What Makes It a Just Transition? A Case Study of Renewable Rikers

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ARTICLE
What Makes It a Just Transition? A Case Study of
Renewable Rikers

REBECCA BRATSPIES*

“The time for connecting the dots on climate change and incarceration was yes-
terday.”1

“Try harder.”2

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dance.com/. Readers interested in the ongoing campaign to #CLOSERikers can find updated
information at https://www.campaigntocloserikers.org/.

1. Nadia B. Ahmad, The Cliodynamics of Mass Incarceration, Climate Change and
2. Mia Mottley, Prime Minister of Barbados at the Opening of the #COP26 World Leaders
INTRODUCTION

In the winter of 2019 New York Representative Alexandria Ocasio-Cortez and Massachusetts Senator Edward Markey introduced a joint resolution proposing a Green New Deal. Modeled on the New Deal, the Green New Deal offers a roadmap for reducing United States carbon footprint and avoiding the worst consequences of climate change. A cornerstone of the Green New Deal is the commitment to a “just transition”—to achieving net-zero greenhouse gas emissions through a process that is fair and just for communities and workers. Similarly, New York’s Climate Leadership and Community Protection Act requires that the state convene a just transition working group. On the surface, that sounds great—who opposes fairness and justice? But, as always, the devil is in the details.

This essay offers New York City’s Renewable Rikers as an example of what a just transition might look like in practice. Specifically, this essay

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5. S.J. Res. 8, 116th Cong. (as introduced, Feb. 13, 2019).


describes how *Renewable Rikers* connects the need for non-polluting energy infrastructure with a broader conversation about decarceration and racial justice to build an inclusive pathway for prosperity and environmental health for all New Yorkers. The first part of this essay sets the stage with a brief overview of the climate crisis. Part two sketches the contours of what constitutes a just transition as that term is used in the Green New Deal Resolution. Part three situates the idea of a just transition against the current racialized injustices embedded in the carceral state. Part four turns to *Renewable Rikers*. After describing the history of incarceration on Rikers Island, and contours of the *Renewable Rikers* project, this section highlights the creativity of the partnerships, legal structures, and participation processes embedded in the *Renewable Rikers* project. The final section draws some early lessons from *Renewable Rikers*, suggesting how it does and does not offer a model for how to solve what Nadia Ahmad has called “the tsunami of the problems arising from the carceral state and extractivist economy.”

I. The Climate Crisis

The earth’s climate is rapidly changing; atmospheric carbon dioxide concentrations are at record levels and the window for averting the worst impacts of climate change continues to narrow. The global climate trajectory is heading in the wrong direction. Nine of the 10 hottest years on record occurred in this decade. Extreme weather and climate disasters, in the form of devastating heat waves, floods, and fires, are increasing in frequency and intensity. Global mean temperatures have already warmed

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8. Ahmad, *supra* note 1, at 376.
significantly,12 sea level is rising,13 and the ice sheets are melting.14 The evidence that this climate change is anthropogenic in nature is “unequivocal.”15 Yet, carbon emissions continue to grow.16

Greenhouse gas levels already exceed the threshold the Intergovernmental Panel on Climate Change designated as critical for keeping global climate change below 1.5 degrees—the point at which climate impacts become increasingly harmful to people and the planet.17 National commitments for emissions reductions under the Paris Agreement fall far short of the radical and rapid transition that is necessary to avert catastrophe.18 U.N. Secretary General António Guterres characterized the situation as “code red for humanity”19 and has called for urgent action to grab the “low-hanging fruit” of replacing “dead end” fossil fuels with renewable energy.20 He

14. ADAM PARRIS ET AL., GLOBAL SEA LEVEL RISE SCENARIOS FOR THE UNITED STATES NATIONAL CLIMATE ASSESSMENT 5 (NOAA 2012).
repeatedly emphasized that this transition must be “just, equitable and inclusive.” Without using the precise phrase, Secretary General Guterres called for a just transition.

The unfolding crisis is not a surprise—scientists have been issuing warnings about a looming climate catastrophe for quite some time. Indeed, recently released internal documents indicate that Exxon and other fossil fuel companies knew for decades that their products were driving a climate catastrophe. Yet, even as they privately discussed the role that fossil fuels played and would play in global climate change, Exxon and other fossil fuel companies underwrote public campaigns designed to obscure that relationship and instead sow confusion.

The Trump Administration’s climate denial only exacerbated the crisis, wasting critical time that could have helped avert disaster. The Biden Administration has publicly committed to significant climate action. Unfortunately, the administration’s legislative initiatives have been stymied, and

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22. For an introduction to these efforts, see NATHANIAL RICH, LOSING EARTH 3–10 (2019), which documented the heroic efforts by scientists Rafe Pomerance and James Hansen to get the Reagan Administration to recognize and respond to climate change.

23. Complaint at 88–89, Delaware, ex rel. Jennings v. BP Am. Inc., No. 20-1429-LPS, 2022 U.S. Dist. LEXIS 2378 (D. Del. Jan. 5, 2022) (quoting a 1981 internal memorandum from Exxon scientists to company executives stating “it is distinctly possible that [continued CO₂ emissions from fossil fuel products] will produce effects which will indeed be catastrophic (at least for a substantial fraction of the world’s population.”). For details about the extent of company knowledge, see id. ¶ 70a–90.

24. See generally NAOMI ORESKES & ERIK M. CONWAY, MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING (2011) (documenting how fossil fuel companies funded an intentional disinformation campaign about climate change modeled on the campaign designed to sow doubt about the relationship between tobacco and cancer).


27. See, e.g., Austin Ahlman, Build Back Better Dies . . . Again, AM. PROSPECT (Apr. 28, 2022), https://prospect.org/politics/build-back-better-dies-again/ [https://perma.cc/Q8LZ-JF3J]. After this article was completed, Congress passed the Inflation Reduction Act. When he signed it into law, President Biden described this law as “the most aggressive action ever—ever, ever, ever—to combat the climate crisis.” Remarks by President Biden at Signing of H.R. 5376, The Inflation Reduction Act of 2022, WHITE HOUSE (Aug. 16, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/08/16/remarks-by-
recent Supreme Court decisions make using existing laws to implement climate initiatives vastly more difficult. The United States is a critical actor for any attempts to mitigate catastrophic climate impacts. Despite having only five percent of the global population, the United States has been responsible for roughly one quarter of anthropogenic greenhouse gas emissions since the Industrial Revolution. Given this outsized carbon footprint, any kind of just transition away from fossil fuels must include major changes to how Americans live and work. The Green New Deal offers a glimpse of what that might look like, if done well.

II. What is a Just Transition?

At its broadest, the term “just transition” has been defined as moving from an extractive economy to a regenerative economy in a fashion that is just and equitable. That means not only redressing past harms, but also building new power structures and economic relationships moving forward. The Climate Justice Alliance defines a just transition as “a principle, a process and a practice” and emphasizes that “if the process of transition is not just, the outcome will never be.” Key to a just transition, as opposed merely to a transition, is the involvement of those most affected by the changes, and the intentional disruption of structural inequalities embedded in pre-existing economic and environmental policies.

