

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

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PACE ENVIRONMENTAL LAW REVIEW

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 yesterday.”¹

“Try harder.”²

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*Professor, CUNY School of Law, Director Center for Urban Environmental Reform. This essay benefitted from research help from Natasha Bynum and Megan Carr, as well as feedback and suggestions from Melissa Iachan, Sarita Daftary, and other members of the #CloseRikers campaign. A special thank you to research librarians Jonathan Saxon and Kathy Williams for getting me some hard-to-obtain sources, and to artist and CUNY Law student Jill Sigman for her creative dance-based advocacy work which can be found at <https://www.renewabledance.com/>. Readers interested in the ongoing campaign to #CLOSERikers can find updated information at <https://www.campaigntocloserikers.org/>.

1. Nadia B. Ahmad, *The Clodynamics of Mass Incarceration, Climate Change and “Chains on our Feet,”* 49 *FORDHAM URB. L.J.* 371, 391 (2022).

2. Mia Mottley, *Prime Minister of Barbados at the Opening of the #COP26 World Leaders Summit*, YOUTUBE, at 7:59 (Nov. 1, 2021), <https://www.youtube.com/watch?v=PN6THYZ4ngM> [<https://perma.cc/D6NU-JE4E>].

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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.³ 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.⁴ 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.⁵ Similarly, New York’s Climate Leadership and Community Protection Act requires that the state convene a just transition working group.⁶ On the surface, that sounds great—who opposes fairness and justice?⁷ 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

3. See S.J. Res. 8, 116th Cong. (2019) (noting that on March 26, 2019, the Joint Resolution failed in the Senate); H.R. Res. 332, 117th Cong. (2021) (Representative Ocasio-Cortez and Senator Markey reintroduced an identical joint resolution in 2021); S. Res. 1244, 117th Cong. (2021) (another series of related green new deal bills, though none have gained much traction); H.R. Res. 2644, 117th Cong. (2021) (another introduction by Ocasio-Cortez and Markey—the Civilian Climate Corps for Jobs and Justice Act. Representatives Ocasio-Cortez and Cori Bush introduced the Green New Deal for Cities Act of 2021); S. Res. 1218, 117th Cong. (2021) (noting an additional proposition by Representative Ocasio-Cortez and Senator Bernie Sanders—the Green New Deal for Public Housing Act).

4. Lisa Friedman, *What is the Green New Deal? A Climate Proposal, Explained*, N.Y. TIMES (Feb. 21, 2019), <https://www.nytimes.com/2019/02/21/climate/green-new-deal-questions-answers.html> [<https://perma.cc/VJW9-95S2>].

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

6. S. Res. 6599, S. Assemb., Reg. Sess. (N.Y. 2019).

7. It turns out that the Senate opposes justice and fairness, at least as expressed in the Green New Deal resolution. See Dino Grandoni & Felicia Sonmez, *Senate Defeats Green New Deal, as Democrats Call Vote a ‘Sham’*, WASH. POST (Mar. 26, 2019), https://www.washingtonpost.com/powerpost/green-new-deal-on-track-to-senate-defeat-as-democrats-call-vote-a-sham/2019/03/26/834f3e5e-4fdd-11e9-a3f7-78b7525a8d5f_story.html [<https://perma.cc/S92T-FEB3>].

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.”⁸

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.⁹ The global climate trajectory is heading in the wrong direction. Nine of the 10 hottest years on record occurred in this decade.¹⁰ Extreme weather and climate disasters, in the form of devastating heat waves, floods, and fires, are increasing in frequency and intensity.¹¹ Global mean temperatures have already warmed

8. Ahmad, *supra* note 1, at 376.

9. See *Atmospheric Greenhouse Gas Concentrations*, EUR. ENV’T AGENCY (Jan. 6, 2022, 1:17 PM), <https://www.eea.europa.eu/ims/atmospheric-greenhouse-gas-concentrations> [<https://perma.cc/58LJ-PVRE>].

10. See *State of the Climate: Monthly Global Climate Report for 2021*, NOAA NAT’L CTRS. FOR ENV’T INFO. (Jan. 2022), <https://www.ncei.noaa.gov/access/monitoring/monthly-report/global/202113/supplemental/page-1> [<https://perma.cc/43B3-7A7D>]. All ten of the hottest years on record have occurred since 2010. *Id.*

11. See MYLES R. ALLEN ET AL., *FRAMING AND CONTEXT* ch. 1 §1 (Ismail Elgizouli Idris et al., eds., 2018).

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

12. See *Climate Change Indicators: U.S. and Global Temperatures*, EPA, <https://www.epa.gov/climate-indicators/climate-change-indicators-us-and-global-temperature> [<https://perma.cc/T89M-ENH4>]; ALLEN ET AL., *supra* note 11, at 51–60.

13. WILLIAM V. SWEET ET AL., GLOBAL AND REGIONAL SEA LEVEL RISE SCENARIOS FOR THE UNITED STATES 1 (NOAA 2022); Sarah Kaplan & Brady Dennis, *Sea Level to Rise One Foot Along U.S. Coastlines by 2050, Government Report Finds*, WASH. POST (Feb. 15, 2022, 3:38 PM), <https://www.washingtonpost.com/climate-environment/2022/02/15/sea-level-rise-2050-climate/> [<https://perma.cc/9DB3-E2K7>] (quoting NOAA oceanographer William Sweet to warn “there will be water in the streets.”).

