

## FOREWORD: IS POLICE REFORM POSSIBLE? REIMAGINING THE CRIMINAL LEGAL SYSTEM TO SUPPORT HEALTH EQUITY

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I have spent most of my career focusing on the health and well-being of children and families, from child protective services to state public health, and now as part of the Network for Public Health Law, advancing law and policy solutions to advance health and racial equity. It was an honor to bring this experience to the November 2021 Symposium and use my keynote address as an opportunity to talk about ways to center equity in reimagining the criminal legal system. What is equity? Equity is the assurance of the conditions for optimal health and well-being for all people. Achieving equity requires valuing all individuals and populations equally, recognizing and rectifying historical injustices, and providing resources according to need. Group-based disparities in health and well-being will be eliminated when equity is achieved.<sup>1</sup>

The Symposium was a deep dive into one pathway to assuring the conditions for optimal health and well-being by addressing the health-harming impact of the criminal legal system. Panelists described historical laws and policies that have resulted in inequitable outcomes for people of color and other economically and socially marginalized populations. Panelists also discussed re-envisioning resource allocation to better support the needs of impacted communities but also cautioned against the dangers of shifting resources (and associated power) without safeguards to prevent many of the problems that currently exist, including a lack of accountability and transparency. Panelists also talked about the challenges of actually implementing legal and policy reforms, including knowing where to start—with large scale transformation, with incremental improvements, or somewhere in between—all while avoiding the trap of well-intentioned but ineffective interventions.

This convening took place at a time that seems to be in some ways a lull, a period of reflection and intentional contemplation of the path forward. The COVID-19 pandemic was (and is) looming large; at the same time, early outrage at the disproportionate impact on vulnerable populations seems to have waned. As Ed Yong noted in his article *How Did This Many Deaths Become Normal?*,<sup>2</sup> Americans have accepted both a threshold and a gradient of death, accepting that some lives are valued less. Indeed, the Articles in this Issue all address the fact that policy interventions are historically and currently based on the devaluation of the lives of people of color, people with low incomes, and other socially vulnerable groups.

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1. Camara P. Jones, *Systems of Power, Axes of Inequity: Parallels, Intersections, Braiding the Strands*, 52 MED. CARE S71 (2014).

2. Ed Yong, *How Did This Many Deaths Become Normal?*, ATLANTIC (Mar. 8, 2022), <https://www.theatlantic.com/health/archive/2022/03/covid-us-death-rate/626972> [http://perma.cc/6E55-XFTT].

This convening also took place a year and a half after the murder of George Floyd in May 2020, two years after the murder of Breonna Taylor and a full year after more than 200 agencies and organizations declared racism a public health crisis.<sup>3</sup> These events sparked a racial justice movement and a nationwide reckoning over police reform. However, those early discussions reimagining policing and public safety have encountered a backlash. For example, the movement to “defund the police” has turned into “fund the police,” with jurisdictions restoring and even increasing public safety budgets in 2021 after decreasing them in 2020.<sup>4</sup>

Defunding the police was not just about divestments from law enforcement, it was also about investments in alternatives to policing. Throughout this convening, panelists explored what alternatives to policing can look like, identified the pressure points for change, and examined how making well-being the end goal can lead to policy solutions that are health affirming, can value all individuals and populations equally, and can eliminate group-based disparities in health and well-being—in other words, solutions that can achieve equity. These same ideas are explored in this Issue’s Articles.

The Symposium was dynamic and engaging in many ways. It not only provided an opportunity to explore and dissect ideas, but it also offered an opportunity to connect. Although it was a hybrid in-person and virtual event, the Symposium felt like an intimate setting with opportunities to forge relationships and have deeper conversations on challenging topics to collectively explore a path forward. My remarks will focus first on the Symposium panels, followed by a discussion of the Articles in this Issue, which pull through some of the common themes discussed here.

