found that an increase in homelessness increased crimes against people, property, and society.¹⁴⁴ Other studies have also shown higher rates of reported criminal behavior among adults who are unhoused with severe mental illness as compared to housed adults with severe mental illness.¹⁴⁵ The San Diego District Attorney's Office came to a similar conclusion with regards to recidivism rates, as well.¹⁴⁶ They found that not only did people experiencing homelessness become involved with the criminal legal system at significantly higher rates than others, but they also had high recidivism rates.¹⁴⁷

While these studies demonstrate a positive relationship between homelessness and crime, they also make note of the societal factors that contribute to this finding. For one, policies often criminalize homelessness by prohibiting acts like sleeping, eating, and asking for money in public spaces.¹⁴⁸ Indeed, people experiencing unsheltered homelessness - which exposes them to arrest for these acts - report more interactions with law enforcement than people living in shelters.¹⁴⁹ Specifically, people who are unhoused are frequently arrested for "survival crimes" like theft and "nuisance crimes" like sleeping on benches.¹⁵⁰ The research thus indicates that public benefits that address homelessness would help to reduce crime by taking people off the streets and out of the situations in which they are most likely to be arrested. In other words, public benefits could lower rates of homelessness, thereby diminishing the number of interactions between people who are unhoused and the criminal legal system. Overall, studies have shown that housing assistance has the potential to decrease crime rates, but different programs have had varying levels of success. Housing vouchers have proved to be one of the most effective forms of assistance in decreasing crime rates.¹⁵¹ One study examined administrative records at public service agencies in Los Angeles County in 2016 and 2017 to analyze the impact of housing programs on crime rates.¹⁵² It found that housing programs - in the form of monetary assistance - reduced crime; specifically, it lowered the probability of committing a crime by 80 percent, compared to a baseline mean.¹⁵³ Jail bookings fell significantly for people who received housing assistance, compared to those who did not.¹⁵⁴ Additionally, individuals with housing assistance were nearly eight percent less likely to be charged with at least one crime than those who did not receive assistance.¹⁵⁵ Indeed, housing assistance appeared to decrease future returns to homelessness, which might have a longer-term negative impact on crime rates, as well.¹⁵⁶

144 Marilyn Ee & Yan Zhang, Homelessness and Crime in Neighborhoods, *CRIME & DELINQUENCY* 1, 17 (2022).

145 Laurence Roy, Anne G. Crocker, Tonia L. Nicholls, Eric A. Latimer, & Andrea Reyes Ayllon, Criminal Behavior and Victimization Among Homeless Individuals With Severe Mental Illness: A Systematic Review, 65 *PSYCHIAT. SERV.* 739, 739 (2014).

146 DA Share First-of-Its Kind Crime Data, Proposes Three-Point Plan to Address Intersection of Crime and Homelessness, *OFFICE OF THE DISTRICT ATTORNEY COUNTY OF SAN DIEGO*, 1, 1 (2022).

147 *Id.* ("Of the individuals experiencing homelessness who have been charged with a crime and recidivated in the two-year period studied, 83% had two to four cases filed against them, and 15% had between five and nine cases filed against them").

148 Ee & Zhang, *supra* note 145, at 4-5; The Criminalization of Homelessness, *NATIONAL COALITION FOR THE HOMELESS*, <https://nationalhomeless.org/civil-rights-criminalization-of-homelessness/> (last visited Mar. 14, 2024).

149 Janey Rountree, Nathan Hess, & Austin Lyke, Health Conditions Among Unsheltered Adults in the U.S., *CALIFORNIA POLICY LAB*, Oct. 6, 2019, <https://www.capolicylab.org/health-conditions-among-unsheltered-adults-in-the-u-s/>.

150 Christopher Mayer & Jessica Reichert, The Intersection of Homelessness and the Criminal Justice System, *ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY*, Jul. 3, 2018, <https://icjia.illinois.gov/researchhub/articles/the-intersection-of-homelessness-and-the-criminal-justice-system>.

151 Elinor Cohen, Housing the Homeless: The Effect of Homeless Housing Programs on Future Homelessness and Socioeconomic Outcomes, *UCLA ANDERSON SCHOOL OF MANAGEMENT*, 1, 3 (2021).

152 *Id.* at 1-2.

153 *Id.* at 3.

154 *Id.* at 37.

155 *Id.*

156 *Id.* at 2.