14. ADAM PARRIS ET AL., GLOBAL SEA LEVEL RISE SCENARIOS FOR THE UNITED STATES NATIONAL CLIMATE ASSESSMENT 5 (NOAA 2012).

15. RICHARD P. ALLAN ET AL., *IPCC, 2021: Summary for Policymakers*, in CLIMATE CHANGE 2021: THE PHYSICAL SCIENCE BASIS. CONTRIBUTION OF WORKING GROUP 1 TO THE SIXTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE 4 (Valérie Masson-Delmotte et al., eds., 2021).

16. See World Meteorological Organization & Global Atmosphere Watch, *The State of Greenhouse Gases in the Atmosphere Based on Observations through 2019*, 16 WMO GREENHOUSE GAS BULL. 1 (2020).

17. See *id.*; see also WMO Update: 50:50 Chance of Global Temperature Temporarily Reaching 1.5°C in Next Five Years, WMO (May 9, 2022), <https://public.wmo.int/en/media/press-release/wmo-update-5050-chance-of-global-temperature-temporarily-reaching-15c-threshold> [<https://perma.cc/8Z7X-6U5G>].

18. U.N. Framework Convention on Climate Change, *Nationally Determined Contributions Under the Paris Agreement*, ¶ 10–15, U.N. Doc. FCCC/PA/CMA/2021/8/Rev.1 (Sept. 17, 2021), https://unfccc.int/sites/default/files/resource/cma2021_08r01_E.pdf [<https://perma.cc/28SS-E9M8>].

19. U.N. Secretary-General, Secretary-General’s Statement on the IPCC Working Group 1 Report on the Physical Science Basis of the Sixth Assessment (Aug. 9, 2021), <https://www.un.org/sg/en/content/secretary-generals-statement-the-ipcc-working-group-1-report-the-physical-science-basis-of-the-sixth-assessment> [<https://perma.cc/WX26-JJ74>].

20. Press Conference, António Guterres (UN Secretary-General) Remarks at Press Conference on WMO State of the Global Climate 2021 Report, (May 18, 2022), <https://media.un.org/en/asset/k1q/k1qn00cy8a#:~:text=Transforming%20energy%20systems%20is%20low,coal%20and%20other%20fossil%20fuels> [<https://perma.cc/WN4P-DU7P>].

repeatedly emphasized that this transition must be “just, equitable and inclusive.”²¹ 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.²² Indeed, recently released internal documents indicate that Exxon and other fossil fuel companies knew for decades that their products were driving a climate catastrophe.²³ 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.²⁴

The Trump Administration’s climate denial only exacerbated the crisis, wasting critical time that could have helped avert disaster.²⁵ The Biden Administration has publicly committed to significant climate action.²⁶ Unfortunately, the administration’s legislative initiatives have been stymied,²⁷ and

21. Press Release, Secretary-General, Failure of Just, Equitable, and Inclusive Transition to Net Zero Will Mean Catastrophe, Secretary-General Tells Caring of Climate Meeting, U.N. Press Release SG/SM/21015 (Nov. 10, 2021), <https://press.un.org/en/2021/sgsm21015.doc.htm> [<https://perma.cc/WF6M-TSNQ>].

22. For an introduction to these efforts, see NATHANIAL RICH, *LOSING EARTH* 3–10 (2019), which documented the heroic efforts by scientists Rafe Pomeroy 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).

25. Coral Davenport, *What Will Trump’s Most Profound Legacy Be? Possibly Climate Damage*, N.Y. TIMES (Dec. 3, 2020), <https://www.nytimes.com/2020/11/09/climate/trump-legacy-climate-change.html> [<https://perma.cc/SS2U-77ZN>] (quoting Prof. Michael Gerrard for the proposition that “Donald Trump has been to climate regulation as General Sherman was to Atlanta . . .”).

26. Exec. Order No. 13,990, 86 Fed. Reg. 7,037 (Jan. 20, 2021).

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.²⁸ 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.²⁹ 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.³⁰ That means not only redressing past harms, but also building new power structures and economic relationships moving forward.³¹ 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.”³² 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.³³ While these new polluting industries generated remarkable wealth for capital owners, the conditions for workers were brutal.³⁴ Many coal

president-biden-at-signing-of-h-r-5376-the-inflation-reduction-act-of-2022/
[<https://perma.cc/T4A2-WAAP>].

28. See *West Virginia v. EPA*, 142 S. Ct. 2587, 2599–02.

29. Hannah Ritchie & Max Roser, *United States: CO2 Country Profile*, OUR WORLD IN DATA (2020), <https://ourworldindata.org/co2/country/united-states?country=~USA> [https://perma.cc/729G-NVEH].

30. *What Do We Mean by Just Transition?*, CLIMATE JUST. ALL., <https://climatejusticealliance.org/just-transition/#:~:text=Just%20Transition%20is%20a%20vision,cycles%20holistically%20and%20waste%2Dfree> [https://perma.cc/YU5E-JTLQ].

31. *Id.*

32. *Id.*

33. W. Walker Hanlon, *Coal Smoke, City Growth, and the Costs of the Industrial Revolution*, 130 *ECON. J.* 462, 465–66, n.8 (2020).

