



Rutgers CLiME
Center on Law, Inequality & Metropolitan Equity

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PANDEMIC REMEDIES



SUMMARY

In this first installment of a faculty essay series, CLiME asked Rutgers professors affiliated with the center to provide brief analysis on some of the many institutional crises exacerbated by the Coronavirus pandemic and to offer solutions. Law Professor Rachel Godsil discusses the loss of public revenues to struggling communities and offers a pipeline to millions. Political Scientist Domingo Morel reveals the growing crisis in public pension fund commitments and a possible path to meeting those obligations. Law Professor Laura Cohen takes readers inside juvenile justice to show the increased risk of viral infection incarcerated youth face as well as the steps advocates are taking on their behalf. Director David Troutt looks into the future to interrogate claims that “we are all in this together” and offers an alternative set of policy priorities we would pursue if mutuality really mattered.



Racial Reckoning: A Structural Response

By Rachel Godsil

Millions of people are protesting the murders of Ahmaud Arbery, George Floyd, Breonna Taylor, and Rayshard Brooks. Three of these murders were committed by police officers -- filmed and viewed across the entire globe. Like the 1960 news films of dogs attacking children during the civil rights protests, these videos are vivid and visceral. As in the 1960's, the images have galvanized people to come into the streets to make their outrage visible.

The murders have come at the same time that COVID-19 is causing disproportionate numbers of deaths in Black and Latino neighborhoods. Racism and injustice are in the spotlight. Consequently, there is a flood of commentary addressing the long-term inequality and exploitation that people of color have endured.

If, as a nation, we are serious about deconstructing systemic racism, we must make structural reforms that impact people's economic, social and political reality. One of the critical issues we must address is how current federal spending perpetuates racial inequality that was a direct result of racist federal spending of earlier eras.

There are many examples of discriminatory financial policies -- but one vivid example is spending by the Home Owners Loan Corporation (HOLC). HOLC was created as a part of the New Deal ostensibly to help at-risk urban homeowners. Between 1933 and 1935, HOLC dispersed more than \$3 billion (\$60 billion in today's dollars). The funds helped tens of thousands of people with mortgages in danger of default and foreclosure by granting low-interest loans. These loans allowed people in financial crises to keep their homes.

However, this funding program excluded people of color entirely as well as white families who sought funding in "red-lined" (racially integrated) areas. In effect, HOLC funding was both a massive transfer of wealth to white working class families and a disinvestment in neighborhoods inhabited by people of color.

The dual assault helps explain the current differences in accumulated wealth between whites and people of color. In addition, the limits placed on Black mobility resulted in densely populated neighborhoods, where people of color continue to live. This crowding of

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families is linked to the disproportionate number of deaths due to COVID-19 in inner city communities.

One immediate step in remediating the damage of racist policies would be to designate a minimum of \$60 billion to invest in the minority neighborhoods hit hardest by COVID-19.

This funding could be easily accessed by repealing the tax benefits accorded to the rich which are hidden in the \$2 trillion Coronavirus Aid, Relief, and Economic Security Act (CARES). Along with the small and well-publicized grants to families financially hit by COVID-19, the "CARES" Act contained a provision for owners of real estate firms, hedge funds, and corporations to offset their losses into huge tax savings and refunds. The Joint Committee on Taxation estimates the cost of this benefit to be \$135 billion for noncorporate businesses and ProPublica estimates a related loss of \$88.70 billion for corporations. If this tax benefit is repealed, there would be more than enough to compensate for the \$60 billion for communities affected disproportionately by COVID-19 and significant additional funds for much need support in job creation, health care, and education.

If this is truly an inflection moment on race, this government must move beyond speeches of regret to concrete and substantive policy changes that actually move our nation toward justice.

Rachel Godsil is a Professor of Law and Chancellor's Social Justice Scholar at Rutgers Law School.



Public Pensions in Peril

By Domingo Morel

On April 23, while on a conservative talk show, Senate Majority Leader Mitch McConnell suggested that, instead of receiving federal aid to deal with the economic effects of Covid-19, some state and local governments should file for bankruptcy to cut spending.

In a later interview with Fox News, McConnell revealed one motivation for his bankruptcy proposal: a desire to sidestep responsibility for public employees' pensions.

"We're not interested in solving their pension problems for them," McConnell said, referring to states. "We're not interested in rescuing them from bad decisions they've made in the past, we're not going to let them take advantage of this pandemic to solve a lot of problems that they created themselves [with] bad decisions in the past."