The industrial revolution is an object lesson in what does not constitute a just transition. At its core, the industrial revolution was about coal—mining it, transporting it, and burning it to power production in a host of industries. While these new polluting industries generated remarkable wealth for capital owners, the conditions for workers were brutal.

28. See West Virginia v. EPA, 142 S. Ct. 2587, 2599–02.
31. Id.
32. Id.
miners died on the job, many more died of respiratory illnesses, which plagued mining communities. The pollution associated with burning coal for industrial production rapidly impacted health in industrial towns, prompting contemporary writers to describe cities choked with thick black smoke and urban slums crowded with sick and dying people. The way that the Industrial Revolution’s negative externalities in the form of pollution, poverty, and disease were entwined with economic growth gave rise to a belief that these conditions were a necessary and inevitable stage in economic growth—the so-called environmental Kuznets curve theory. The Green New Deal’s embrace of environmental justice is a flat rejection of this theory, and an attempt to build a different kind of transition than the one that was powered by coal.

Transitions are usually painful and often violent. During the Industrial Revolution, strikes and violence swept through industry after industry—with potters, weavers, colliers, and other workers squaring off against capitalists in a struggle over who would capture the excess value created by their labor. The word Luddite, which has come to mean someone opposed to modern technologies, comes from the actions by early 19th Century British weavers protesting for better wages in the textile industry. Similarly, the word “sabotage” entered the English lexicon in the early 1900s to describe

35. See id.


37. For a critique of this theory, see Rebecca Bratspies, Assuming Away the Problem: The Vexing Relationship Between International Trade and Environmental Protection, in NONSTATE ACTORS, SOFT LAW AND PROTECTIVE REGIMES 1, 236–249 (Cecilia M. Bailliet ed., 2012).

38. See generally Fyson, supra note 34; T. D. W Reid & Naomi Reid, The 1842 “Plug Plot” in Stockport, 24 INT’L REV. SOC. HIST. 55 (1979) (describing the strike and its context); William Benbow, GRAND NATIONAL HOLIDAY, AND CONGRESS OF THE PRODUCTIVE CLASSES (1832), reprinted in 2 REVUE D’HISTOIRE DES DOCTRINES ÉCONOMIQUES ET SOCIALES 397, 402–04 (1909) (calling for a national strike). Only rarely are slavery and colonialism included as the context for the industrial revolution—despite the central role that cotton played in Britain’s industrial development. See, e.g., Letter from Karl Marx to Pavel Vasilyevich Annenkov (Dec. 28, 1846), in MARX & ENGELS COLLECTED WORKS 95, 101 (2001) (characterizing chattel slavery system as a key pillar of industrial development and stating, “without slavery there would be no cotton, without cotton there would be no modern industry.”).

worker pushback against the economic and social violence embedded in capitalist industrial policies. Its original definition “malicious damaging or destruction of an employer’s property by workmen” reflects the word’s origins in French labor disputes. These labor disputes were embedded in the coal-powered industrial revolution.

As a presidential candidate, Trump capitalized on worker insecurities from prior transitions, especially amongst coal miners. He offered a political vision tied to a sanitized and romanticized vision of the industry’s past. Yet, despite his heated rhetoric to the contrary, global, social, and economic realities meant that the coal-powered industrial age was over. The Green New Deal, by contrast, looks beyond industrial revolutions tied to coal. Endorsing a just transition framework and including workers in the earliest stages of planning and discussion, the Green New Deal paves a way to overcome the “environment versus jobs” narrative that so often pits workers against measures designed to protect the environment. Thus a Blue/Green Alliance has emerged to support the Green New Deal.

Most importantly for a just transition, the Green New Deal seeks to learn from the New Deal’s successes, while avoiding its mistakes. During the 1930s, the New Deal attempted to ameliorate the worst social and economic aspects of capitalism by providing a social safety net for the working class. The Green New Deal seeks to do the same for the environment.

43. West Virginia Public Broadcasting, Donald Trump Rally in Charleston, West Virginia, YouTube, at 1:57 (May 6, 2016), https://www.youtube.com/watch?v=x1tvynB-kb24 [https://perma.cc/8KYV-3FZN] (promising to get coal miners back to work).
44. Trump White House Archived, President Trump Delivers Remarks at CPAC, YouTube, at 28:43 (Feb. 24, 2017), https://www.youtube.com/watch?v=dXWBcDz3Y68&t=1724s [https://perma.cc/DHT4-GY9H] (promising to put our miners back to work on “beautiful clean coal”).
economic dislocation associated with the Great Depression. The National Labor Relations Act, the Social Security Act, the Federal Housing Authority all built a social safety net and/or created good union jobs. The successes were many, especially for white families.

However, structural racism was built into too many New Deal efforts, intentionally excising Black and Brown communities from social prosperity through red-lining and other racist exclusionary policies. For example, the Social Security Act exempted agricultural and domestic workers and marginalized low wage workers in order to exclude Black workers at the behest of Southern Democrats. The Federal Housing Authority denied mortgages to Black candidates, and red-lined large swaths of mixed-race and Black neighborhoods, making purchasers in these neighborhoods ineligible for low-interest, government backed loans. The National Highway Administration intentionally sited roads through Black and Brown communities in an attempt to wall them off from adjacent white communities.

Proponents of the Green New Deal ideas aspire to do things differently. Instead of recreating the racialized exclusion and hardships associated with past transitions, they propose intentionally structuring the transition to a zero-carbon economy with wider social justice in mind. To that end, the Green New Deal resolution begins with the recognition that “climate

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52. MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH 40–41 (2d ed. 2006) (noting that many of the structural biases embedded in social security remain to this day).


change, pollution, and environmental destruction have exacerbated systemic racial, regional, social, environmental, and economic injustices.”

The explicit goals enumerated in the Green New Deal resolution include:

(A) achieving net-zero greenhouse gas emissions through a fair and just transition for all communities and workers;
(B) creating millions of good, high-wage jobs that will ensure prosperity and economic security for all people of the United States;
(C) investing in the infrastructure that will allow the US to sustainably meet the challenges of the 21st century;
(D) And securing—
   (i) clean air and water;
   (ii) climate and community resiliency;
   (iii) healthy food;
   (iv) access to nature; and
   (v) a sustainable environment for everyone by promoting environmental justice for frontline communities, including repairing historic oppression of indigenous peoples, communities of color.

Missing, however, from this Green New Deal resolution is any mention of mass incarceration. This gap undermines the credibility of any claim to a just transition because the carceral practices in the United States are among the most pressing systemic injustices. For this reason, I suggest that accomplishing a Green New Deal necessarily includes addressing the justice challenges embedded in the carceral state—particularly the way that the state regularly applies racialized and “violent solutions to nonviolent, and often nonexistent, problems.” In short, to truly build a just transition to a net-zero economy, we must tie decarbonization with decarceration.