**Othering and Belonging.**<sup>5</sup> Othering describes the processes and structures that create and foster exclusion and marginalization based on group identity or membership. Belonging describes the condition of having a meaningful opportunity to participate in and influence social and political institutions. Throughout the Symposium, panelists explored how the criminal legal system excludes and marginalizes people based on race, ability, sexual orientation, gender identity, and other characteristics. For example, Paige Joki with the Education Law Center talked about belonging as the basis of exclusionary school discipline policies (the investigation of who belongs in a school), and Daniel Bodah of the Vera Institute of Justice talked about how contact with the police results in system avoidance (for example, not seeking healthcare) and affects voting behavior.

**Social costs of policing.** During the second panel of the day, Aaron Stagoff-Belfort and Daniel Bodah of the Vera Institute of Justice presented on the current research into the social costs arising from policing across four areas: economic well-being, civic

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3. Cliff Despres, *Update: 242 Cities, Counties, Leaders Declare Racism a Public Health Crisis!*, SALUD AM. (Sept. 1, 2021), <https://salud-america.org/rising-number-of-cities-counties-are-declaring-racism-a-public-health-crisis> [http://perma.cc/NWL7-8KPH].

4. Zeeshan Aleem, *‘Defund the Police’ Dominated 2020. What Happened?*, MSNBC (Sept. 4, 2021, 5:31 AM), <https://www.msnbc.com/opinion/defund-police-dominated-2020-what-happened-n1278506> [http://perma.cc/484D-CF52].

5. See HAAS INST. FOR A FAIR & INCLUSIVE SOC’Y, UNIV. OF CAL. BERKELEY, OTHERING & BELONGING: EXPANDING THE CIRCLE OF HUMAN CONCERN ISSUE 1, 10 (2016), [https://www.otheringandbelonging.org/wp-content/uploads/2016/07/OtheringAndBelonging\\_Issue1.pdf](https://www.otheringandbelonging.org/wp-content/uploads/2016/07/OtheringAndBelonging_Issue1.pdf) [http://perma.cc/89KJ-YT7L].

engagement and social cohesion, education, and health. Throughout the day, panelists explored the disproportionate harms of the criminal legal system across these determinants of health and the need for additional research—to understand the mechanisms driving disproportionate harm and how people are impacted throughout their lifespan and across generations.

**Valuing lived experience.** Gathering data and stories about people and the ways that institutions and systems impact them informs policy development and builds political will. The narratives that we create drive whether and how we value a problem and the kinds of solutions we propose to address it. One of the most powerful presentations of the day was “Over-Impacted and Under-Represented: The Case for Centering Black People with Disabilities in Police Reform,” by Jamie Ray-Leonetti and Parris Boyd with the Temple University Institute on Disabilities. The two talked about the importance of putting faces to statistics and shared a number of stories, including the story of Clifford Owensby, a Black man with paraplegia who was forcibly removed from his car by police, with footage of the incident released in the month before the Symposium.<sup>6</sup> The message that police training should include the lived experiences of people with disabilities undoubtedly extends to other identities as well and should be integrated (along with other concepts of diversity, equity, inclusion, and justice) into operations and day-to-day work. As noted by April Shaw, Senior Staff Attorney with the Network for Public Health Law, “it’s time to treat people of color as the best, most informed knowers of their life experience and what serves their needs.”

**Making policy decisions based on what we value.** One of the day’s themes was the tension between more measured, incremental reforms and a total overhaul of the criminal legal system. On one hand, institutions can choose to implement reforms that will have an immediate and measurable impact on equity (for example, in school discipline or in responses to intimate partner violence). On the other hand, there is a case to be made that nothing short of a complete transformation is necessary. As argued by Melissa Moore, Director of Civil Systems Reform with the Drug Policy Alliance, we must center the needs of the people most impacted in policy development and resource allocation, moving away from punitive approaches and toward a strengths-based approach that supports people at all the points they may touch the system. We have to value both the end goal (health and well-being) and the people impacted for this transformation to be realized.