My colleagues, Marion Orr and Jonathan Collins from Brown University and I have been conducting research on public pensions. McConnell is right to imply that public pensions are in crisis. Before Covid-19, estimates showed that state and local unfunded pension liabilities in the U.S. totaled between \$3 and \$4 trillion. In other words, public-sector employees in almost every state have been promised far more in pension benefits than has been set aside for them.

Although the unfunded pension crisis has been decades in the making, a major cause for unfunded pension liabilities in the U.S. can be traced to the economic crash of 2008. The 2008 economic downturn compounded cities' pension liability problems with significant market erosion in most pension funds' investments. State and local pension plans [lost more than \\$672 billion during fiscal years 2008 and 2009](#).

In 2008, McConnell and his colleagues were perfectly willing to bail out the financial industry, whose "bad decisions" caused the financial crisis. Yet today, he is willing to put retirees, whose lives have been affected most negatively by Covid-19, at greater economic risk.

If his suggestion came to fruition, it would impact tens of millions of lives. According to the Brookings Institution, more than [10 million retired Americans rely on state or local public pensions for their retirement security](#). Another 20 million people – more than 13 percent of the country's workforce – currently work for state and local governments and expect a public

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pension for their retirement. Public sector workers – police officers, firefighters, teachers, bus drivers, nurses, librarians, garbage collectors – joined the workforce understanding that their salaries would be lower than those of their private-sector peers, but that at the end of their many decades of service, they would be able to retire under a traditional pension that would provide a monthly income for life.

Given our country’s unfunded pension liabilities, these employees’ retirement security was already in jeopardy. But McConnell’s bankruptcy plan would put their financial stability at even greater risk.

Local and state leaders and political campaigns should bring media attention to pension concerns.

Why do McConnell and many of his conservative colleagues favor the bankruptcy idea? Because it would force states to nullify existing negotiated agreements and restructure pension obligations. That would mean less federal resources for state and localities to deal with the aftermath of the crisis. But perhaps most importantly for

McConnell and his colleagues, state bankruptcy would deliver a political blow to “blue states” and to labor unions. As [David Frum](#) has noted, Republicans have pushed for state bankruptcy for at least a decade as part of a political strategy that would “enable a Republican Party based in the poorer states to use its federal ascendancy to impose its priorities upon the budgets of the richer states.”

While the bankruptcy plan may benefit Senator McConnell and his political party, the reality is unsettling for retirees and current public sector workers, especially those who live in areas that were hardest hit by the recession. When Detroit emerged from bankruptcy in 2017, about 32,000 active and retired Detroit city workers saw their pensions cut and promised cost-of-living-adjustments, or COLAs, eliminated. In 2013, [Vallejo, California, emerged from bankruptcy after officials reduced pension benefits](#) for new employees, cut payments for retiree health care, and raised contributions for current employees. In August 2011, some retired city workers in Central Falls, Rhode Island, had their pensions cut by more than 50 percent after the city filed for bankruptcy. While these cuts have been difficult for retirees and their families, cutting pension benefits in the wake of a pandemic would be devastating to an already vulnerable population.

There’s some good news: Laws and public opinion make it extremely unlikely that McConnell’s bankruptcy suggestion will come to fruition and further threaten the public sector’s retirement prospects. Most states have constitutional and statutory provisions that make it illegal to cut public workers’ pensions. At the municipal level, bankruptcy is also rare; only 25 states allow municipal bankruptcy. Moreover, we have been conducting research on how citizens view public pension reform and although we find that pension reform is a low-information policy issue, most Americans — 52 percent of our respondents

— said they disagree that bankruptcy should be used to change local governments' obligations to retired city workers.

Mitch McConnell's proposal to allow states and localities to file for bankruptcy to avoid pension obligations for workers, then, has to overcome statutory and public opinion impediments...and it probably won't. But it should be troubling to all Americans that the leader of the U.S. Senate willingly bailed out banks and airlines while denying a lifeline to public-sector workers and retirees at a time of great need.

Recommendations:

Support from the national government for states and localities.

The Covid-19 pandemic will exacerbate the unfunded public pension crisis in the United States. States and localities need the support of the national government to provide retirement security to the more than 30 million Americans and their families who currently rely or will rely on pensions for their retirement.

Mobilize public opinion

Our research also shows that municipal pension reform is a low information policy issue and that many Americans have little knowledge of the issues concerning public pensions. Local and state leaders and political campaigns should bring media attention to pension concerns. The Red for Ed movement, where teachers unions across the country have been mobilizing for teachers' rights, including the pensions they were promised, serves an example of the type of mobilization that is necessary to bring attention to this issue.