Other city-specific studies complicate this research, though, by suggesting that the success of housing voucher programs is dependent on the location of the housing. A study of housing vouchers in Charlotte, North Carolina, found that voucher households were associated with higher crime, relying on UCR data from 2000 to 2009.¹⁵⁷ The researchers explained that these results did not indicate higher criminality among voucher recipients, but instead suggested a convergence of neighborhood conditions that foster crime, which include “higher residential turnover, decreased social cohesion, and increased numbers of at-risk youths.”¹⁵⁸ They specifically connected their results with social disorganization theory to demonstrate that the location of subsidized housing mitigated the potential positive effect of vouchers.¹⁵⁹

A study of Dallas, Texas, came to a similar conclusion but also cast doubt on the use of vouchers as a cause for high crime, noting that subsidized households are more likely to be in “distressed neighborhoods,” leading to increases in crime.¹⁶⁰ Neighborhoods with higher numbers of households with vouchers experienced high crime rates not because of a change in the number of voucher households in their neighborhood, but because the neighborhood was already experiencing higher levels of crime.¹⁶¹ Thus, the location of the subsidized housing - rather than the voucher program itself - served as an explanation for the relationship between vouchers and crime rates. Location is also a significant factor in public housing, which blurs the relationship between housing assistance and crime rates. Hartley and Sandler, in two separate studies of Chicago, both found that demolishing public housing decreased crime rates.¹⁶² Hartley, identifying a natural experiment through public housing destruction in Chicago, found that demolition was associated with a reduction in murder and assault rates across the city, pointing to the concentration of low-income housing in one area as a cause.¹⁶³ Importantly, the alternative to public housing in this study was not homelessness, but instead relocation of public housing residents.¹⁶⁴ Thus, the results of this study point to spatial distribution of public housing as a method of decreasing crime, rather than solely eliminating public housing.¹⁶⁵ Hartley suggested a reliance on social disorganization theory, noting that collective efficacy deteriorated when poverty was spatially concentrated, leading to higher crime rates.¹⁶⁶ The current concentration of public housing in low-income and low-resourced areas only increases the crime that those neighborhoods are already experiencing, so effective public housing would require more distribution across neighborhoods. Sandler’s study, analyzing the same natural experiment as Hartley, corroborated these findings and indicated that crime significantly decreased within a quarter mile of the demolition.¹⁶⁷ Sandler, like Hartley, explained that Chicago’s housing was “above average” in its need for renovation.¹⁶⁸ Specifically, she established that the poor maintenance and large size of housing primarily drove the decrease in crime after the public housing demolition.¹⁶⁹

157 Brent D. Mast & Ronald E. Wilson, *Housing Choice Vouchers and Crime in Charlotte, NC*, 23 HOUS. POLICY DEBATE 559, 559 (2013).

158 *Id.* at 591; see also Susan Clampet-Lundquist, Kathryn Edin, Jeffrey R. Kling, & Greg J. Duncan, *Moving At-Risk Youth Out of High-Risk Neighborhoods: Why Girls Fare Better Than Boys*, 116 AM. J. OF SOC. 1154, 1155 (2011) (“Children who grow up in public housing developments may be at particular risk for these adverse outcomes, since families who live in public housing are typically in neighborhoods with higher poverty than families who are similarly poor but have no housing subsidy”).

159 Mast & Wilson, *supra* note 158, at 591.

160 Shannon S. Van Zandt & Pratik C. Mhatre, *The Effect of Housing Choice Voucher Households on Neighborhood Crime: Longitudinal Evidence from Dallas*, 5 POVERTY & PUBLIC POLICY 229, 243 (2013).

161 *Id.* at 244.

162 Daniel A. Hartley, *Blowing it Up and Knocking it Down: The Effect of Demolishing High Concentration Public Housing on Crime*, FED. RESERVE BANK OF CLEVELAND, 1, 23 (2010); Danielle H. Sandler, *Externalities of public housing: The effect of public housing demolitions on local crime*, 62 REG. SCI. URB. ECON. 24, 34 (2016).

163 Hartley, *supra* note 163.

164 *Id.* at 16.

165 *Id.* at 23.