34. See Robert Fyson, *The Crisis of 1842: Chartism, the Colliers' Strike and the Outbreak in the Potteries*, in *THE CHARTIST EXPERIENCE: STUDIES IN WORKING CLASS RADICALISM AND CULTURE, 1830-60*, at 196 (James Epstein & Dorothy Thompson eds., 1982).

miners died on the job, many more died of respiratory illnesses, which plagued mining communities.³⁵ 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.³⁶ 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.³⁷ 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.³⁸ 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.³⁹ Similarly, the word “sabotage” entered the English lexicon in the early 1900s to describe

35. *See id.*

36. *Id.* (describing an appalling environment of pervasive smoke, dirt, and squalor); *see also* FRIEDRICH ENGELS, *THE CONDITION OF THE WORKING CLASS IN ENGLAND* 1, 61 (Panther ed. 1969) (1845); James R. Allum, “*An Outcrop of Hell*”: *History, Environment, and the Politics of the Trail Smelter Dispute*, in *TRANSBOUNDARY HARM IN INTERNATIONAL LAW: LESSONS FROM THE TRAIL SMELTER ARBITRATION* 13–15 (Rebecca M. Bratspies & Russel A. Miller, eds., 2006).

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.”).

39. Richard Conniff, *What the Luddites Really Fought Against*, *SMITHSONIAN* (Mar. 2011), <https://www.smithsonianmag.com/history/what-the-luddites-really-fought-against-264412/> [<https://perma.cc/26HX-HEN4>] (documenting that these workers organized themselves under the (apocryphal) leadership of Ned Ludd—a mythic weaver who smashed knitting looms).

worker pushback against the economic and social violence embedded in capitalist industrial policies.⁴⁰ Its original definition “malicious damaging or destruction of an employer’s property by workmen” reflects the word’s origins in French labor disputes.⁴¹ These labor disputes were embedded in the coal-powered industrial revolution.⁴²

As a presidential candidate, Trump capitalized on worker insecurities from prior transitions, especially amongst coal miners.⁴³ He offered a political vision tied to a sanitized and romanticized vision of the industry’s past.⁴⁴ Yet, despite his heated rhetoric to the contrary, global, social, and economic realities meant that the coal-powered industrial age was over.⁴⁵ 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.⁴⁶ Thus a Blue/Green Alliance has emerged to support the Green New Deal.⁴⁷

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

40. WALKER C. SMITH, *SABOTAGE: ITS HISTORY, PHILOSOPHY & FUNCTION* 1–2 (1917).

41. *Sabotage* (*n.*), ONLINE ETYMOLOGY DICTIONARY, <https://www.etymonline.com/word/sabotage> [<https://perma.cc/U43N-RA3J>]; see Philip S. Foner, *United States of America vs. Wm. D. Haywood, et. al.: The I.W.W. Indictment*, 11 LAB. HIST. 500, 514–15 (1970) (quoting Preamble Industrial Workers of the World).

42. Erik Eklund, *Coal and Industrial Relations: How Miners Secured Workers’ Rights*, CONVERSATION (June 9, 2016), <https://theconversation.com/coal-and-industrial-relations-how-miners-secured-workers-rights-53371> [<https://perma.cc/3UGT-MRR4>].

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=1xtynB-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”).

45. Taylor Kuykendall, *US Coal Jobs Down 24% from the Start of Trump Administration to Latest Quarter*, S&P GLOB. (Nov. 20, 2020), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-coal-jobs-down-24-from-the-start-of-trump-administration-to-latest-quarter-61386963> [<https://perma.cc/5CLD-4CLD>].

46. George Goddard & Megan A. Farrelly, *Just Transition Management: Balancing Just Outcomes with Just Processes in Australian Renewable Energy Transitions*, 225 APPLIED ENERGY 110, 112 (2018).

47. See *Solidarity for Climate Action*, BLUEGREEN ALL., <https://www.bluegreenalliance.org/work-issue/solidarity-for-climate-action/> [<https://perma.cc/C2Z9-TRHB>].

economic dislocation associated with the Great Depression.⁴⁸ 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.⁴⁹ The successes were many, especially for white families.⁵⁰

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.⁵¹ 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.⁵² 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.⁵³ The National Highway Administration intentionally sited roads through Black and Brown communities in an attempt to wall them off from adjacent white communities.⁵⁴

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.⁵⁵ To that end, the Green New Deal resolution begins with the recognition that “climate

48. See *The Great Depression, the Dust Bowl, and New Deal in Oklahoma*, OKLA. HIST. SOC'Y, <https://www.okhistory.org/learn/depression3> [<https://perma.cc/VDT6-A93Q>].

49. LAWRENCE DAMIAN ROBINSON, PRINCETON UNIVERSITY'S INDUSTRIAL RELATIONS SECTION IN HISTORICAL PERSPECTIVE: 1922-2015 53–54 (Beth Chute ed., 2016).

50. See Otis Rolley, *The New Deal Made America's Racial Inequality Worse. We Can't Make the Same Mistake with Covid-19 Economic Crisis*, THE ROCKEFELLER FOUND. (June 11, 2020), <https://www.rockefellerfoundation.org/blog/the-new-deal-made-americas-racial-inequality-worse-we-cant-make-the-same-mistake-with-covid-19-economic-crisis/> [<https://perma.cc/D287-ZEZ6>].

51. See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

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).

53. See John Kimble, *Insuring Inequality: The Role of the Federal Housing Administration in the Urban Ghettoization of African Americans*, 32 L. & SOC. INQUIRY 399, 403–05 (2007) (detailing how FHA policies drove segregation and prevented Black people from obtaining mortgages); see also FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT pt. 1, § 2 (rev. 1936).