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Keep Your Children Well: Covid-19, Incarcerated Youth, And The New Jersey Experience (So Far)

By Laura Cohen

On a Sunday morning in April 2020, as the novel coronavirus wreaked havoc across the nation, eighteen-year-old Nathaniel¹ woke up with a pounding headache and 103 degree fever. Within hours, he began to feel chest pains, developed a cough, and had trouble breathing, a particularly alarming symptom in light of his lifelong history of asthma. He needed medical attention, quickly.

But Nathaniel could not simply call his doctor or go to an emergency room. He is incarcerated in one of New Jersey's youth prisons, and his story throws open a window to the pandemic's particularly harsh impact on the lives of children behind bars. In a certification written in the midst of his illness, he wrote:

I was strip searched and shackled. I was put into an ambulance in shackles. I was taken to the hospital, where I was evaluated and given a test for COVID-19. Within an hour, the doctor told me I had tested positive, and three hours later I was taken back to [the youth prison] in shackles and put on a medical isolation unit. There, I am isolated in my room for 23 hours a day. In the room are a bed, a steel toilet and sink, and a shelf.

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The nurse comes to see me approximately every four hours. If I need the nurse otherwise I have to bang on the door. If I ask for the guards' attention, they ignore me, so I also have to bang the door. I am able to speak to my mother on the phone for five minutes two or three times a week. I do not see or speak with anyone else. At night I feel overwhelmed and think about my family. I worry that if something happens to me I won't be able to take care of them.

I'm losing weight. My food for the day was cereal, tuna fish, and spaghetti. If I were home, I'd be eating soup. I feel like I'm in trouble and in solitary confinement. Being so isolated, I feel anxious, lonely, and depressed. I feel so trapped.

Tragically, Nathaniel's experience with the virus reflects those of incarcerated people throughout the United States. According to weekly data collected by the Marshall Report, 52,649 adult prisoners have tested positive for COVID-19 and at least 616 have died - - an infection rate that surpasses that of the general population by more than 150%.² In New Jersey - - an epicenter of this sub-pandemic - - 46 incarcerated adults have died, the highest inmate mortality rate in the country and more deaths than in 34 other states combined.³ As Attorney General Gurbir Grewal recently stated, "As we began to prepare for the crisis, it became apparent to me that this was going to hit prisons hard. We were absolutely crushed."⁴

Nationally, advocates and some government officials have worked to alleviate these dangers through furloughs, expedited parole, and medical releases of adult prisoners. These efforts have led to drastic reductions in some local jail populations; in New Jersey, the jail census has declined by 35% since March 22, when the State Supreme Court directed the release of most sentenced jail inmates. Categorical releases of state prison inmates - - who by definition have been convicted of more serious offenses and are serving longer sentences than those confined in county jails - - have been rarer, but an Executive Order issued by New Jersey Gov. Phil Murphy in April and subsequent action by the Supreme Court in June created a review process for people with medical vulnerabilities and short periods of time remaining on their sentences.⁵

Children like Nathaniel, however, have largely been left behind, despite calls for action from physicians, public health experts, parents, advocates, and eleven U.S. Senators.⁶ Although youth who are prosecuted as juveniles do not have criminal convictions

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and are committed to state custody for primarily rehabilitative purposes, most states, including New Jersey, have been reluctant to modify their sentences in response to the pandemic. Ironically, some courts, parole boards, and other decision-makers have even couched this reluctance in child protective terms, claiming that young people are safer in prison than in their

communities. As a result, the virus continues to inflict very real medical, emotional, and educational harms on some of our country's most vulnerable young people, threaten the community as a whole, and undermine the core goals of the juvenile legal system.

New Jersey provides a useful case study of the challenges created by the pandemic and the Sisyphean efforts needed to extricate children from its grasp. Although the state's Juvenile Justice Commission ("JJC") took early, pro-active steps to keep the virus at bay, the wildfire that spread so quickly through adult prisons also has engulfed the agency's juvenile facilities. As of July 7, 2020, 29 young people – more than 10% of those in long-term state custody - had tested positive,⁷ an infection rate almost six times New Jersey's overall rate of 1.7%.⁸ (Nationally, 796 youth and 833 staff of juvenile correctional facilities had tested

positive as of June 29.)⁹ In a bleak reminder that prison walls are but a porous membrane, at least thirty-nine JJC staff members also have become infected.

While these numbers may in part be attributable to differences in testing rates - - the JJC was one of the first juvenile justice agencies in the country to commit to testing every young person in its custody - - without question, a substantially higher percentage of children in congregate facilities are infected than those who remain in the community.