166 *Id.*

167 Sandler, *supra* note 163.

168 *Id.*

169 *Id.*

Another study of the same natural experiment in both Chicago and Atlanta similarly found no adverse impact on neighborhood crime as a result of public housing relocation.¹⁷⁰ The researchers pointed to public housing transformation that relocated residents to improved housing in safer neighborhoods as a method of reducing crime.¹⁷¹ They offered several reasons to explain this phenomenon:

First, relocating public housing residents for redevelopment could disrupt their social networks (Hagedorn and Rauch 2007), increasing their risk for either perpetrating or becoming victims of crime in their new neighborhoods (Haynie and South 2005; Sharkey and Sampson 2010).

Second, new residents moving into a neighborhood could disrupt the community’s “collective efficacy”—the degree of mutual trust and social cohesion that acts as a protective factor for residents—thereby making the residents of these neighborhoods less safe (Sampson, Raudenbush, and Earls 1997).

And third, some public housing residents or their associates could simply bring crime with them, essentially displacing problems like drug trafficking and gang activity from one neighborhood to another.¹⁷²

While these studies, on their face, suggest an ambiguous or even positive relationship between access to public housing and crime rates, they more clearly serve as an indictment of the current public housing program in the United States. They highlight the shortcomings of the program in concentrating public housing in areas that already have fewer resources and experience high crime rates. Housing assistance programs, overall, though, have the potential to decrease crime rates by reducing homelessness. Vouchers have proven to be more effective than public housing in decreasing crime, but this is primarily because public housing is poorly located. If these programs instead spread public housing and housing participating in the voucher program throughout cities and counties, housing assistance could have a significant inverse relationship with crime rates across the country.

D. Medical Care

Overview of public health insurance programs

Medicaid and Medicare are the two primary public health insurance programs in the United States. Medicaid, the most expansive program, provides health coverage to low-income individuals and families.¹⁷³ The federally-funded and state-administered health insurance program offers financial support to, at the very least, children in families with an income below 138 percent of the federal poverty line, pregnant people with an income below 138 percent of the poverty line, certain parents and caretakers with very low incomes, and most seniors and people with disabilities who get cash assistance through SSI.¹⁷⁴ Proponents of the Affordable Care Act (ACA) intended to expand coverage of Medicaid to other populations, but the Supreme Court gave states discretion over whether to expand their program.¹⁷⁵ The federal government requires state Medicaid to cover certain mandatory services, like hospital and physician care, but all states also cover certain additional services, like prescription drugs and vision services.¹⁷⁶ In 2018, the federal and state governments spent about \$630 billion on Medicaid, and provided health coverage to 97 million low-income Americans throughout the year.¹⁷⁷

170 Susan J. Popkin, Michael J. Rich, Leah Hendey, Chris Hayes, & Joe Parilla, Public Housing Transformation and Crime, URBAN INST. 1, 6 (2012).

171 *Id.* at 2.

172 *Id.* at 2-3 (citations omitted).

173 Policy Basics: Introduction to Medicaid, CENTER ON BUDGET AND POLICY PRIORITIES, Apr. 14, 2020, <https://www.cbpp.org/research/policy-basics-introduction-to-medicaid/>.

174 *Id.*

175 *Id.*

176 *Id.*

177 *Id.*

Medicare is a slightly different program, which provides health insurance to people aged 65 or older who are eligible for Social Security benefits.¹⁷⁸ It covers many of the same services that are covered by Medicaid.¹⁷⁹ The major difference between the two, other than the eligibility requirements, is that Medicare is both federally-funded and federally-administered.¹⁸⁰ In the context of crime, Medicare is far less researched because people aged 15-25 commit most crimes, with criminal activity slowing or entirely stopping by the age of 40.¹⁸¹ While health insurance that is targeted at individuals over the age of 65 is not necessarily unrelated to crime rates, it does not target the most impacted age group. As a result, researchers have focused on access to Medicaid, rather than Medicare, as a driver of crime rates across the country.

The relationship between public health insurance programs and crime

Research overwhelmingly shows that increased access to Medicaid decreases crime rates. One study compared state-level crime rates from 2010 to 2016 between states that expanded Medicaid and those that did not.¹⁸² It found that the ACA expansion of Medicaid in participating states reduced crime by improving people's quality of life, thereby increasing the opportunity cost of criminal behavior.¹⁸³ The results suggested that the ACA Medicaid expansion was negatively correlated with burglary, vehicle theft, homicide, robbery, and assault.¹⁸⁴ The ACA, in particular, targeted childless adults, a population likely to include many people engaging in criminal behavior.¹⁸⁵ This approach of focusing on specific vulnerable communities likely contributed to the inverse relationship between health insurance and crime rates.¹⁸⁶