56. Id.
57. Id.
59. Josie Duffy Rice, The Abolition Movement, VANITY FAIR (Aug. 25, 2020), https://www.vanityfair.com/culture/2020/08/the-abolition-movement [https://perma.cc/SX7Z-GUNM] (challenging us to imagine a world where resources currently devoted to incarceration are instead invested in people and communities). This vision draws on Robert Nixon’s idea of slow violence that is “incremental and accretive” rather than sudden and dramatic. ROB NIXON, SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR 2 (2013). Nixon’s paradigmatic example of slow violence is environmental harm that is “decoupled from its original causes by the workings of time.” Id. at 11.
60. I have elsewhere written about Renewable Rikers in this context. See generally Rebecca Bratspies, Decarceration with Decarbonization, Renewable Rikers and the Transition to Clean Power, 13 SAN DIEGO J. CLIMATE & ENERGY L. 1 (2022).
III. A Just Transition Must Tackle the Incarceration Crisis

This section provides a brief overview of the scope and scale of mass incarceration in the United States. The statistics tell a grim story of structural racism, one that traces its roots all the way back to the Reconstruction era and the adoption of the 13th Amendment, which ended slavery and involuntary servitude “except as a punishment for crime whereof the party shall have been duly convicted.” This exception has unfortunately swallowed the rule. Today, those sentenced to prison are still forced to work in dangerous, dirty jobs under threat of punishment, for little or no pay. Despite justifying this forced labor as “job training,” many individuals discover upon release that they are categorically ineligible to be hired as full-time workers for the jobs they did under duress while incarcerated.

While the statistics shared below are damning in themselves, it is important to remember that the harms from the United States’ foray into mass incarceration and over-policing cannot be reduced merely to statistics. The effects of incarceration extend far beyond prison walls, impacting multiple generations within families, and undermining the stability, political


influence, and economic success of overpoliced communities. Collateral consequences of incarceration extend to nearly every aspect of life. For example, those with felony convictions temporarily or permanently lose their right to vote in many states. They are also faced with limited access to housing, as well as reduced prospects for employment, and decreased eligibility for certain welfare benefits.

Moreover, choices that advance the carceral state divert public resources from schools and social services to building and maintaining prisons. The costs of incarceration are staggering: over 100 billion dollars are spent on state and local corrections each year, and over half of federal funding is allocated based on Census data. Counting incarcerated individuals where they are incarcerated shifts political power away from their home communities and siphons federal funds out of their home communities into the communities that are host to prisons.

One of the most egregious ramifications of mass incarceration is that incarcerated individuals who are deprived of their right to vote (often permanently) are counted in the census, not in their home districts, but where they are incarcerated. This practice distorts population counts and shifts political power, in the form of political representation, from Black and Brown urban communities to white rural communities. See, e.g., Hansi Lo Wang & Kumari Devarajan, "Your Body Being Used": Where Prisoners Who Can’t Vote Fill Voting Districts, NPR (Dec. 31, 2019), https://www.npr.org/sections/codeswitch/2019/12/31/761932806/your-body-being-used-where-prisoners-who-can-t-vote-fill-voting-districts. This is known as the "prison gerrymander." Julie A. Ebenstein, The Geography of Mass Incarceration: Prison Gerrymandering and the Dilution of Prisoners’ Political Representation, 45 FORDHAM URB. L.J. 323, 324–25 (2018).

Billions of dollars in federal funding are apportioned based on Census data. Not only does counting incarcerated individuals where they are incarcerated shift political power away from their home communities, it also siphons federal funds out of their home communities into the communities that are host to prisons.


prisons, which are often pitched as economic development to host communities. The rise of the so-called “prison industrial complex” turned mass incarceration into a lucrative business model.

A. The US Leads the World in Incarceration (by a lot)

In 2020, there were 10,711,204 individuals incarcerated across the globe, out of a global population of just over 7.9 billion. The United States is decidedly the global leader in imprisonment. With under 5% of the world’s population, the United States incarcerates 20% of the world’s prisoners (approximately 2,068,000 individuals). China is a distant second—having 20% fewer prisoners despite having four times the population. To put those figures into context, 629 out of every 100,000 Americans are imprisoned, while in China that figure is five times lower—only 119 out of every 100,000. These statistics are particularly noteworthy considering

72. Thus, Mariame Kaba poses the question of “what would the country look like if it had billions of extra dollars to spend on housing, food and education for all?” Mariame Kaba, Yes, We Mean Literally Abolish the Police, N.Y. TIMES (June 12, 2020), https://www.nytimes.com/2020/06/12/opinion/sunday/floyd-abolish-defund-police.html [https://perma.cc/3RQN-VDKU].
73. Tracy Huling, Building a Prison Economy in Rural America, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 1–2 (Marc Mauer & Meda Chesney-Lind eds., 2002); Ashleigh T. Rasheed, Impacts of Prisons in Rural Communities: Economic and Social Factors (2016) (Honors Thesis, Georgia Southern University) (on file with Digital Commons@Georgia Southern).
75. HELEN FAIR & ROY WALMSLEY, WORLD PRISON POPULATION LIST, INST. FOR CRIME & JUST. POL’Y RSC. 17 (13th ed. 2021).
76. Id. at 6.
77. The United States incarcerates 2,068,000 individuals out of a population of 331 million. Id. These figures do not include immigration detention—an entire parallel incarceration and detention system. See Danielle C. Jefferis, Constitutionally Unaccountable: Privatized Immigration Detention, 95 IND. L.J. 145, 148 (2020). The United States’ carbon footprint is similarly outsized. With 5% of the global population, the United States’ cumulative carbon emissions account for nearly 25% of anthropogenic greenhouse gas emissions. Ritchie & Roser, supra note 29.
78. FAIR & WALMSLEY, supra note 75, at 11.
79. Id. at 6.
80. Id. at 11.
the narrative we tell ourselves about the relative freedom in the two countries.81

Over the past 30 years, crime rates have plummeted across the United States.82 Yet, over that same period, state and federal spending on policing and incarceration have skyrocketed.83 And incarceration rates increased exponentially.84 The equation of less crime yet more incarceration, police, and jails makes little sense. Most of the staggering rise in incarceration resulted from changes in law and policy, most specifically the sentencing policies from the so-called “War on Drugs” era.85 The federal sentencing guidelines, established by the 1984 Sentencing Reform Act (which were mandatory until 2005)86 imposed mandatory minimum sentences that resulted in a steep growth in incarceration for drug offenses.87 Similarly, New York’s harsh Rockefeller Drug laws88 in place from 1973 to 2009 imposed mandatory minimum sentences for low-level drug offenses.89 As a result, the number


82. Crime Data Explorer, FBI https://crime-data-explorer.app.cloud.gov/pages/explorer/crime/crime-trend [https://perma.cc/UX78-VEPY]. As Ruth Wilson Gilmore explained, it is overly simplistic to assume that prisons exist because there are criminals. “While common sense suggests a natural connection between ‘crime’ and ‘prison,’ what counts as crime in fact changes, and what happens to people convicted of crimes does not, in all times and places, result in prison sentences.” GILMORE, supra note 74, at 12.