Rendering the statistics acutely alarming are the racial disparities they embody and amplify. Approximately 66% of youth currently incarcerated in JJC facilities are Black, compared to 13% of Black youth in the general population. According to a 2017 report, Black youth in New Jersey are 30 times more likely to be incarcerated than white youth, the highest rate of disparity in the nation.¹⁰ These deep inequities cannot be explained by differences in offending; Black and white children break the law in equal numbers. Making matters worse, these gross disparities in incarceration have led to disproportionate rates of COVID-19 infection and illness among Black children.¹¹

Incarcerated youth also have a disproportionately high incidence of underlying health conditions that exacerbate the dangers posed by the virus. Adolescent clients of the Rutgers Criminal and Youth Justice Clinic (CYJC), which has provided legal representation to more than 700 youth incarcerated in New Jersey over the last decade and is deeply involved in pandemic-related advocacy, have cardiac disease, diabetes, epilepsy, and asthma, among other medical concerns. Like Nathaniel, they are particularly susceptible to the virus and more likely to experience acute or even life-threatening symptoms if infected. And, although COVID-19 symptoms generally are milder among children than adults, recent studies have determined that some infected youth develop a syndrome that can lead to multi-organ failure and shock.¹²

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Juvenile prisons, moreover, are designed to promote control and institutional safety, rather than to prevent the transmission of infection or provide health care most effectively. Incarcerated youth typically sleep in multi-bed dormitories or in “pods” with multiple cells that share a single common area. Showers and some toilet facilities are communal, as are most recreation spaces, school rooms, and cafeterias. Cleaning often is done by residents rather than a professional custodial staff, and the disinfectants, alcohol-based sanitizers, and other supplies recommended to slow the spread of infections often are not always readily accessible due to security concerns.

Recognizing that these and other factors make juvenile prisons hotbeds for disease, medical experts have urged release of young people to the community whenever possible. According to Physicians for Criminal Justice Reform, “With a mortality rate 10 times greater than the seasonal flu and a higher R0 (the average number of individuals who can contract

the disease from a single infected person) than Ebola, an outbreak of COVID-19 in youth detention and correctional facilities would be devastating.”¹³

The pandemic also has undermined the central mission of the juvenile legal system: the treatment, rehabilitation, and education of vulnerable and trauma-affected youth.¹⁴ The American Academy of Pediatrics estimates that up to 90 percent of young people involved in the legal system experienced one or more traumatic events in childhood or adolescence and 65 – 70 percent have mental health diagnoses requiring treatment, including anxiety, post-traumatic stress disorder, and clinical depression.¹⁵ Over 50 percent have special education needs. According to the CDC, these young people “may respond more strongly” to the stress and fears associated with COVID-

19 and are uniquely susceptible to the emotional and psychiatric tolls of the disease. Yet, in order to slow its spread, the JJC and other juvenile correctional agencies have banned all but “essential” staff - - i.e., corrections officers and medical personnel - - from their institutions. Social workers, counselors, and teachers have not been onsite since March, and all in-person school, vocational and therapeutic programs, and family visits have been suspended. As Nathaniel so wrenchingly describes it, the facilities are in a state of near-lockdown. Young people are cut off from essential professional and familial interactions, increasing their sense of isolation, undermining their mental health, and leaving them frightened and without purpose.

Since early March, advocates have filed at least 50 motions in juvenile courts across the state on behalf of young people with underlying health conditions or short periods of time remaining on their sentences, in order to stem the tide of COVID-19 in JJC facilities. Unfortunately, these motions have met with resistance at every turn.

Such conditions have given rise to widespread calls for states to return incarcerated youth to their families and communities under appropriate supervision.¹⁶ Like most jurisdictions, however, New Jersey has been hesitant to do so, and accomplishing this goal has required intensive advocacy in multiple forums.

Sentence Modifications

A fundamental distinction between juvenile and adult sentencing in New Jersey is the Juvenile Court’s ongoing jurisdiction over adjudicated youth and broad authority to modify dispositions throughout a young person’s custodial term.¹⁷ Convincing judges to exercise this discretion, however, is often an uphill battle, even in the midst of a pandemic.