**The path forward.** It was clear from every panel and participant that the question is not whether police reform is possible but rather what alternatives are available and how they can be implemented. It starts with prioritizing and engaging the people most impacted—most harmed—by the criminal legal system, leading to what Thalia González, Senior Visiting Scholar in the Center on Poverty and Inequality at Georgetown University Law Center, described as policy that “not just uplifts but deeply integrates what is lived and community experience.” We would all be well-served to remember that community is the foundation of public health, and that we must join together in

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6. Sarah Bean, *Clifford Owensby Timeline: Arrest, Investigation and Lawsuits*, MIAMI VALLEY NEWS (Jan. 11, 2022, 2:17 PM), <https://www.wdtn.com/news/local-news/clifford-owensby-timeline-arrest-investigation-and-lawsuits> [<http://perma.cc/SJ2Q-4L86>].

collaboration with communities to develop a comprehensive approach to developing policies that are health-affirming and reducing policies that are health-harming.

Harkening back to Ed Yong's article, people have evaluated the trade-offs to our current approach to policing and public safety and have decided some social harm directed toward some groups is acceptable. We have to explore the reasons behind this decision because if we do not all value equity, even with the best design, we will continue to experience barriers to adoption and implementation. The Sections that follow explore these themes and lingering questions in four Articles that focus on the drug war, domestic violence, fees and fines, and preemption of police reform.

#### I. THE INFLUENCE OF WHITE EXCEPTIONALISM ON DRUG WAR DISCOURSE

If I had to pick one word to describe this Essay, it would be "narrative." Taleed El-Sabawi and Jennifer Oliva use the drug war to illustrate several themes from the Symposium: othering people who use drugs, developing policy solutions based on false and uninformed narratives that create a "demonized racial other," and contributing to the broader exclusion of marginalized groups that limits full participation in the democratic process. The authors also discuss the role of fundamental attribution error,<sup>7</sup> or the framing of the problem of drug use among White people from a public health perspective while framing the same problem among Black people as a personal moral failing. I spoke about being aware of cognitive biases in my keynote, and this particular bias is significant because it is a driver of inequitable policy.

This Essay also discusses the importance of acknowledging history and the origins of current drug policy and tracing the intergenerational impacts of the drug war. For example, the authors share an admission by Nixon advisor John Ehrlichman that "by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities." Think about this statement as you read through the pieces in this Issue and the ways in which policy is designed to disrupt communities and reduce their collective power.

#### II. OVERMEDICALIZATION OF DOMESTIC VIOLENCE IN THE NONCARCERAL STATE

Michal Buchhandler-Raphael's Article builds on the narrative theme established in the previous Essay by exploring the ways in which creating a narrative about medical solutions to social problems and who they benefit drives policy decisions. Also like the previous Essay, this Article explores the ways in which interventions can become a way to "exercise social control over vulnerable populations." The Article opens with a story—an important demonstration of connecting to the lived experience of people impacted by the system—to build a discussion about shifting power to nonpunitive institutions to curb domestic violence, as well as a discussion of the risk of creating tools that are just as coercive and concerning as criminal responses. While this Article offers an in-depth exploration of several ideas, there is one that really stands out, and that is the idea of shifting of power: "One of the adverse consequences of decriminalizing domestic

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7. Saul A. McLeod, *Fundamental Attribution Error*, SIMPLY PSYCH. (Oct. 31, 2018), <https://www.simplypsychology.org/fundamental-attribution.html> [http://perma.cc/UB7C-8FCJ].

violence is that the unregulated power that was once exclusively entrusted with prosecutors will be shifted to psychiatrists, creating similar dangers that the criminal legal system has created.” This is a stark warning against designing alternative, noncarceral policy solutions that have the same inherent problems as the carceral state.

### III. THE HEALTH-HARMING EFFECTS OF COURT FINES AND FEES: MODERN DAY DEBTORS’ PRISONS AS A PUBLIC HEALTH THREAT

Like the previous Article, this Comment by Puja Upadhyay opens with a story illustrating how fines and fees can harm physical, mental, and economic well-being. This harm can disrupt the family structure by extending punishment to other family and community members, resulting in entrenched and intergenerational effects. Upadhyay notes that fines and fees are the most common form of punishment imposed on defendants in the United States, meaning that the experience related in the opening story is amplified and compounded across populations. Much like punitive drug policy and coercive domestic violence policy, fines and fees operate as a way to effect social control over vulnerable populations, with no tangible social benefit.