85. Id.

86. U.S. v. Booker, 543 U.S. 220, 266 (2005) (finding that the sentencing guidelines were advisory rather than mandatory).


of persons imprisoned for drug offenses in the United States skyrocketed by an order of magnitude—from 40,900 in 1980 to 430,926 in 2019.\footnote{90} At the federal level, people incarcerated on a drug conviction constitute nearly half the prison population.\footnote{91} At the state level, the number of people in prison for drug offenses increased ninefold since 1980, although the numbers have started to dip.\footnote{92} Most incarcerated individuals are not high-level actors in the drug trade, and most lack a prior criminal record for a violent offense.\footnote{93}

**B. There Are Profound Racial Imbalances in Who Gets Incarcerated**

When incarceration rates in the United States are examined through the lens of race, the picture is grim. For white Americans, 248 out of every 100,000 are incarcerated,\footnote{94} a figure that is incidentally still more than double the overall incarceration rate in China. But, for Black Americans, that figure is 1,489 out of every 100,000—more than five times the incarceration rate for their white compatriots.\footnote{95} The most dire of statistics relate to Black men, who are incarcerated at a rate eight times that of white Americans of either gender—2,272 out of every 100,000.\footnote{96}

Overall, Black people comprise one-third of the United States prison population despite making up only 12% of the total population.\footnote{97} This means that Black Americans are incarcerated at a rate roughly triple their share of the population. Collectively, Black and Latinx people make up 56% of those imprisoned, even though they are only 28% of the population.\footnote{98} By contrast, white prisoners comprise about 30% of prisoners, roughly half their overall percentage of the population.\footnote{99}

This disparity of who goes to jail in the United States reflects structural racism rather than actual differences in criminal infractions—something the

\begin{footnotes}
\footnote{91} Id.
\footnote{92} Id.
\footnote{93} Id.
\footnote{95} Id.
\footnote{97} Id.
\footnote{98} Id.
\footnote{99} Id.
\end{footnotes}
United States Commission on Civil Rights referred to as a “racial tax.” At every step in this process, Black Americans are more likely to be subjected to the carceral system than are their white counterparts. Not only are they more likely to be stopped by the police, they are also more likely to be arrested for petty infractions, and, if convicted, are more likely to be sentenced to prison and for


101. FRANK R. BAUMGARTNER ET AL., SUSPECT CITIZENS: WHAT 20 MILLION TRAFFIC STOPS TELLS US ABOUT POLICING AND RACE (2018) (documenting that Black drivers are 98% more likely to be stopped and searched by police but are less likely to have committed infractions than their white counterparts). In Floyd v. City of New York, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013), Judge Scheindlin found that more than 80% of those suffering Terry stops at the hands of the New York Police Department were Black or Latinx. She further concluded that these “stop and frisks” were unconstitutionally biased and that the police had a policy of targeting of Black and Latinx young men. Id. at 559–61. See also Harold Stolper & Jeff Jones, THE ENDURING DISCRIMINATORY PRACTICE OF STOP & FRISK, CMY SERV. SOC’Y (2018), https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/stop_and_frisk_4_16_18_%281%29.pdf [https://perma.cc/9X5S-2FJN] (mapping the zip codes with disproportionate stop and frisk).


longer terms. For example, even though Black and white Americans use drugs at roughly the same rate, Black Americans are arrested for drug crimes far more frequently, and are punished far more severely. The disparate treatment of individuals, and the divergent social narratives surrounding the opioid crisis versus the crack cocaine crisis embodies this structural inequality. Indeed, multiple commenters have noted that white

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104. For example, The Anti-Drug Abuse Act of 1986 set mandatory five- and 10-year minimum sentences for trafficking crack and cocaine based on the amount of the drug involved. Punishment and Prejudice: Racial Disparities in the War on Drugs, Part VI Racially Disproportionate Drug Arrests, HUMAN RTS. WATCH (May 2000), https://www.hrw.org/reports/2000/usa/Rcdrag00-05.htm [https://perma.cc/DSFZ-3RY9]. However, the amounts of drugs that triggered those minimum sentences were vastly different, with the Act imposing a 100:1 ratio on the quantities of cocaine versus crack that triggered the same mandatory minimum penalty. Id. Put simply, selling crack cocaine was punished far more harshly than selling cocaine—it took 500 grams of powder cocaine to trigger the same five-year mandatory prison sentence imposed on someone caught with five grams of crack cocaine (even though powdered cocaine could readily be converted to crack cocaine). Id. Even though most crack cocaine users were white, those arrested and subjected to mandatory minimums were overwhelmingly Black. Id. See also Report to Congress: Impact of the Fair Sentencing Act of 2010, U.S. SENT’G COMM. 1, 12 (Aug. 2015), https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RTC_Fair-Sentencing-Act.pdf [https://perma.cc/JR6G-XWRN] (reporting that more than three-quarters of those sentenced in federal court for crack cocaine were Black). The 1988 Anti-Drug Abuse Act added to this disparity by setting mandatory minimum sentences for mere possession of crack cocaine. Id. It took until 2010 for Congress to begin to address this disparity, with the Fair Sentencing Act, which reduced the disparity from 100-to-1 to 18-to-1 and eliminated the mandatory minimum for mere possession. Id.


107. Shannon Mullen et al., Crack v. Heroin: An Unfair System Arrested Millions of Blacks, Urged Compassion for Whites, ASBURY PARK PRESS (Dec. 2, 2019), https://www.app.com/in-depth/news/local/public-safety/2019/12/02/crack-heroin-race-arrests-blacks-whites/2524961002/ [https://perma.cc/55XH-P2R9]. To see how racism warps public discourse, one need not look farther than the sympathetic medicalized approach to the ongoing opioid addiction crisis which stands in sharp contrast to the punitive, criminal justice response to the crack cocaine crisis. Id. While it would be nice to think that the difference is due to social learning, the evidence overwhelmingly shows it to be attributable to the fact that the opioid crisis is largely a problem of white America while the crack cocaine crisis was perceived as being centered in Black America. Id.
perpetrators of crimes are frequently treated more sympathetically by the police and the press than are Black victims of crimes.\textsuperscript{108}

C. Cash Bail Exacerbated Racial Inequality

What makes these profoundly racially skewed statistics even more disturbing is the fact that nearly a quarter of those imprisoned in the United States are pre-trial detainees—people who have been convicted of nothing and are incarcerated largely because they cannot afford cash bail.\textsuperscript{109} According to one national survey, 95\% of growth in the jail population over the last 20 years is attributable to pre-trial detainees.\textsuperscript{110} The presumption of innocence does little to protect those remanded to custody for being unable to pay bail, despite a constitutional requirement that “excessive bail shall not be required.”\textsuperscript{111}

The entire purpose of bail is to ensure that defendants show up for court dates, up to and including trial. But, when nearly 70\% of Americans do not have the resources to meet a $400 emergency,\textsuperscript{112} even $500 bail (the typical New York City bail for low-level nonviolent offenses before the
state’s 2019 bail reform[113] was beyond the reach of too many people.\[114\] Thousands of New Yorkers wound up on Rikers Island solely because they were too poor to pay the bail intended to ensure they show up for trial.\[115\] Yet, once on Rikers Island, the Department of Correction’s abysmal record of failing to produce people for court dates meant that they missed court dates anyway.\[116\] Think about it. The sole justification for holding bail-eligible people in jail was to ensure they appeared in court. Yet the very fact that such individuals were held at Rikers Island became the reason they did not appear—because the Department of Corrections failed to produce them for court dates.\[117\] This travesty impacts Black and Latinx New Yorkers the most because they are less likely to have access to the wealth and resources that would allow them to pay cash bail and be released pre-trial.\[118\] This “bail trap,”\[119\] which emerges from the alchemy of structural racism, poverty, and criminal law enforcement policies, prompted Professor Aya Gruber to call