Since early March, the CYJC and state Office of the Public Defender collectively have filed at least 50 motions in juvenile courts across the state on behalf of young people with underlying health conditions or short periods of time remaining on their sentences, in order to stem the tide of COVID-19 in JJC facilities. Unfortunately, these motions have met with resistance at every turn and were stymied by delays in court scheduling, onerous

prosecutorial discovery demands, and unreasonable judicial findings. In one case, for example, the CYJC filed a motion on behalf of a young man with a history of metabolic disorder, a community release plan approved by the Parole Board, a stellar disciplinary record, and only three months remaining on his sentence. Despite the urgency created by his medical condition, the county prosecutor objected to modification - - as has happened in the vast majority of these cases - - arguing that there was no evidence he would be safer in his mother's home than in prison. Although the judge eventually granted release, this did not occur until nearly one month after the motion was filed - keeping the young man in harm's way as the virus swept through JJC facilities. And many judges have simply failed to take the threat of COVID-19 into account in their decision-making, even in the cases of a boy with a serious cardiovascular condition whose family was ready and able to bring him home and an 18-year-old pregnant girl with only one month remaining on her sentence.

Parole Advocacy

Due to the central rehabilitative purposes of the juvenile legal system, the juvenile parole process also differs significantly from those governing adults. Under New Jersey law, all juvenile terms of incarceration are indeterminate, and the New Jersey State Parole Board has broad authority to grant early release from custody - - perhaps the most effective "carrot" in the behavior modification toolbox - - at any time following entry of juvenile court disposition.¹⁸ Historically, however, the Board's exercise of this discretion has been stingy at best; approximately 70 percent of youth in JJC custody are denied parole and forced to serve every day of their sentences, regardless of their accomplishments and behavior while in custody. Racial disparities also plague parole decision-making; white youth are significantly more likely than Black youth to be paroled, even when they have similarly positive institutional records and release plans.¹⁹

Approximately 70 percent of youth in JJC custody are denied parole and forced to serve every day of their sentences, regardless of their accomplishments and behavior while in custody. Racial disparities also plague parole decision-making.

Another significant difference between adult and juvenile sentencing in New Jersey is that, under the law that was in effect when the pandemic began, incarcerated youth were statutorily mandated to complete a term of post-incarceration supervision equaling one-third of their custodial terms, with conditions mirroring those of parole.²⁰ Since the Juvenile Code authorizes sentences of up to 20 years, depending on the severity of the offense, many youth remain on post-incarceration supervision far into their twenties or beyond, with their movements restricted and living under constant fear of being returned to custody. Under the then-operative statute, "technical" violations of post-incarceration supervision, such as failure to report or complete mandated programs, could lead to revocation and re-incarceration at the discretion of the Parole Board, even though these youth had served every day of their custodial sentences and, sometimes, a lengthy period of parole.

As of late May, at least six CYJC clients were being held in JJC custody for such violations, despite the recent enactment of P.L. 2019, c. 363 (2020), which abolished this practice but had would not become effective until November 1, 2020. In one of these cases, the Board refused to reconsider a pregnant resident's revocation, even though she had only one month remaining on her sentence. In another, it brought a young woman with a well-documented history of diabetes who had complied with all the conditions of parole back into custody because she failed to report to her parole officer during the early weeks of the pandemic-related stay at home order. In third case, even after the Board reversed its own revocation decision, it refused to release the client because, while the revocation hearing was pending, he objected to being transferred to a housing unit in which there were COVID-positive residents, for fear of becoming infected.

In short, the Parole Board could and should have responded to the crisis quickly and safely by using its essentially unfettered authority to release children to the community under supervision. It could and should have ceased its longstanding practice of returning youth to prison for technical violations. Instead, it has continued to do business as usual, unnecessarily leaving young people with approved release plans stranded in facilities that are locked down and rife with COVID-19.

Because juvenile justice decisional authority is divided in almost equal measure among the three branches of government, the CYJC and other advocates have had to pursue relief in the courts, the executive branch, and the legislature simultaneously, putting together a patchwork quilt of substantive and procedural protections.

Since the pandemic began, the CYJC has advocated aggressively for its clients before the Parole Board as well as in the courts. Although attorneys are not permitted to participate in parole hearings, clinic lawyers and students have helped clients and their families develop comprehensive release plans. They have compiled and submitted parole "packets" to the Board in support of requests for early release. They have pursued appeals on behalf of clients who were denied parole, even though the deferential abuse of discretion standard

effectively shields parole decision-making from judicial review. And they have represented numerous youth in revocation hearings, often successfully. Yet individual advocacy is slow-moving and rarely leads to systemic reform. In order to respond to this fast-evolving crisis, a broader-based strategy was needed.

Achieving Systemic Change

One of the biggest obstacles to shielding incarcerated youth from the ravages of the pandemic has been the legal crevasses created by the separation of powers doctrine. Because juvenile justice decisional authority is divided in almost equal measure among the three branches of government, each is able to "pass the buck" when an issue becomes politically charged or divisive. As a result, the CYJC and other advocates have had to pursue relief in

the courts, the executive branch, and the legislature simultaneously, putting together a patchwork quilt of substantive and procedural protections.