54. Deborah N. Archer, “*White Men’s Roads Through Black Men’s Homes*”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1277–78 (2020); see ROBERT A. CARO, *THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK* 318 (1974) (detailing how Moses intentionally designed New York City’s parkways to be exclusionary).

55. H.R. Res. 109, 116th Cong. (2019).

change, pollution, and environmental destruction have exacerbated systemic racial, regional, social, environmental, and economic injustices.”⁵⁶ 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.⁵⁷

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.⁵⁸ 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.”⁵⁹ In short, to truly build a just transition to a net-zero economy, we must tie decarbonization with decarceration.⁶⁰

56. *Id.*

57. *Id.*

58. Wendy Sawyer, *Visualizing the Racial Disparities in Mass Incarceration*, PRISON POL’Y INITIATIVE (July 27, 2020), <https://www.prisonpolicy.org/blog/2020/07/27/disparities/> [<https://perma.cc/V7NQ-MWE9>].

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/SX72-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,⁶¹ one that traces its roots all the way back to the Reconstruction era⁶² 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.”⁶³ 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.⁶⁴ 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.⁶⁵

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,⁶⁶ and undermining the stability, political

61. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010) (arguing that mass incarceration strategies had their roots in structural racism, and in the racist, political calculations of certain politicians).

62. Daniele Selby, *How the 13th Amendment Kept Slavery Alive: Perspectives from the Prison Where Slavery Never Ended*, INNOCENCE PROJECT (Sept. 17, 2021), <https://innocenceproject.org/13th-amendment-slavery-prison-labor-angola-louisiana/> [<https://perma.cc/4Y5A-DVXH>]; Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899, 922–35 (2019) (providing a trenchant historical analysis).

63. U.S. CONST. amend. XIII, § 1.

64. Christopher Robbins, *New York State’s New Hand Sanitizer is Made by Prisoners Paid an Average 65 Cents an Hour*, GOTHAMIST (Mar. 9, 2020), <https://gothamist.com/news/new-york-states-new-hand-sanitizer-made-prisoners-paid-average-65-cents-hour> [<https://perma.cc/YPL7-T2GL>] (pointing out that those forced to make hand sanitizer for pennies per hour were prohibited from receiving or using it); Whitney Benms, *American Slavery, Reinvented*, ATLANTIC (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/> [<https://perma.cc/J5GZ-E8MT>] (describing the Angola prison).

65. Nick Sibilla, *Federal Judge: Californians Who Fought Fires in Prison Can’t Become Career Firefighters*, FORBES (Feb. 16, 2021), <https://www.forbes.com/sites/nick-sibilla/2021/02/16/federal-judge-californians-who-fought-fires-in-prison-cant-become-career-firefighters/?sh=6c9a7614170f> [<https://perma.cc/EH5H-7D4X>] (reporting on the ruling in *Gurrola v. Duncan*, 519 F.3d 732 (E.D. Cal. 2021)).

66. See, e.g., Manudeep Bhuller et al., *Intergenerational Effects of Incarceration 1–12* (Nat’l Bureau of Econ. Rsch., Working Paper No. 24227, 2018), <https://www.nber.org/papers/w24227> [<https://perma.cc/2BRN-TSQN>] (providing data about spillover impacts of parental incarceration on children and families); Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT’L INST. JUST. (Mar. 1, 2017),

influence,⁶⁷ and economic success⁶⁸ 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.⁶⁹ They are also faced with limited access to housing, as well as reduced prospects for employment,⁷⁰ and decreased eligibility for certain welfare benefits.⁷¹

Moreover, choices that advance the carceral state divert public resources from schools and social services to building and maintaining

<https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children> [<https://perma.cc/M6Y8-693L>].

67. 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. Given the racial dynamics of incarceration and the location of prisons, 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> [<https://perma.cc/P67Z-6NA3>]. 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).

68. Ames Grawert & Terry-Ann Craigie, *Mass Incarceration Has Been a Driving Force of Economic Inequality*, BRENNAN CTR. FOR JUST. (Nov. 4, 2020), <https://www.brennan-center.org/our-work/analysis-opinion/mass-incarceration-has-been-driving-force-economic-inequality> [<https://perma.cc/Z3FB-3EGQ>]; Khaing Zaw et al., *Race, Wealth and Incarceration: Results from the National Longitudinal Survey of Youth*, 8 *RACE & SOC. PROBS.* 103, 104 (2016) (documenting the negative impact that incarceration has on wealth accumulation, especially for Black men). Billions of dollars in federal funding are apportioned based on census data. Nora Gordon & Krista O’Connell, *Why Does the Census Matter for State and Local Governments?*, ECONOFACT (Aug. 31, 2020), <https://econofact.org/why-does-the-census-matter-for-state-and-local-governments-updated> [<https://perma.cc/M38F-8ECC>]. Therefore, 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.

69. Jean Chung, *Voting Rights in the Era of Mass Incarceration: A Primer*, SENTENCING PROJECT (July 28, 2021), <https://www.sentencingproject.org/publications/felony-disenfranchisement-a-primer/> [<https://perma.cc/SMZ9-RR5F>]; see *Felony Disenfranchisement Laws (Map)*, ACLU <https://www.aclu.org/issues/voting-rights/voter-restoration/felony-disenfranchisement-laws-map> [<https://perma.cc/3XW5-RWTG>] (displaying map of felon disenfranchisement laws).

70. Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> [<https://perma.cc/CR92-BU89>].