In states that expanded Medicaid eligibility, violent crime rates significantly decreased compared to non-expansion states.¹⁸⁷ The effect was concentrated mainly among younger adults, the demographic most likely to commit crimes.¹⁸⁸ Jacob Vogler identified three possible theories to explain the relationship between Medicaid and crime rates. First, increased medical care may address the connections between mental illness, substance use, and violence, thereby reducing crime as a result.¹⁸⁹ Second, insurance "reduces expected medical expenditures and increases disposable income," creating positive income shocks that correlate with decreased financially-motivated and violent crimes.¹⁹⁰ Third, increased insurance coverage might increase quality of life, which would raise the opportunity cost of committing a crime.¹⁹¹ For these reasons, increased access to Medicaid may translate to lower rates of crime.

Other researchers similarly found a relationship between Medicaid expansion and a reduction in crime rates.¹⁹² Focusing on Medicaid expansions through Health Insurance Flexibility and Accountability (HIFA) waiv-

178 Basic Introduction to Medicare, CENTER FOR MEDICARE ADVOCACY, <https://medicareadvocacy.org/medicare-info/medicare-basics-2/> (last visited Mar. 15, 2024).

179 Id.

180 Policy Basics: Introduction to Medicaid, *supra* note 174.

181 Millennials Commit Less Crime Than Prior Generations, U. OF TX. AUSTIN, May 10, 2021, <https://news.utexas.edu/2021/05/10/millennials-commit-less-crime-than-prior-generations/>.

182 Qiwei He & Scott Barkowski, The effect of health insurance on crime: Evidence from the Affordable Care Act Medicaid expansion, 29 HEALTH ECON. 261, 266-267 (2020).

183 Id. at 262.

184 Id. at 261.

185 Id.

186 Id.

187 Jacob Vogler, Access to Healthcare and Criminal Behavior: Evidence from the ACA Medicaid Expansions, 39 J. POLICY. ANAL. MANAG. 1166, 1190 (2020).

188 Id.

189 Id. at 1171.

190 Id. at 1171-1172.

191 Id. at 1172.

192 Hefei Wen, Jason M. Hockenberry, & Janet R. Cummings, The effect of Medicaid expansion on crime reduction: Evidence from HIFA-waiver expansions, 154 J. PUBLIC ECON. 67, 78 (2017).

ers, a study found that rates of robbery, aggravated assault, and larceny theft declined.¹⁹³ Medicaid expansions increased substance use disorder treatments, which reduced the prevalence of substance use, and consequently decreased crime rates.¹⁹⁴ The researchers highlighted the importance of substance use treatment, in particular, as a major factor in crime reduction.¹⁹⁵

Another study observed arrest rates before and after Medicaid expansion in various states, and found that arrests significantly declined after the ACA expanded Medicaid, with the largest negative difference for drug arrests.¹⁹⁶ With greater access to Medicaid, the researchers proposed, individuals would be able to get mental health and substance use disorder treatment, “reduc[ing] the likelihood that police would arrest individuals who may present mental health problems or are involved in drug-related activity or other criminalized behaviors.”¹⁹⁷

Overall, they found that Medicaid expansion’s increased insurance coverage among people with substance use disorders resulted in fewer crimes.¹⁹⁸ Beyond drug use, the study corroborated the findings of other researchers, observing a decrease in violent and low-level arrests following the expansion of Medicaid.¹⁹⁹ It offered similar hypotheses to Vogler’s in explaining this trend, noting that insurance increased the financial stability of uninsured populations and also advanced community health, which both reduced crime.²⁰⁰

Research consistently proves an inverse relationship between medical care and crime rates. As states opted to expand Medicaid, they saw crime fall for a variety of reasons. For some, medical care improved people’s quality of life, which raised the cost of committing crime and risking one’s life. For others, medical care helped to address underlying issues often associated with crime, such as mental health issues and substance use disorders. Expanded access to medical care also increased people’s disposable incomes, reducing their need to engage in crime for financial benefit. These reasons help to demonstrate that investing in expanded medical care through Medicaid could contribute to a decrease in crime rates across the board.