The Supreme Court Takes Action

Governor Murphy's April 10 Executive Order directed the state Department of Corrections and Parole Board to review adult state prison inmates for possible medical release or parole. By late May, however, only a small number of prisoners had been released. The New Jersey Office of the Public Defender and the ACLU of New Jersey thus filed an Order to Show Cause in the State Supreme Court, asking the Court to direct the immediate release of certain inmates and create due process protections for others. Although the Executive Order inexplicably excluded youth incarcerated in JJC facilities, the CYJC sought leave to appear as *amicus curiae* and asked the Court to take action with regard to these young people in light of the failure of the lower courts and Parole Board to protect them adequately. Following a four-hour oral argument, the Court issued a lengthy opinion, in which it ordered the state's juvenile courts to schedule hearings on motions for early release within five days of filing; issue decisions within three days of the hearings; and, importantly, to consider and accord weight to the impact of COVID-19 in making its decisions.²¹ This directive will ensure that motions for sentence modification are heard quickly, provide fodder for appellate review, and hasten the release of children who remain in custody unnecessarily.

In recent months, CYJC staff and students have negotiated with the JJC and helped clients pursue administrative remedies to reduce isolation from families, to obtain medical and mental health care and to improve conditions in medical quarantine.

The Legislature Steps Up

In ordering expedited COVID-19-related hearings, the Supreme Court acted within its supervisory authority over the state judiciary, but the doctrine of separation of powers and established principles of administrative law prohibited it from issuing a similar directive to the Parole Board. Since previous efforts to negotiate with Board administrators had proven fruitless, the CYJC asked the state legislature to step in.

Since 2015, New Jersey has enacted a series of progressive measures that have radically transformed the juvenile legal system. The most recent of these is Senate Bill S.48 of 2019, which, among other reforms, reduces the maximum length of post-incarceration supervision to one year; prohibits re-incarceration of youth who have violated the conditions of their post-incarceration supervision; and - - particularly important in light of the economic devastation the pandemic has wrought on children of color and their families - - eliminates most monetary penalties imposed on children adjudicated in juvenile court. These fines and fees, which often total several thousand dollars or more, increase racial disparities (wealthier white parents are better able and more likely to pay the penalties for their children than parents of color), prevent young people from establishing credit and obtaining student loans, and perpetuate financial instability far into adulthood.²² Once implemented, these provisions

would compel the immediate release of certain youth, prevent the re-incarceration of others, and ease the financial burdens of young people at this moment of unprecedented difficulty. But the legislation's effective date was not until November 1, 2020.

Fortunately, Senator Nellie Pou, Senate Bill S.48's original sponsor, was willing to help. She introduced a new bill that accelerated implementation of the post-incarceration supervision and fines and fees reforms, which progressed through both houses with lightning speed and was signed into law on July 1, 2020.²³ Armed with this newly-minted statute, CYJC attorneys and other advocates will seek the release of every youth currently incarcerated for violations of post-incarceration supervision, further reducing the JJC population, allowing for greater distancing within the facilities, and promoting safety within and outside the prison gates.

Protecting Youth Who Remain Inside

Despite all of these efforts, a substantial number of young people will remain in custody due to the length of their sentences and severity of their crimes. It thus

is crucial to ensure that the pandemic does not provide a convenient excuse to undermine their safety and well-being, physical and emotional health, and legal and educational rights. In recent months, CYJC staff and students have negotiated with the JJC administration and helped clients pursue administrative remedies to demand more frequent telephone and video calls with their families; enhance remote educational instruction; obtain essential medical care and mental health counseling; challenge overuse of isolation as a response to the virus; suspend garnishment of fines and fees from prison commissary accounts, in light of the suspension of most residents' institutional jobs during the virus-related lockdown; permit the use of prayer rugs during Ramadan; and improve conditions in the medical quarantine units, among other concerns.

Youth like Nathaniel should not have to live with the constant fear that their juvenile adjudications will give rise to a death sentence. The COVID-19 pandemic has exposed the many fault lines and fissures of the juvenile legal system, once again calling into question the purposes, utility, and inequities associated with incarcerating the young. Perhaps this moment will compel much-needed, fundamental reforms. In the meantime, robust advocacy will continue to be necessary to keep our young people safe until the crisis abates.

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The Future of All Together

By David Dante Troutt

From the rigid confines of a jail cell, Rev. Martin Luther King wrote that our fates are interconnected. “All life is interrelated,” he began. “Somehow we’re caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly affects all indirectly.” From our own locked-down vantage of forced quarantine, King’s words ring true.