71. Policy Brief by Ashley Burnside, *No More Double Punishments: Lifting the Ban on SNAP and TANF for People with Prior Felony Drug Convictions*, CTR. FOR L. & SOC. POL’Y (Apr. 2022), https://www.clasp.org/wp-content/uploads/2022/04/2022Apr_No-More-Double-Punishments.pdf [<https://perma.cc/X3V5-8GQD>].

prisons,⁷² which are often pitched as economic development to host communities.⁷³ The rise of the so-called “prison industrial complex” turned mass incarceration into a lucrative business model.⁷⁴

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

In 2020, there were 10,711,204 individuals incarcerated across the globe,⁷⁵ out of a global population of just over 7.9 billion. The United States is decidedly the global leader in imprisonment.⁷⁶ With under 5% of the world’s population, the United States incarcerates 20% of the world’s prisoners (approximately 2,068,000 individuals).⁷⁷ China is a distant second—having 20% fewer prisoners despite having four times the population.⁷⁸ To put those figures into context, 629 out of every 100,000 Americans are imprisoned,⁷⁹ while in China that figure is five times lower—only 119 out of every 100,000.⁸⁰ 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).

74. See, e.g., RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* (2007); Angela Davis, *Masked Racism: Reflections on the Prison Industrial Complex*, COLORLINES (Sept. 10, 1998), <https://www.colorlines.com/articles/masked-racism-reflections-prison-industrial-complex> [<https://perma.cc/QHC6-QFND>] (connecting dots between mass incarceration, racism, and profits).

75. HELEN FAIR & ROY WALMSLEY, *WORLD PRISON POPULATION LIST*, INST. FOR CRIME & JUST. POL’Y RSCH. 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

81. See, e.g., Laura Silver et al., *Large Majorities Say China Does Not Respect the Personal Freedoms of its People*, PEW RSCH. CTR. (June 30, 2021), <https://www.pewresearch.org/global/2021/06/30/large-majorities-say-china-does-not-respect-the-personal-freedoms-of-its-people/> [<https://perma.cc/2KWX-DW3A>]. Richard Wike et al., *What People Around the World Like – and Dislike – About American Society and Politics*, PEW RSCH. CTR. (Nov. 1, 2021), <https://www.pewresearch.org/global/2021/11/01/what-people-around-the-world-like-and-dislike-about-american-society-and-politics/> [<https://perma.cc/8WS5-XBC8>] (reporting that majorities around the world believe the United States respects personal freedoms of its people).

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.

83. Lauren-Brooke Eisen, *The Federal Funding that Fuels Mass Incarceration*, BRENNAN CTR. FOR JUST. (June 7, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/federal-funding-fuels-mass-incarceration> [<https://perma.cc/N5GJ-V8FJ>].

84. *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/> [<https://perma.cc/GY7K-9TSQ>].

85. *Id.*

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

87. Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, BRENNAN CTR. FOR JUST. (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs> [<https://perma.cc/K9CX-JKWJ>].

88. William E. Farrell, *Governor Signs His Drug Bills and Assails His Critics Again*, N.Y. TIMES (May 9, 1973), <https://www.nytimes.com/1973/05/09/archives/governor-signs-his-drug-bills-and-assails-the-critics-again.html> [<https://perma.cc/K4W3-U4EG>].

89. Jim Parsons et al., *End of an Era? The Impact of Drug Law Reform in New York City*, VERA INST. (Jan. 2015), <https://www.vera.org/downloads/publications/drug-law-reform-new-york-city-summary-01.pdf> [<https://perma.cc/4NGF-WK7K>].

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 2019.⁹⁰ At the federal level, people incarcerated on a drug conviction constitute nearly half the prison population.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.⁹² Most incarcerated individuals are not high-level actors in the drug trade, and most lack a prior criminal record for a violent offense.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,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.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 100,000.⁹⁶

Overall, Black people comprise one-third of the United States prison population despite making up only 12% of the total population.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.⁹⁸ By contrast, white prisoners comprise about 30% of prisoners, roughly half their overall percentage of the population.⁹⁹

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

90. *Trends in U.S. Corrections*, THE SENTENCING PROJECT (May 2021), <https://www.sentencingproject.org/publications/trends-in-u-s-corrections/> [<https://perma.cc/AG2K-ZJFY>].

91. *Id.*

92. *Id.*

93. *Id.*

94. E. Ann Carson, *Prisoners in 2020 – Statistical Tables*, DEP'T. OF JUST. (Dec. 2021), <https://bjs.ojp.gov/content/pub/pdf/p20st.pdf> [<https://perma.cc/62TW-X8J>].

95. *Id.*

96. John Gramlich, *Black Imprisonment Rate in the U.S. Has Fallen by a Third Since 2006*, PEW RSCH. CTR. (May 6, 2020), <https://www.pewresearch.org/fact-tank/2020/05/06/share-of-black-white-hispanic-americans-in-prison-2018-vs-2006/> [<https://perma.cc/6Q38-PBDP>].

97. *Id.*

98. *Id.*

99. *Id.*

United States Commission on Civil Rights referred to as a “racial tax.”¹⁰⁰ 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,¹⁰¹ they are also more likely to be arrested for petty infractions,¹⁰² more likely to be overcharged by prosecutors,¹⁰³ and, if convicted, are more likely to be sentenced to prison and for

100. N.Y. ADVISORY COMM. TO THE U.S. COMM’N ON CIV. RTS., *THE CIVIL RIGHTS IMPLICATIONS OF “BROKEN WINDOWS” POLICING IN NYC AND GENERAL NYPD ACCOUNTABILITY TO THE PUBLIC 12–13* (2018) (describing the racially disproportionate impact of “broken window” policing as a “racial tax.”).