This Comment addresses several key themes from the Symposium. One is the tension between incremental and structural reforms: while there are policy solutions that can be implemented now to alleviate the disproportionate burden of fines and fees, we must also design solutions that prevent the burden in the first place. Another theme is designing alternative solutions that do not undermine other societal interests (like economic and housing stability, the health of individuals and populations, and even local government control, as discussed in the next Essay). Finally, Upadhyay ties her analysis back into the theme of othering and belonging by highlighting the fact that decisions like the imposition and enforcement of fines and fees are a political choice that reflect a judgement about the value of people in different groups.

### IV. PREEMPTION OF POLICE REFORM: A ROADBLOCK TO RACIAL JUSTICE

In this Essay, Rick Su, Marissa Roy, and Nestor Davidson bring home one of the messages from the last Symposium panel: people are demanding action, transparency, accountability, and responsiveness to community needs and priorities. The authors explore this message through a discussion of legislative preemption of police reform through racially targeted bills that prevent local action. The authors highlight how such legislative action undermines the very structure and function of government by limiting accountability and restraining local discretion, with cascading effects across other local services. Local government—and local public health in particular—is best positioned to identify and respond to the needs of local communities and provide opportunities for democratic engagement that can boost health outcomes. This Essay also explores incremental versus transformational change—preemption is in some ways about protecting a way of being. At a systems level, we have to ask whether we value protecting institutions that harm and oppress people, or whether we value justice and want to create institutions, policies, and practices aligned with that value. This is where conversations about reimagining public safety and policing come in.

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There are common themes and points of leverage for systems change: developing nonpunitive approaches that safeguard against abuses of power; investing in supports and services that are health-affirming for individuals and populations; creating narratives that value and promote belonging; designing policy interventions through the lens of lived experience in a way that supports full participation in the democratic process; and analyzing the effects of policy decisions across the social determinants of health. We also need to focus on implementation. During the last panel of the Symposium, Jorge X. Camacho, Clinical Lecturer in Law and Policing, Law, and Policy Director of the Justice Collaboratory, made the remark that even when we agree on goals, we do not know how to implement them in real life. I used my keynote to address exactly that problem—the practical aspects of law and policy work and lessons learned in practice, many of which align with the themes explored throughout the Symposium and the Articles included in this Issue.

One lesson is that sometimes an idea, whether an incremental policy change or a complete system transformation, gets negotiated into being something less than what we envisioned. When that curtailment happens, we have to decide whether to move forward with the proposal, dedicating time and resources, and we often have to rethink our strategy to achieve the outcome that we actually want to see. Another lesson is that the most well-designed and health-affirming laws and policies in the world mean nothing if we do not have a way to educate people on them, implement them, enforce them, and believe in them. As Thalia González noted during the Symposium, we have an opportunity to train the next generation of advocates on the legal needs of people impacted by the criminal legal system and to design a comprehensive approach to address those needs as lawyers, healthcare professionals, and public health professionals in collaboration with communities. One final lesson is that we have to develop individual and institutional self-awareness. This means understanding our own biases, being open to alternative ideas and perspectives, and recognizing the ways in which public health can both help and harm.

As I reviewed the panels from the Symposium and the Articles in this Issue, I kept coming back to one question: What is the end game? Racism and other forms of structural discrimination are going to continue to exist. If we are going to achieve equity, we should consider the need for both incremental and transformational change, the ways that lived experience informs policy solutions, and the need to reassess what and who we value. I ended my keynote on this point: “Just because rules are changed, doesn’t mean hearts are changed.”<sup>8</sup> In reimagining the criminal legal system, we have to design human-centered and health-affirming alternatives, but we also have to change hearts for meaningful law and policy change to take root.

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8. *Colin in Black and White*, NETFLIX (2021), <https://www.netflix.com/title/80244479> [<http://perma.cc/KQY9-LXZL>].