113. In 2019, New York enacted a bail reform that ended cash bail for most misdemean-ors and non-violent felonies. S. 1509-C, 2019-2020 Leg. Sess. (N.Y. 2019). The law was expected to eliminate pre-trial detention and cash bail for more than 90% of arrests. Within months, however, opponents succeeded in amending the law to expand the list of charges for which bail could be required. S. 7506, 2019-202 Leg. Sess. (N.Y. 2020). For details, see Michael Rempel & Krystal Rodriguez, Bail Reform Revisited: The Impact of New York’s Amended Bail Law on Pretrial Detention, CTR. FOR Ct. INNOVATION 2–4 (May 2020). https://www.courtinnovation.org/sites/default/files/media/document/2020/Bail_Reform_Revisited_050720.pdf [https://perma.cc/8UAE-7TP6]. Since bail reform took effect in 2020 the number of people subject to bail has declined significantly, but the impacts of bail on low-income defendants and their families continue to be significant. For example, only half of defendants required to post bail have been able to do so, and most are incarcerated for some amount of time before doing so. New York City Comptroller, Report: NYC Bail Trends Since 2019 (Mar. 22, 2022).

114. See, e.g., in 2017, 33,000 New Yorkers were incarcerated as pre-trial detainees solely because they could not pay bail. At any given time, that amounted to one-third of the City’s jail population. Bail Bonds: The Public Cost of Private Bail, NYC OFF. OF THE COMPT. 5 (2018).


116. Hogan, supra note 115.

117. Id.


the criminal system “a, if not the, primary site of racial injustice in America.”

D. Climate Change Makes Everything About the Carceral State Worse

Even though government officials are legally responsible for the welfare of those they incarcerate, evidence of breaches of that duty abound. Prison and jail residents are often held in overcrowded, antiquated facilities, many of which have no policies for addressing climate challenges like extreme heat. As a result, increasing numbers of incarcerated people are dying from preventable, climate-related causes, like being left in cells that reached fatally high temperatures. Individuals residing in prisons and jails have no ability to leave, or to make repairs or upgrades to the facilities in which they are housed. Nor do they have control over their schedule, their resources, or their environment. They are generally barred from engaging in climate-adaptive behaviors that would decrease their risk. For example, many prison and jail facilities have no plans for evacuating residents from their facilities during natural disasters and even prohibit residents from storing water.

126. Vaidya Gullapalli, As It Prepares for a Hurricane, South Carolina (Once Again) Does Not Evacuate a Prison, APPEAL (Sept. 04, 2019), https://theappeal.org/as-it-prepares-for-a-
The Department of Justice flagged the Bureau of Prisons’ ability to maintain adequate supplies of food, water, and medicine in extreme weather conditions as a critical challenge.\textsuperscript{127}

Yet, rather than a vulnerable population to be protected in a crisis, state officials typically view prison residents either as a hazard to be contained, or as a disaster response resource that can be deployed to protect others. For example, as Superstorm Sandy bore down on New York City, then-Mayor Bloomberg made no plans for evacuating Rikers Island.\textsuperscript{128} His only public comments about the Rikers Correctional Facility and the impending storm was “[d]on’t worry about anyone getting out.”\textsuperscript{129} In California, ill-equipped prison residents are regularly deployed in dangerous firefighting.\textsuperscript{130} Indeed, one prison official touted the advantages that prisons offered for defending communities stating, “I think it’s a benefit to California that [prisons are] located all over the state. There’s practically nowhere in the state you can be where there’s not a prison within an hour drive.”\textsuperscript{131}

We know from experience that those residing in prisons are particularly vulnerable in a natural disaster. The pernicious impacts of cash bail and mass incarceration amplify the racialized aspects of who is in harm’s way. When Hurricane Katrina hit New Orleans, thousands of (mostly Black) pre-trial detainees were among those trapped in Orleans Parish Prison as flood waters rose.\textsuperscript{132} The New Orleans Mayor’s mandatory evacuation order

\begin{footnotesize}
\begin{enumerate}
\item U.S. DEP’T OF JUST., U.S. DEPARTMENT OF JUSTICE CLIMATE CHANGE ADAPTATION PLAN 1, 16 (2021) (identifying such efforts as “mission critical”).
\item James Ridgeway & Jean Casella, Prisoners to Remain on Rikers Island As Hurricane Sandy Heads for New York, MOTHER JONES (Oct. 29, 2012), https://www.motherjones.com/crime-justice/2012/10/prisoners-rikers-island-hurricane-sandy-new-york-bloomberg/ [https://perma.cc/UW3Q-RRAH]. In her doctoral thesis, Melissa Savilonis reports an even greater indifference to prisoner wellbeing during Hurricane Katrina. Savilonis, supra note 124, at 11 (quoting an unnamed federal official as saying: “Move all of the prisoners to the roof, and if they start to act out, shoot one and throw his body off the roof, the rest will then behave.”).
\item Ridgeway & Casella, supra note 129.
\item Elaine Rundle, When Disaster Strikes, Inmates Can Move to the Front Lines of Community Response, GOV’T TECH. (Sept. 25, 2009) (quoting Capt. Robert Williams of the California Department of Corrections and Rehabilitation).
\end{enumerate}
\end{footnotesize}
excluded the prison and its inmates. The overwhelmingly Black prison residents were trapped inside their cells, left with no food, water, or electricity for days. At least 45 people died as a result. When Hurricane Florence hit more than a decade later, the situation was no better.

Across the country, prisons and jails fail to plan adequately to protect their residents during climate related (and other) disasters. The intersection of climate vulnerability with structural racism in the criminal justice system makes existing racialized inequalities worse. The EPA projects that Black, Latinx, and Indigenous Americans are more likely to experience the adverse effects of climate change, in general. The overwhelmingly Black and Brown prison population likely face even greater risks because they are uniquely vulnerable to climate-related harms.

IV. Renewable Rikers as a Case Study for a Just Transition

Renewable Rikers is New York City’s plan to combine decarceration with decarbonizations. It grew out of the #CloseRikers movement. The intention behind Renewable Rikers is to respond to the climate crisis by promoting restorative justice in the New York City communities most impacted by polluting infrastructure and mass incarceration. As such, Renewable Rikers is a response to brutality—to the abysmal human rights record of the Rikers Island Correctional Facility. This proposal, described in detail below, offers a plan for restorative justice by completely reimagining Rikers

133. Id.
135. Id.
137. See Rachel Shaw, Up the Creek Without a Paddle: Consequences for Failing to Protect Prisoners During a Natural Disaster, 9 BARRY ENV’T & EARTH L.J. 55 (2019).
138. Wu & Felder, supra note 124, at 275.
140. Bratspies, supra note 60, at 4.
141. Id. at 1.
The coalition that successfully advocated for Renewable Rikers emerged out of a shared commitment to place-based conflict resolution and social reconciliation, dedicated to producing what Shalanda Baker has described as “deep healing” for the people, and place, that suffered harm. Renewable Rikers accomplishes this by encoding processes for social restoration, inclusion, and equity in the laws that govern development of green technologies on the island. As such, Renewable Rikers sounds very much like what the Green New Deal refers to as a just transition.