Yet sheltered in place, we’re still in the early shock of viral interdependence, far from knowing just what kind of mutuality the coronavirus pandemic will ultimately reveal. We say we’re all in this together, a statement of mutuality that suggests an equity of necessity, like the social contract—sacrificing to the whole for individual benefits. Because a single farm worker, store clerk, lawyer, visitor or even nurse can alter dozens of lives forever, we might see lockdown as the first act of collective mutuality among a people experiencing “the interrelated structure of reality,” as King called it.

Addressing the concerns of people of color and those who must work with the public is usually an afterthought until the interests of more affluent people are secured. A global pandemic-recession shows how backward this is.

Yet we’re not an equitable society, and the pandemic already painfully shows the deep inequalities of an every-household-for-itself response that disproportionately exposes, infects and kills the bodies of the economically unprotected, especially Black, Latino and tribal peoples. Right now, mutuality still looks awfully lopsided. Even the sheltering in place

order—not going out, quarantining in a separate room with its own bathroom—assumes a house with guest quarters, irrelevant to the working-class homes of essential workers. Like the irony of Rev. King, a Black American, embracing mutuality while imprisoned for championing human rights for all Americans, painful ironies will accumulate during the coming recession, as people with the least suffer the most, and the most vulnerable support the most resourceful.

This is the fatal flaw in how modern American society structures mutuality—or, for that matter, equality. It defaults to the perspective of the most resourced rather than the least, as if what we provide for the neediest of us doesn’t also help those with the most. We see this in the slow pace of federal so-called paycheck protection as well as the “accidental” preference for big businesses over small ones in the CARES Act. Addressing the concerns of people of color and those who must work with the public is usually an afterthought until the

interests of more affluent people are secured. A global pandemic-recession shows how backward this is.

So, using a crystal ball, consider two futures—one from the top down as usual and the other through an equitable lens in which mutuality affects all according to need. Assume that fear and a lack of testing will compel most of us to stay home for months, avoid large venues, including restaurants, malls and office workplaces, no matter what Donald Trump hopes will happen. Until there's a reliable, universally available vaccine, it will be a long time before many of us chance elevators, mass transit or distant vacations. The wage-earning unemployed will grow by millions, their employers cutting back or bankrupt.

In this typical American future, housing affordability will tighten and housing conditions worsen as landlords squeezed by lost rents discriminate in favor of renters who can help them cover property taxes, repairs and mortgages. Dwindling public tax revenues will decrease subsidies for affordable housing construction, and developers will again focus on luxury building—perhaps in suburbs as the market moves away from dense living. All of this favors people with means and distinctly disfavors lower-income people, especially renters.

In education, achievement gaps in learning will widen rapidly and accumulate, particularly in low-performing districts with disproportionate rates of kids classified for special education or without adequate distance-learning capacity or even instruction. These too are often Black and brown. Nothing will likely make up the lost growth.

Public transportation will suffer service declines as anyone who can afford to own and insure a car will drive one. All poor people—whose lives are distinguished by relationships to public agencies—will see declining social services as tax bases shrink in a recession.

The difference today is more inequality and less trust. Mutuality relies on trust.

From housing opportunity to jobs, the pandemic-fueled recession will favor the advantaged and devastate the health, education and economic welfare of millions of people “caught out there.”

Lopsided as it is, this will be a multi-trillion-dollar future that we all have to pay for—just as the two generations following World War II paid for that effort. The difference today is more inequality and less trust. Mutuality relies on trust. People expected to sacrifice for the whole have to trust that burdens will be shared. For poorer and working-class people, why trust that *this* crisis will produce a mutuality of solutions on equitable terms when crises never do?

It almost certainly won't, which is why we should envision recovery plans with their interests *first*, not last. What might that alternative future look like?

For starters, we must focus increased testing and contact tracing among public-facing essential workers and their families. As in South Korea, their homes must be disinfected at public expense. When a vaccine arrives, they get it first.

A more equitable mutuality teaches that securing basic needs like shelter, education, jobs and health requires seeing them as fundamental rights supported and regulated by a larger governmental role—as most of the industrialized West already does.

In housing, we should first protect the health of tenants in public housing, who often reside in dangerous densities at high risk of eviction by government landlords—practices that must end, in part by ensuring a right to free legal representation. As we did after World War II, we should reconsider an expansion of public housing schemes to increase affordability and rent regulation to stabilize housing costs. Rental assistance eligibility must expand, decreasing the public costs of homelessness.