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*, CMTY. SERV. SOC’Y (2018), https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/Stop_and_Frisk_4_16_18_%281%29.pdf [<https://perma.cc/9X5S-2FJN>] (mapping the zip codes with disproportionate stop and frisk).

102. As an example, contrast the disparate treatment of people arrested for subway fare evasion versus the small civil fines imposed on drivers evading tolls and tickets with obscured license plates. Clio Chang, *Fare-Evasion Arrests are Back With a Vengeance*, CURBED (Apr. 11, 2022), <https://www.curbed.com/2022/04/nypd-fare-evasion-arrest-increase.html> [<https://perma.cc/2PB7-4NHM>] (reporting arrest figures); Erik Bascome, *Obstructed License Plates Could Cost You \$300 in Fines*, SILIVE (May 7, 2022), <https://www.silive.com/news/2022/05/how-much-can-new-yorkers-be-fined-for-obstructed-license-plates.html> [<https://perma.cc/XA25-NBG8>] (reporting significant underenforcement and civil penalties only). Even though the offense in both cases is precisely the same—obtaining transit services from MTA without payment—the former become enmeshed in the criminal justice system while the latter do not. New York City’s own statistics show that young Black men are more likely to be accused of fare evasion, and more likely to be arrested for the infraction. *An Analysis of Arrests*, NYC FARE EVASION, <https://nyc-fare-evasion.csail.mit.edu/> [<https://perma.cc/96JP-SKQV>]; Ashley Southall, *Subway Arrests Investigated Over Claims People of Color are Targeted*, N.Y. TIMES (Jan. 13, 2020), <https://www.nytimes.com/2020/01/13/nyregion/letitia-james-fare-beating-nypd.html> [<https://perma.cc/P7NF-YQX5>]. While statistics for those ticketed for obscured license plates are not broken down by race, car ownership is. Those with access to a private car are significantly more likely to be white. *Citywide Mobility Survey 2018*, NYC DOT 96 (Nov. 2018), <https://www1.nyc.gov/html/dot/downloads/pdf/nycdot-citywide-mobility-survey-report-2018.pdf> [<https://perma.cc/J754-DP8Y>].

103. M. Marit Rehavi & Sonja B. Starr, *Racial Disparity in Federal Criminal Sentences*, 122 J. POLIT. ECON. 1320, 1343–45 (2014) (attributing the racial disparities in sentencing Black versus white defendants with the same records, who commit the same offense, to the racialized disparities in how prosecutors initially charge these defendants), <https://www.jstor.org/stable/10.1086/677255> [<https://perma.cc/9YLD-J2TW>].

longer terms.¹⁰⁴ 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,¹⁰⁵ and are punished far more severely.¹⁰⁶ The disparate treatment of individuals, and the divergent social narratives surrounding, the opioid crisis versus the crack cocaine crisis embodies this structural inequality.¹⁰⁷ Indeed, multiple commenters have noted that white

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/Rcedrg00-05.htm> [<https://perma.cc/D5FZ-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.*

105. Benjamin Muller et al., *Surest Way to Face Marijuana Charges in New York: Be Black or Hispanic*, N.Y. TIMES (May 13, 2018), <https://www.nytimes.com/2018/05/13/nyregion/marijuana-arrests-nyc-race.html> [<https://perma.cc/ZB3E-C37D>].

106. *Demographic Differences in Sentencing: An Update to the 2012 Booker Report*, U.S. SENT'G COMM. 1, 6 (2017), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171114_Demographics.pdf [<https://perma.cc/5C95-BEUQ>] (reporting that Black men received sentences 19% longer than similarly situated white men).

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/5SXM-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.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.¹⁰⁹ According to one national survey, 95% of growth in the jail population over the last 20 years is attributable to pre-trial detainees.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.”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,¹¹² even \$500 bail (the typical New York City bail for low-level nonviolent offenses before the

108. Nick Wing, *When the Media Treats White Suspects and Killers Better than Black Victims*, HUFFPOST, (Aug. 14, 2014), https://www.huffpost.com/entry/media-black-victims_n_5673291 [<https://perma.cc/VR4S-WX39>]. David Leonard has written about how American society “manufactures innocence” for straight white men—regardless of their transgressions. David J. Leonard, *The Unbearable Invisibility of White Masculinity: Innocence in the Age of White Male Mass Shootings*, GAWKER (Jan. 12, 2013), <https://www.gawker.com/5973485/the-unbearable-invisibility-of-white-masculinity-innocence-in-the-age-of-white-male-mass-shootings> [<https://perma.cc/2SCL-VMLR>].

109. See, e.g., Peter Wagner, *Jails Matter. But Who is Listening?*, PRISON POL’Y INITIATIVE (Aug. 14, 2015), <https://www.prisonpolicy.org/blog/2015/08/14/jailsmatter/> [<https://perma.cc/STE6-U7YF>] (providing statistics).

110. BUREAU OF JUST. STAT. BULL. NO. 248629, JAIL INMATES AT MIDYEAR 2014 (2015).

111. U.S. CONST. amend. VIII, § 2.

112. See Alicia Adamczyk, *A Record 68% of American Households Said Their Savings Could Cover a \$400 Emergency in 2021*, FORTUNE (May 23, 2022), <https://fortune.com/2022/05/23/record-number-american-households-400-dollar-emergency-savings/> [<https://perma.cc/J48X-PCWU>].