A. Some Background on the Rikers Island Correctional Facility

Rikers Island has been New York City’s main jail facility since 1935. The facilities on the island are antiquated, overcrowded, and unsafe. A 2013 Mother Jones exposé called the Rikers Correctional Facility one of America’s 10 worst prisons, with “a deeply entrenched” pattern of violence by guards. U.S. Attorney for the Southern District of New York, Preet Bharara, described youth incarceration as a “Lord of the Flies” situation, with a “deep-seated culture of violence.” Women held on Rikers Island suffered sexual assault at the hands of guards, who were rarely, if ever, punished. Those who live and work on Rikers Island face serious health risks.


149. Calder, supra note 142.


because the island is a giant landfill that continues to offgas methane.\textsuperscript{152} It is also directly in the flight path for LaGuardia airport and the noise levels exceed the World Health Organization’s standards.\textsuperscript{153} In short, Rikers Island is currently a toxic place by just about every possible measure.\textsuperscript{154}

More than three-quarters of the people locked up in Rikers Island are pre-trial detainees,\textsuperscript{155} and nearly 90\% are people of color.\textsuperscript{156} Most come from a handful of over-policed neighborhoods.\textsuperscript{157} There is wide agreement

rape allegations by women confined at Rikers are double the national average); Benjamin Weiser, \textit{SI.1 Million City Settlement With Rikers Inmates Who Accused Guard of Rape}, N.Y. \textsc{Times} (May 9, 2017) https://www.nytimes.com/2017/05/09/nyregion/rikers-inmates-who-accused-guard-of-rape-settle-suit-for-1-2-million.html [https://perma.cc/S89L-NJBD] (describing official indifference to the culture of sexual violence against women detained at Rikers).


\textsuperscript{153}. Bruno Gallo, \textit{Airport Noise Footprint Exposed, Path to Mitigation Unclear}, \textsc{Gotham Gazette} (Dec. 6, 2016) https://www.gothamgazette.com/city/6654-airport-noise-footprint-exposed-path-to-mitigation-unclear [https://perma.cc/LM9X-DR38] (indicating that the FAA has no intention of mitigating airplane noise at Rikers Island).

\textsuperscript{154}. See Raven Rakia, \textit{A Sinking Jail: The Environmental Disaster that is Rikers Island}, \textsc{Grist} (Mar. 15, 2016), https://grist.org/justice/a-sinking-jail-the-environmental-disaster-that-is-rikers-island/ [https://perma.cc/83YR-4CL5]; see also Bratspies, supra note 146, at 375.


\textsuperscript{156}. N.Y.C. Dep’t of Corr, \textsc{Population Demographics FY22 Qtr. 3} (2022), https://www1.nyc.gov/assets/docs/doc/downloads/pdf/FY22_Q3_DEMOGRAPHICS.pdf [https://perma.cc/P3PM-DCWF].

that the harms inflicted by incarceration at Rikers falls “disproportionately on communities of color.”\footnote{see, e.g., letter from the hon. jonathan lippman, in independ. comm’n on n.y.c. crim. just. and incarceration reform, a more just n.y.c. (2017), https://www1.nyc.gov/assets/hra/downloads/pdf/hra-docs/commission-community-reinvestment-report.pdf (identifying priority neighborhoods).}

The COVID-19 pandemic created a humanitarian crisis on Rikers Island. Crowding and official indifference combined with the lack of PPE produced predictable results—the facility’s residents tested positive for COVID-19 at alarmingly high rates.\footnote{justin chan et al., covid-19 in the new york city jail system: epidemiology and health care response, march-april 2020 136 pub. health reps. 375, 375 (2021); reuven blau, how the city failed three men who died of covid-19 in jail: watchdog, the city (mar. 8, 2021, 5:00 am), https://www.thecity.nyc/2021/3/8/22318504/nyc-failed-inmates-died-covid-rikers-jails [https://perma.cc/VYM5-URH8].} Despite calls from the civilian oversight board for decisive action to protect those at the highest risk from the pandemic, the Governor and Mayor released only a handful of those incarcerated.\footnote{katemcmahon, n.y. board of corr. draft covid pdrb report to agencies (2020); nick pinto, if coronavirus deaths start piling up in rikers island jails, we’ll know who to blame, intercept (mar. 23, 2020, 9:00 am), https://theintercept.com/2020/03/23/coronavirus-rikers-jail-de-blasio-cuomo/ [https://perma.cc/84JM-G44B]. this was part of a nationwide failure to address the need for compassionate release. joseph neff & keri blakinger, thousands of sick federal prisoners sought compassionate release. 98 percent were denied., marshall project (oct. 7, 2020, 6:00 am), https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied [https://perma.cc/UB7Q-3CAL].}

All this social harm comes with a hefty price tag—the cost of keeping people incarcerated at Rikers is astonishingly high—more than $556,000 per individual, per year.\footnote{n.y.c. comptroller, nyc department of corrections fy’s 2011-21 operating expenditures, jail population, cost per incarcerated person, staffing ratios, performance measures outcomes and overtime (dec. 6, 2021), https://a860-gpp.nyc.gov/concern/nyc_government_publications/098zd988?locale=en [https://perma.cc/DZ5F-G98C]. in 2021, the department of corrections had 7,288 correction officers. compare n.y. city dept. of corr., uniform personnel demographics data (2021).} renewable rikers gives us a way to imagine what this
money could accomplish if it were instead used to transform the city’s provision of housing, education, and medical services.

B. Closing Rikers Island

The #CLOSERikers campaign, led by survivors of Rikers Island, launched in early 2016. Their advocacy, along with crises like Kalief Browder’s death, and the lawsuits launched by the Department of Justice and Legal Aid, made Rikers Island into a pressing political issue. In her 2016 State of the City Address, Speaker Melissa Mark-Viverito responded by forming the Independent Commission on New York City Criminal Justice and Incarceration Reform (generally called the Lippman Commission after its chair, former New York Chief Judge Jonathan Lippman). Lippman put together a panel of 27 criminal justice experts to investigate whether New York City could close the correctional facility on Rikers Island, and if so, how. The Lippman Commission was explicitly tasked with considering racial justice as part of “taking our criminal justice system out of the shadows – and finally address[ing] the institutional racism which has plagued it for far too long.” The next year, the Lippman Commission issued its first report titled Criminal Justice and Incarceration Reform: A More Just New York. Among its most prominent recommendations were closing the Rikers Island Correctional facility which

[https://perma.cc/ZJ8R-F9CS]

https://www1.nyc.gov/site/doc/about/average-daily-population-2021.page
[https://perma.cc/6YKF-RWHG]

with Reema Amin, NYC Spends a Record $28k per student, but the State is Footing a Smaller Portion of that Bill, CHALKBEAT (Jan. 27, 2020, 6:35 PM), https://ny.chalkbeat.org/2020/1/27/21121084/nyc-spends-a-record-28k-per-student-but-the-state-is-footing-a-smaller-portion-of-that-bill [https://perma.cc/43RE-8KYN] (showing N.Y.C. spends just under $29,000 per student on education).