IV. SOLUTIONS

The research on public benefits demonstrates a clear inverse relationship between increased access to welfare programs and crime rates. Tuttle suggested that this relationship could be based at least in part on deterrence.²⁰¹ He hypothesized that people may not have engaged in drug trafficking because they feared losing access to SNAP benefits.²⁰² While a plausible mechanism, a theory of deterrence would be detrimental in practice, as it would punish already financially-disadvantaged groups and defund marginalized communities, which would increase crime, contrary to the principles of abolitionist theory.²⁰³ Rather, the combined strength of the other research findings support increasing, rather than limiting, access to welfare programs.²⁰⁴

¹⁹³ Id. at 78-79.

¹⁹⁴ Id. at 79.

¹⁹⁵ Id.

¹⁹⁶ Jessica T. Simes & Jaquelyn L. Jahn, The consequences of Medicaid expansion under the Affordable Care Act for police arrests, 17 PLOS ONE 1, 1 (2022).

¹⁹⁷ Id. at 3.

¹⁹⁸ Id. at 11.

¹⁹⁹ Id. at 1.

²⁰⁰ Id. at 3.

²⁰¹ Tuttle, *supra* note 118, at 322.

²⁰² Id.

²⁰³ Connections Among Poverty, Incarceration, and Inequality, INST. RESEARCH ON POVERTY, May 2020, <https://www.irp.wisc.edu/resource/connections-among-poverty-incarceration-and-inequality/>; Nine Perspectives for Prison Abolitionists, *supra* note 18.

²⁰⁴ No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions, CLASP, Apr. 2022, <https://www.clasp.org/publications/report/brief/no-more-double-punishments/> (Furthermore, a deterrence theory would be challenging to execute, as the federal government does not limit access to SNAP based on criminal records; these restrictions are based on state decisions, so employing this theory nationally would require implementing a federal ban).

Indeed, as a direct and immediate response to the connection between welfare programs and crime rates, activists working in coalition with the government must improve access to public benefits. This would require at least a three-pronged approach. First, the government should broaden eligibility requirements so more people can have access to these programs. Considering that the distribution of most of these benefits relies on proof of low-income status, expanding access might require reconstruction of the standards for income eligibility. SNAP, for example, is available to families who are at or below 130 percent of the poverty line, which would mean they make about \$32,000 a year or less.²⁰⁵ An MIT study, though, found that a living salary - the income required to meet a four-person family's basic needs - in the United States for 2022 was around \$104,000.²⁰⁶ This discrepancy between the legal standard of poverty and the realistic standard of poverty demonstrates the need to amend the legal standards to reflect the experiences of families in America. SNAP administrators could respond to this disparity by increasing the bar to 200 percent of the poverty line, or even greater.

Many welfare programs also implement procedural barriers that make it more difficult for people to apply for and receive them. From large amounts of paperwork to long wait times after mailing in applications, low-income people face obstacles to receiving benefits.²⁰⁷ Many people simply lack information on how to enroll in benefits in the first place.²⁰⁸ Others do not have the means or the time to travel to government agencies to offer proof of their eligibility.²⁰⁹ Additionally, programs could benefit from federal administration, rather than state administration, so requirements could be more uniform across the country, limiting a state's ability to deny people access to benefits. Federal funding for these programs is also important, as programs funded fully by the federal government usually get more support from state policymakers than programs that rely on state funding.²¹⁰

Second, the government should provide more funding for public benefits, so that a) more people can access them, and b) people can receive more support from the programs. Funding can come from a variety of places; often, activists call for taxing the rich to invest in low-income communities.²¹¹ Abolitionist theory calls for divesting from police departments and prisons and reallocating that funding to public benefits.²¹² In 2017, the federal government spent \$30 billion on police and \$7 billion on corrections; state and local governments spent \$129 billion on police and \$86 billion on corrections in 2020.²¹³ If even a fraction of this money went to funding welfare programs, they would see material expansion. While fixing the budget and reallocating funds is a long and complicated process that requires a strong financial infrastructure, the government must pursue this path to provide better assistance to people in poverty.²¹⁴

205 A Quick Guide to SNAP Eligibility and Benefits, CENTER ON BUDGET AND POLICY PRIORITIES, Oct. 2, 2023, <https://www.cbpp.org/research/food-assistance/a-quick-guide-to-snap-eligibility-and-benefits>.

206 Amy K. Glasmeier, NEW DATA POSTED: 2023 Living Wage Calculator, Feb. 1, 2023, <https://livingwage.mit.edu/articles/103-new-data-posted-2023-living-wage-calculator>.