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 misdemeanors 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, 2019-2020 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).

115. Gwynne Hogan, *Detainees Now Spend More than 9 Months on Rikers, An 88 Day Jump, Report Finds*, GOTHAMIST (Oct. 19, 2021), <https://gothamist.com/news/detainees-now-spend-more-9-months-rikers-88-day-jump-report-finds> [<https://perma.cc/DQ5S-VHY5>]. In 2021, more than 70 percent of detainees at Rikers were held for more than 90 days, with 34 percent held for longer than a year. CITY OF N.Y., LOCAL LAW 86: INDIVIDUALS IN DOC CUSTODY, FOURTH QUARTER (2021).

116. Hogan, *supra* note 115.

117. *Id.*

118. See Christian E. Weller & Richard Figueroa, *Wealth Matters: The Black-White Wealth Gap Before and During the Pandemic*, CAP (July 20, 2021) <https://www.americanprogress.org/article/wealth-matters-black-white-wealth-gap-pandemic/> [<https://perma.cc/7CDH-GYDZ>].

119. Nick Pinto, *The Bail Trap*, N.Y. TIMES (Aug. 13, 2015), <https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html> [<https://perma.cc/8Q6N-ZZRW>].

the criminal system “a, if not *the*, primary site of racial injustice in America.”¹²⁰

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.¹²¹ Prison and jail residents are often held in overcrowded, antiquated facilities, many of which have no policies for addressing climate challenges like extreme heat.¹²² 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.¹²³ 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.¹²⁴ For example, many prison and jail facilities have no plans for evacuating residents from their facilities during natural disasters¹²⁵ and even prohibit residents from storing water.¹²⁶

120. Aya Gruber, *Equal Protection Under the Carceral State*, 112 NW. L. REV. 1137, 1139 (2018).

121. Among the more notorious abuse was the practice of Alabama sheriffs pocketing any unspent monies allocated for prison meals. Associated Press, *Enjoying Leftovers: Sheriffs in Alabama Feed Inmates, Keep Extra Cash*, L.A. TIMES (Apr. 28, 2018), <https://www.latimes.com/nation/la-na-alabama-prison-meals-lawsuit-20180428-story.html> [<https://perma.cc/K6BT-ESRR>]. Another example is the extortionist charges that prison residents, and their families, are charged for telephone calls. For details, see *Prison Phone Justice*, <https://www.prisonphonejustice.org/> [<https://perma.cc/KG57-L5L6>].

122. DANIEL W. E. HOLT, HEAT IN US PRISONS AND JAILS: CORRECTIONS AND THE CHALLENGE OF CLIMATE CHANGE 59–62 (SABIN CTR. FOR CLIMATE CHANGE L., 2015).

123. Kim Kelly, *The Climate Disaster Inside America's Prisons*, NEW REPUBLIC (Sept. 18, 2019). For statistics and details, see Holt, *supra* note 122, at 6–16; see also Michael Schwartz, *\$2.25 Million Settlement for Family of Rikers Inmate who Died in Hot Cell*, N.Y. TIMES (Oct. 31, 2014), <https://www.nytimes.com/2014/11/01/nyregion/settlement-for-family-of-rikers-inmate-who-died-in-overheated-cell.html> [<https://perma.cc/6NCY-U2MW>].

124. Melissa A. Saviolis, *Prisons and Disasters* 14–15 (Jan. 2014) (PhD Thesis, Northeastern University) (on file with Northeastern University Digital Library). For a detailed explanation of how prisons limit the ability of residents to take climate adaptative measures, see Paloma Wu & D. Korbin Felder, *Hell and High Water: How Climate Change Can Harm Prison Residents and Jail Residents, and Why COVID-19 Conditions Litigation Suggests Most Federal Courts Will Wait-And-See When Asked to Intervene*, 49 FORDHAM URB. L. J. 259, 262 (2022).

125. Tess Owen, *At Least 650 Inmates in South Carolina Could be Stranded When Hurricane Florence Hits*, VICE NEWS (Sept. 11, 2018), <https://www.vice.com/en/article/d3jzkw/at-least-650-inmates-in-south-carolina-could-be-stranded-when-hurricane-florence-hits> [<https://perma.cc/W29E-HZG5>].

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.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.¹²⁸ His only public comments about the Rikers Correctional Facility and the impending storm was “[d]on’t worry about anyone getting out.¹²⁹ In California, ill-equipped prison residents are regularly deployed in dangerous fire-fighting.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.”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.¹³² The New Orleans Mayor’s mandatory evacuation order

hurricane-south-carolina-once-again-does-not-evacuate-a-prison/ [https://perma.cc/LP64-TJXJ].

127. U.S. DEP’T OF JUST., U.S. DEPARTMENT OF JUSTICE CLIMATE CHANGE ADAPTATION PLAN 1, 16 (2021) (identifying such efforts as “mission critical”).

128. Alyssa Rinaldi, *Why Was Rikers Island Left Out of the Evacuation Plan for Hurricane Sandy?*, NYU LOCAL (Nov. 5, 2012) <https://nyulocal.com/why-was-rikers-island-left-out-of-the-evacuation-plan-for-hurricane-sandy-146a9e162c4b> [https://perma.cc/QN4U-BUYQ].

129. 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.”).