165. Id.

166. See generally, INDEP. COMM’N ON N.Y.C. CRIMINAL JUST. AND INCARCERATION REFORM, A MORE JUST NEW YORK CITY (2017), https://static1.squarespace.com/static/5b6de4731ae1fde914f3628/t/5b96c6f81ae6c5e9c5f186d15356607993482/Lippman%2BCommission%2BReport%2BFinal%2BSingles.pdf [https://perma.cc/5SM5-MJXS].
had become a “stain on our great city,” and eliminating cash bail entirely. In an op-ed that coincided with the release of this report, Speaker Mark-Viverito and Judge Lippman emphasized that the Rikers Island facility corrupted everyone it touched and made the city less safe.

Reacting to the Lippman Report, and the ongoing humanitarian crisis at Rikers, New York City Council voted to close the jail on Rikers Island by 2026. When he signed the legislation, then-Mayor Bill DeBlasio declared that “the era of mass incarceration was over.” Part of implementing that legislation involved adopting decarceration as an official policy goal. Part of that process involves responding to crises with health care, housing, and treatment rather than incarceration, and emphasizing social connection, solidarity, and cooperativeness to manage conflict.

167. Id. at 2.
168. Id. at 512; In 2019, New York enacted bail reform that ended cash bail for most misdemeanors and non-violent felonies, S. 1509C, 2019-20 Leg. Sess. (N.Y. 2019). The law was expected to eliminate pre-trial detention and cash bail for more than 90% of arrests. Id. Within months, however, opponents succeeded in amending the law to expand the list of charges for which bail could be required, S.S.7506B, 2019-20 Leg. Sess. (N.Y. 2020); see also MICHAEL REMPHEL & KRISTAL RODRIGUEZ, BAIL REFORM REVISITED: THE IMPACT OF NEW YORK’S AMENDED BAIL LAW ON PRETRIAL DETENTION 2-4 (2020) [https://perma.cc/ZF5X-QZGN] (providing more details).
V. Lessons from Renewable Rikers

The movement to close Rikers was remarkably successful at building a wide and unified coalition under the slogan “Close Rikers, Build Community.” One distinctive aspect of this campaign was that it was led by people with lived experience with incarceration on Rikers Island. Their advocacy tied compelling personal narratives about the brutality of incarceration on Rikers with data about the economic costs associated with maintaining the notorious jail. Because there is a clear connection between communities that are over-policed and communities that are over-polluted, advocates began to champion the idea that Rikers Island could be repurposed to include uses that would allow the city to shutter polluting infrastructure in those highly impacted communities. This was the genesis of Renewable Rikers—a true embodiment of the Jemez principle that communities speak for themselves.

After persuading City Council to enact legislation phasing out the use of Rikers Island as a jail, these advocates turned their attention to how to repair some of the harmful legacies from mass incarceration, legacies borne predominantly by the City’s Black and Brown communities. Specifically, the advocates behind Renewable Rikers connected the dialogue around the need for new, nonpolluting energy infrastructure with broader conversation about racial justice and equity. What emerged was a transformative, restorative vision for a new way of doing things—a new way of siting polluting

175. See generally Humphreys, supra note 143, at 188–89 (explaining that this emphasis on hearing, mitigating, and recognizing the harms suffered by those “who are not in the mainstream” is a critical aspect of restorative justice).
178. JUSTLEADERSHIPUSA, supra note 173.
infrastructure and a new approach to the trauma caused by mass incarceration on Rikers Island. As a result, Renewable Rikers truly embodies the idea of a just transition and builds a pathway for prosperity and environmental health for all New Yorkers.

A. Details of Renewable Rikers

The decision to close the correctional facility on Rikers Island raised the question of what would become of the island once it was no longer used to incarcerate. In February 2021, the New York City Council answered that question with a trio of local laws known as Renewable Rikers. These three laws, Local Law 31, Local Law 17, and Local Law 16 sketch out a framework for what the future of Rikers Island’s might hold. Collectively, these laws represent a City Council endorsement of restorative Justice at the intersection of decarceration, environmental justice, and the Green New Deal.

Local Laws 31 and 17 require New York City to undertake feasibility studies for using Rikers Island to house wastewater treatment and composting facilities, and renewable energy generation respectively. But Renewable Rikers aspires to do far more than just create better infrastructure. Renewable Rikers is an attempt to ensure that the environmental and economic benefits from repurposing Rikers Island flow directly and foremost to the individuals and communities most harmed by incarceration on the island. The third piece of legislation in the Renewable Rikers trilogy, Local Law 16, plays a critical role in these aspirations.

Local Law 16 establishes a process for phased transfers of authority over parts of Rikers Island from the Department of Corrections to the Department of Citywide Administrative Services (DCAS). Twice a year, the


182. This part of Renewable Rikers is a proposal for converting the 481.5 acres of Rikers Island to large-scale solar energy and battery storage installations. Current estimates indicate that Renewable Rikers could replace most of the City’s dirty peaker plants, while supplying 1520 megawatts worth of battery storage, roughly one half of the goal for the entire state.

183. LOCAL LAW 16, supra note 181, at 2–4.

184. Id. at 1–2.
mayor must transfer control of “every portion of Rikers Island that the mayor determines is not in active use for the housing of incarcerated persons, or in active use for the providing of direct services to such persons”\(^\text{185}\) from DOC to DCAS. And, by no later than August 31, 2027, the law requires that all portions of Rikers Island must be fully transferred to DCAS and “shall no longer be used by the department of corrections for the housing of incarcerated persons.”\(^\text{186}\)

In June 2021, Mayor DeBlasio made the first transfer of land under Local Law 16 when he transferred control of the James A. Thomas Center (JATC) to DCAS.\(^\text{187}\) JATC was the first permanent jail built on Rikers Island and formerly served as a 1200 bed jail.\(^\text{188}\) Thus, the transfer of JATC out of DOC control was a powerful symbol of change. However, many advocates were disappointed that DeBlasio had not been more aggressive and transferred more land.\(^\text{189}\) In December 2021, just as he was leaving office, Mayor DeBlasio made a second, much more extensive transfer to DCAS.\(^\text{190}\) This second transfer involved 43 acres of vacant land on the island.\(^\text{191}\)

Local Law 16 also mandates that the city establish a Rikers Island advisory committee.\(^\text{192}\) This advisory committee is composed of 15 members—six government officials and nine members of the public.\(^\text{193}\) The government officials include the commissioners of citywide administrative services, environmental protection, sanitation, parks and recreation, buildings, long

\(^{185}\) Id. at 1 (Local Law 16 amends Section 4-15 of the New York City code to this effect. Local Law 16 lists “medical care, training, storage, employment training and services, re-entry services, educational services, visitation, legal services, or administrative hearings” as what is meant by direct services provided to incarcerated persons).

\(^{186}\) Id. at 2.


\(^{188}\) Id.


\(^{191}\) Id.

\(^{192}\) LOCAL LAW 16, supra note 181, at 3.

\(^{193}\) Id. at 3–4.
term planning and sustainability or their designees. Of the public members, two are mayoral appointments and seven are appointed by the City Council speaker. At least four of the public members must be persons who have been impacted directly by incarceration on Rikers Island, with at least two being “persons who were in custody at a facility on Rikers Island.” At least three of the public members must have expertise in environmental justice or sustainability. There is also a requirement that all nine of the public members “represent the geographic diversity of communities impacted by incarceration on Rikers Island or environmental justice communities.”