207 Sheila White, The government makes it way too hard to apply for benefits, Dec. 10, 2021, <https://streetsensemedia.org/article/the-government-makes-it-way-too-hard-to-apply-for-benefits/>.

208 Shelley Waters-Boots, Improving Access to Public Benefits, CENTER FOR HIGH IMPACT PHILANTHROPY, 1, 5, https://www.impact.upenn.edu/wp-content/uploads/2016/2015/03/CHIPSeminar2010_ImprovingAccess_Ford-OSI-AECF.pdf (last visited Mar. 15, 2024).

209 Id.

210 Id.

211 Tax the Rich: 9 Reasons for a Wealth Tax, FIGHT INEQUALITY, <https://www.fightinequality.org/blog/tax-rich-9-reasons-wealth-tax> (last visited Mar. 15, 2024).

212 Ending Police Violence: What Do Defund and Divest Mean?, VERA INST. OF JUSTICE, <https://www.vera.org/publications/ending-police-violence-what-do-defund-and-divest-mean> (last visited Mar. 15, 2024).

213 Criminal Justice Expenditures: Police, Corrections, and Courts, URBAN INST., <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/criminal-justice-police-corrections-courts-expenditures> (last visited Mar. 15, 2024).

214 Policy Basics: Introduction to the Federal Budget Process, CENTER ON BUDGET AND POLICY PRIORITIES, Oct. 24, 2022, <https://www.cbpp.org/research/policy-basics-introduction-to-the-federal-budget-process>; MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016) (Desmond argues that the benefits of increased welfare coverage through a program like universal housing vouchers far outweigh the cost and length of the funding process).

Third, the government should improve existing public benefits to ensure effective and comprehensive support for people. As the research on housing demonstrates, public housing and housing vouchers can be problematic, primarily because they concentrate recipients in neighborhoods with high rates of poverty.²¹⁵ More thoughtful housing assistance could eliminate this de facto class segregation (and racial segregation, considering the relationship between race and class). Governments should invest in poorer neighborhoods while also dispersing public housing across communities. Other programs, like SNAP and TANF, might benefit from increased coverage and a revised distribution schedule to ensure maximum access and assistance.

Public welfare programs reforms should be coupled with policy reforms that end the criminalization of poverty. Many laws and policies currently in place criminalize people in poverty solely for their existence.²¹⁶ Crimes that punish homelessness and inability to pay fees directly criminalize people in poverty. Other crimes, like theft and disorderly conduct, indirectly significantly impact communities in poverty, since these groups are more likely to be found guilty of such crimes.²¹⁷ If lawmakers rewrote or eliminated these policies that have a clear disproportionate effect on people in poverty, impacted communities would feel immediate relief.

Finally, abolitionist theory calls for society to eradicate prisons and police to reduce harm.²¹⁸ Efforts to invest in public benefits must be simultaneous with efforts to abolish systems of violence. Prisons in the United States increase crime, so eliminating these would decrease crime.²¹⁹ Policing, as an institution that contributes to and perpetuates the harms of prisons, should also be abolished. In fact, some studies have shown that intensifying policing can exacerbate crime rates.²²⁰ Thus, consistent with abolitionist theory, to decrease crime, activists in coalition with the government must increase access to public benefits, eliminate laws that criminalize poverty, and abolish police and prisons.

V. CONCLUSION

Studies on public benefits have established a strong inverse relationship between crime and at least four different programs: welfare payments, food assistance, housing, and medical care. This research points to the potential power of public benefits in reducing crime, through an abolitionist approach that invests in communities while eliminating systems of harm. In addition to increasing funding for these programs, governments should improve their existing programs to ensure that they are accessible and effective in providing people with the support they need. Further research on this topic could explore different forms of public welfare, the impact of reformed assistance programs, and a more granular analysis of impacted communities. As the existing scholarship makes clear, reducing crime rates requires supporting marginalized communities.

215 Will Fischer, Sonya Acosta, & Anna Bailey, An Agenda for the Future of Public Housing, Mar. 11, 2021, <https://www.cbpp.org/research/housing/an-agenda-for-the-future-of-public-housing#:~:text=More%20than%20half%20of%20public,percent%20are%20people%20of%20color>.