Housing opportunity is also about location. We need a regional system of fair share affordable housing obligations incentivized by the federal government that rewards states for distributing housing opportunity across every municipality and repealing exclusionary zoning roadblocks like single-family zones. Tax abatement criteria should be revised at every level of government to demonstrably promote more affordable units rather than merely vague promises of jobs.

Reforms that begin with those hardest hit quickly benefit us all. The opposite is not true.

In education, end the digital divide within a year by making sure that *all* students have the hardware and bandwidth they need for remote learning and proven modes of instruction. We also need to connect the fates of segregated schools and districts by viewing their performance regionally, not individually, and conditioning federal funding on meeting clear goals for closing achievement gaps in learning. The same household technology that improves home instruction will expand work-from-home options.

In social services, the all-day wait to see a benefits administrator may now be a death sentence just as filing for unemployment has become a soul killer. The private sector can rescue the public with streamlined services that can be timely conducted from a proper social distance—a smartphone.

And in employment and health care, it's clear that a higher minimum wage pegged to a regionally determined living wage standard rewards the dignity of work while keeping people out of poverty. Often this will mean repealing indefensible rules protecting independent contractor status for "gig" workers so they can be employees. Employees should get health benefits, including paid sick leave. And if the pandemic demonstrates anything about mutuality, it's that we're only all in this together if health care is universal.

This alternative future should reflect our mutual interests rather than reinforce the structure of inequality. Reforms that begin with those hardest hit quickly benefit us all. The opposite is not true. In time, we'll recapture our lost celebrations and recoup much of what we've lost. Most importantly, we'll grow into a society that used a pandemic and a recession to become healthier and more equal for generations to come.

Epilogue: George Floyd

Shortly after the recovery analysis above, another crisis bloomed into massive protests across American cities over police brutality. The slow-motion murder of George Floyd, pinned to a Minneapolis street by four policeman, one with his knee on Floyd's neck for almost nine minutes, brought a stunning wave of national anger over, of all things, police brutality as a manifestation of systemic racism. Somehow the violence of this videotaped state action awakened even more of the reality of systemic racism surfaced by the pandemic and recession, enough to overcome a resistance to social proximity learned during lockdown. Seeing that casual yet persistent uniformed knee on the neck of a pleading Black man brought to mind the angry exasperation of uncles past. Back in the day, they used to decry a "system" that was either not designed for their success or actively opposed it. Whether benign institutional neglect for Black interests or malevolent targeting of Black humanity, these uncles understood how institutional rules and practices work in facially neutral lockstep to produce racially obvious disadvantage.

Identify the responsible institutions for whatever functions relate to the inquiry. Then find reliable numbers on the disparities in outcomes by race. Then ask why the inequalities exist.

But what can we do? For people committed to undoing systemic racism and the structures of inequality that have sustained its outcomes for generations, *the work begins with why.*

- Why do educational systems consistently and predictably deliver opportunities to white students at vastly greater rates than for Black students?
- Why do higher incomes, greater wealth and more stable employment opportunities consistently and predictably favor whites much more than Blacks?
- Why do Blacks disproportionately suffer more underlying health conditions that have allowed the coronavirus to kill them at much higher rates than whites?
- Why do whites typically live in more valuable, healthier neighborhoods and homes, with higher rates of ownership than Blacks? Why are those neighborhoods still so racially segregated?
- Why do lending policies typically favor white-owned businesses? Why do tax incentives flow primarily to large, predominantly white-controlled private entities that

already compete effectively in the market? Why the stagnant racial wealth gap 150 years after emancipation?

- Why do Black parents see their parental rights permanently terminated at the highest rates? Why are so many more Black children in foster care?

The tasks are not impossible if the focus is true. Identify the responsible institutions for whatever functions relate to the inquiry. Is it wealth, infant mortality, board membership, incarceration rates, 4-year college attendance, PhDs? Then find reliable numbers on the disparities in outcomes by race. Then ask why the inequalities exist.

The future of all together is very much in question, yet since the protests over Floyd's death, with more hope attached. The pandemic followed the usual rules about the social determinants of health by race. The recession is demonstrating the same acute economic vulnerabilities that forced people of color into virus exposure at higher rates than whites. And the violent death of an unarmed Black man by police—carried out with a visible sense of impunity—is also as old as the republic. No, it's the daily persistence of millions of protesters, many if not most of them white, demanding an end to systemic racism, their still performative commitment to self- and system evaluation, their impatience with pervasive atrocity, their curiosity to learn more about the very things many denied just months ago. Let us all be outraged uncles and aunts this time. Let us be embarrassed by the wastefulness and moral turpitude of racial and economic marginalization. This is the stuff of movements, the likes of which the country has only seen a few times before. Movements are the stuff of change. Let's move.



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