B. What Makes Renewable Rikers a Just Transition Model?

Of the trio of bills that make up Renewable Rikers, Local Law 16 is the most significant from the perspective of ensuring a just transition. It responds to the reality that when the problem formulation stage of public policy development does not include equitable participation from historically marginalized communities, undesirable outcomes that perpetuate discrimination and bias are more likely. This is because when decisionmakers lack lived experience with discrimination, they are more likely to make and deploy assumptions that fail to account for the myriad ways that discrimination and bias skew existing practices and data. This knowledge gap can result in interventions that perversely harm the communities they are nominally intended to help.

Local Law 16 recognizes this dilemma and creates a pathway for the city to engage with this complexity by creating a concrete plan for including diverse stakeholder perspectives. The requirement that advisory committee members be appointed from a wide array of constituents, including environmental justice advocates and those impacted by mass incarceration, is an important innovation. Study after study has demonstrated that diverse teams do better work, ask different questions, and propose more innovative

194. *Id.* at 3. The office of corrections participates solely in an advisory capacity as a non-voting member.
195. *Id.*
196. *Id.* The other two in this category can be people who had immediate family members incarcerated on Rikers Island.
197. LOCAL LAW 16, supra note 181, at 4.
198. *Id.*
solutions. The representation requirements on the advisory committee are intended to ensure that these historically excluded groups have a seat at the table when key decisions are made and that a wide diversity of perspectives and experiences will inform the Committee’s work. In this the Renewable Rikers advisory committee joins the Commission on Community Investment and the Closure of Rikers Island, as city vehicles for ensuring that justice-affected voices are part of the discussion about reform.

By bringing such an array of epistemic diversity to the collective endeavor, this Committee will almost certainly explore new paths in policymaking. This is particularly important because skewed problem-formation can encode bias into seemingly neutral systems, producing significantly biased downstream effects. Research shows that diversity of experience and perspective is particularly valuable in “problem posing, problem construction or hypothesis generation.” And, decisions made at these early stages can have “a profound impact” on how policy choices impact various communities, most notably already marginalized communities. Thus, the intentionally structured policy space created by Local Law 16 is designed to generate fruitful new conversations about the legacy of mass-incarceration, and to help the city expand its strategic goals for Renewable Rikers. If it succeeds, Local Law 16 will transform not only the goals set by the city, but also the means of achieving those goals, and will redefine what information is relevant to public policy deliberations about Renewable Rikers, and how that information should be collected, shared, and integrated.

Moreover, because justice works best when communities speak for themselves, it is particularly important that the Renewable Rikers

201. LOCAL LAW 193, supra note 157.
204. Martin, supra note 202, at 1.
advisory committee includes justice impacted members. Inclusive consultation, with meaningful involvement at early stages of decision-making (up to and including the early stages of defining what the problems actually are) will produce policy recommendations that are more reflective of and responsive to New York City’s actual experience with mass incarceration on Rikers Island. For example, the advisory committee can help ensure that the accompanying job training programs are intentionally designed to include re-entry pathways those formerly incarcerated, and those historically excluded from the energy industry, widening the focus from those currently employed in unsustainable portions of the industry that will be phased out under the Climate Leadership and Community Protection Act. Hearing from justice impacted committee members will help New York City create a plan that opens up a pathway for prosperity and environmental health for all New Yorkers. To date, all of the public members of the Renewable Rikers advisory committee are members of the Close Rikers coalition. Thus they are steeped in collective advocacy and a commitment to decarceration.

C. Some Cautions—Implementation is Much Harder than Legislation

*Lex lata* is never the same as *lex ferenda*. *Renewable Rikers* is no exception to this rule. Despite a clear legislative mandate that the advisory committee was to meet “n]o later than 180 days after the effective date” of the legislation, and quarterly thereafter, it took until June 21, 2022 for Mayor Adams to finally convene the Rikers Island Advisory Committee. At that meeting, mayoral representatives, including the office of climate and environmental justice, met with representative from the departments of environmental protection, buildings, corrections, sanitation and parks and six of the nine public appointees. The meeting was virtual and was held


206. E-mail from Melissa Iachan, Counsel, Justice Catalyst Law, to Renewable Rikers Coalition Google Group (June 21, 2022).


209. Which is the successor to the Mayor’s Office of Sustainability.

210. *Id.*
nine months after the legislatively imposed deadline.\textsuperscript{211} There have been no subsequent meetings, nor have any future meetings been scheduled.

Unfortunately, at that June meeting Mayor Adams indicated that he will not be meeting the July 1, 2022 deadline for transferring land to DCAS, despite announced plans to immediately shutter the Otis Bantum Correction Center because of unsafe conditions.\textsuperscript{212} The Department of Corrections claimed that shuttering the facility did not amount to ‘ceasing to use the facility’ because there was the possibility that they might need to reopen it in the future.\textsuperscript{213} But, as Advisory Committee member Melissa Iachan pointed out, the purpose behind the transfer requirement was to remove shuttered facilities from Corrections control to ensure they would not reopen.\textsuperscript{214}

Rather than comply with Local Law 16 and transfer this shuttered facility to DCAS, the Mayor’s office instead claimed that the Department of Corrections had not identified any land that fit within the criteria of “not being used to house or serve” incarcerated persons.\textsuperscript{215} This troubling statement indicated that the Mayor’s Office was not making the independent assessments required by Local Law 16, but was instead relying on Corrections to decide whether or not to turn over lands.

Worse, more than a year after the statutory deadline, the advisory committee is still missing two members, both the responsibility of City Council Speaker Adrienne Adams (no relation to Mayor Adams). At least one of those missing appointees must be someone who was directly impacted or had a family member incarcerated on Rikers.\textsuperscript{216} Despite her erstwhile strong support for closing Rikers, Speaker Adams’s failure to appoint critical

\textsuperscript{211} Id.
\textsuperscript{214} Id. (quoting Melissa lachan).
\textsuperscript{215} Id.
\textsuperscript{216} E-mail from Melissa Iachan, supra note 206.
members of the advisory committee raises questions about her commitment to Local Law 16’s transformative goals.217

**CONCLUSION**

The Green New Deal was proposed in the context of a growing scholarly investigation of restorative justice as a tool for dismantling self-perpetuating cycles of violence.218 Much of the research has occurred in the criminal justice sphere, where it is offered as an alternative to retributive justice.219 The focus is on healing, and holistic understanding of the dynamics behind criminal behavior, its causes and its consequences.220 More recently scholars have begun to consider what restorative justice might look like in the environmental context, and whether it can be a tool for transformative change targeting systemic injustice.221 *Renewable Rikers* is a concrete example of how to connect those two narratives. Tying decarceration with decarbonization can create a virtuous cycle of social benefits that flow to those most harmed by a wide array of past practices. Not only does it offer a compelling moral narrative with justice at its core, but *Renewable Rikers* also demonstrates that decisionmakers can think differently about problems of mass incarceration and environmental degradation. By reconceptualizing these problems as interrelated and structural, *Renewable Rikers* moves beyond narrow technical solutions and proposes transformative social, economic, and environmental drivers of change.222 As such, it

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offers a model for how restorative justice can help facilitate a just transition.223