216 Devah Pager, Rebecca, Goldstein, Helen Ho, & Bruce Western, Criminalizing Poverty: The Consequences of Court Fees in a Randomized Experiment, *AM. SOCIOLOG. REV.* 1 (2022); Nazish Dholakia, How the United States Punishes People for Being Poor, *Se.* 21, 2023, <https://www.vera.org/news/how-the-united-states-punishes-people-for-being-poor>; Kaaryn Gustafson, The Criminalization of Poverty, 99 *J. CRIM. L. & CRIM.* 643 (2009); Criminalization of Poverty as a Driver of Poverty in the United States, *HUMAN RIGHTS WATCH*, Oct. 4, 2017, <https://www.hrw.org/news/2017/10/04/criminalization-poverty-driver-poverty-united-states>; Peter Edelman, The Criminalization of Poverty and the People Who Fight Back, 26 *GEO. J. ON POVERTY L. & POL'Y* 213 (2019).

217 Dholakia, *supra* note 217.

218 Victoria Law, Rethinking Incarceration, Jun. 9, 2022, <https://www.radcliffe.harvard.edu/news-and-ideas/rethinking-incarceration>.

219 Voices of abolition, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/scans/instead_of_prisons/chapter1.shtml (last visited Mar. 15, 2024); L Paulson & S Wade, Argument for Prison Abolition, 6 *Joint Endeavor* 10 (1980); Sharon Chau, Should Prisons Be Abolished?, Mar. 25, 2019, <https://kwokscholars.org/blog/should-prisons-be-abolished.html>; Don Stemen, The Prison Paradox: More Incarceration Will Not Make Us Safer, *VERA INST. OF JUSTICE*, Jul. 2017, https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf.

220 Rachel Kent & John Raphling, Interview: How Policing in One US City Hurts Black and Poor Communities, Sept. 12, 2019, <https://www.hrw.org/news/2019/09/12/interview-how-policing-one-us-city-hurts-black-and-poor-communities#:~:text=In%20fact%2C%20there%20are%20some,safety%20by%20addressing%20human%20needs>.

ABOUT THE REVIEW

National Lawyers Guild Review, formerly Guild Practitioner, is published triannually by the National Lawyers Guild, a non-profit institution, at 132 Nassau Street, # 922, New York NY 10038. ISSN 0017-5390. Periodicals postage paid at New York, NY and at additional mailing offices.

Subscription rates are \$75/yr for libraries and institutions; \$25/yr for lawyers; \$10/yr for legal workers/law students; \$5/yr for incarcerated persons; add \$5/yr for overseas; \$6.50/single copy, and should be sent to:

132 Nassau Street, # 922
New York NY 10038

POSTMASTER: Send change of address to:
National Lawyers Guild Review
132 Nassau Street, # 922
New York NY 10038

Address all editorial correspondence and law-related poems, criticisms, articles and essays to:

Editor-in-Chief
National Lawyers Guild Review
132 Nassau Street, # 922
New York NY 10038

Unsolicited manuscripts will not be returned unless accompanied by return postage. National Lawyers Guild Review is indexed/abstracted in Westlaw, PAIS-Public Affairs Information Service, The Left Index, and the Alternative Press Index.

SUBMISSION GUIDELINES

National Lawyers Guild Review is published twice a year by the NLG. Our readership includes lawyers, scholars, legal workers, jail-house lawyers and activists. With that audience in mind, we seek to publish lively, insightful articles that address and respond to the interests and needs of the progressive and activist communities. We encourage authors to write articles in language accessible to both legal professionals and intelligent non-experts. Submissions that minimize legal jargon are especially encouraged.

Though we are open to manuscripts of any length, articles typically run about 7,000 words. Pages in issues of NLGR generally contain about 425 words.

Submit your manuscript in Microsoft Word format electronically as an attachment to an email. For reference, we use the Chicago Manual of Style. Citations should appear as footnotes and follow Bluebook style. Citations should identify sources completely and accurately. Lengthy textual commentary and string cites are discouraged.

In addition to scholarly articles, NLGR welcomes submissions of artwork, poetry, and fiction that relates to progressive social movements. Include a short sentence or two describing your professional affiliation, background and area(s) of legal specialization. This description will appear with the article if it is accepted for publication. Please also include a phone number and ground mail address.

Manuscripts should be sent to the Executive Editor at nlgreview.execeditor@nlg.org, whereupon they will be forwarded to the Editor-in-Chief for review by members of the NLGR's editorial board. If accepted, manuscripts will be edited, and the edited manuscripts will be returned to the author for review; however, because of production schedules, late changes are prohibited and authors generally do not see typeset proofs. We make every effort to clear any changes with the author.