130. Ridgeway & Casella, *supra* note 129.

131. 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).

132. Press Release, ACLU, National Prison Project Calls for Immediate Action by President, Congress and Justice Department (2006), <https://www.aclu.org/press-releases/aclu-report-details-horrors-suffered-orleans-parish-prisoners-wake-hurricane-katrina> [https://perma.cc/B47Z-BJNG].

excluded the prison and its inmates.¹³³ The overwhelmingly Black prison residents were trapped inside their cells, left with no food, water, or electricity for days.¹³⁴ At least 45 people died as a result.¹³⁵ When Hurricane Florence hit more than a decade later, the situation was no better.¹³⁶

Across the country, prisons and jails fail to plan adequately to protect their residents during climate related (and other) disasters.¹³⁷ The intersection of climate vulnerability with structural racism in the criminal justice system makes existing racialized inequalities worse.¹³⁸ The EPA projects that Black, Latinx, and Indigenous Americans are more likely to experience the adverse effects of climate change, in general.¹³⁹ 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.¹⁴⁰ It grew out of the #CloseRikers movement.¹⁴¹ 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.¹⁴² This proposal, described in detail below, offers a plan for restorative justice by completely reimagining Rikers

133. *Id.*

134. Meghan Vumback, *Evacuating the Incarcerated: The Intricacies of Keeping Prisoner's Eighth Amendment Rights Intact During Natural Disasters*, 11 L.J. Soc. JUST. 57, 59 (2019).

135. *Id.*

136. Georgina Rannard, *Hurricane Florence: Prisons in Hurricane's Path Not Evacuated*, BBC (Sept. 13, 2018), <https://www.bbc.com/news/world-us-canada-45509303> [<https://perma.cc/63LQ-6SBL>].

137. See Rachel Shaw, *Up the Creek Without a Paddle: Consequences for Failing to Protect Prisoners During a Natural Disaster*, 9 BARRY ENV'T'L & EARTH L.J. 55 (2019).

138. Wu & Felder, *supra* note 124, at 275.

139. *Climate Change And Social Vulnerability In The United States: A Focus On Six Impacts*, EPA (Sept. 2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf [<https://perma.cc/XP4D-8WKE>].

140. Bratspies, *supra* note 60, at 4.

141. *Id.* at 1.

142. See Rich Calder, *Rikers is 'Lord of the Flies' for Youths: Bharara*, N.Y. POST (Aug. 4, 2014, 8:34 PM), <https://nypost.com/2014/08/04/us-attorney-slams-rikers-as-dangerous-for-young-offenders/> [<https://perma.cc/H56Q-MQUN>].

Island.¹⁴³ 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.¹⁴⁴ *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.¹⁴⁵ 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 1935.¹⁴⁶ The facilities on the island are antiquated, overcrowded, and unsafe.¹⁴⁷ 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.¹⁴⁸ U.S. Attorney for the Southern District of New York, Preet Bharara, described youth incarceration as a “Lord of the Flies” situation,¹⁴⁹ with a “deep-seated culture of violence.”¹⁵⁰ Women held on Rikers Island suffered sexual assault at the hands of guards, who were rarely, if ever, punished.¹⁵¹ Those who live and work on Rikers Island face serious health risks

143. See Bratspies, *supra* note 60, at 22. See also Michael L. Humphreys et al., *Doing Justice: The Role of Ethics in Integrated Ecosystem Management and the Implementation of the Integrated Assessment and Ecosystem Management Protocol*, 15 INTERDISC. ENV’T REV. 183 (2014) (discussing the importance of an Integrated Assessment and Ecosystem Management Protocol (IAEMP) when implementing environmentally ethical policies).

144. 52 SHALANDA H. BAKER, FIGHTING FOR A JUST TRANSITION 144, 150 (NACLA — Report on the Americas, No. 2) (2020).

145. Bratspies, *supra* note 60, at 17–29.

146. For details about the racist history of the Rikers family, see Rebecca Bratspies, *Renewable Rikers: A Plan for Restorative Environmental Justice*, 66 LOY. L. REV. 371, 378 (2020).

147. See Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST (Oct. 21, 2021, 3:10 PM), <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/> [<https://perma.cc/R52J-L75S>]; see also *Statement in Support of Closing Rikers Island*, N.Y.C. BAR ASS’N (Oct. 15, 2019), (on file with author).

148. James Ridgeway & Jean Casella, *America’s 10 Worst Prisons: Rikers Island*, MOTHER JONES (May 14, 2013), <https://www.motherjones.com/politics/2013/05/america-10-worst-prisons-rikers-island-new-york-city/> [<https://perma.cc/YUK3-ZJ2N>].

149. Calder, *supra* note 142.

150. Letter from Preet Bharara, U.S. Att’y, S.D.N.Y., to Bill de Blasio, Mayor of N.Y.C., Joseph Ponte, Comm’r, N.Y.C. Dep’t of Corr., and Zachary Carter, Corp. Couns. of the City of N.Y. (Aug. 4, 2014).

151. See, e.g., Jan Ransom, *She Says Rikers Guards Raped Her, Then Warned: ‘This Never Happened’*, N.Y. TIMES (Dec. 14, 2018), <https://www.nytimes.com/2018/12/14/nyregion/rikers-rape-guards-federal-lawsuit.html> [<https://perma.cc/Q3TK-B8AM>] (reporting that

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

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

rape allegations by women confined at Rikers are double the national average); Benjamin Weiser, *\$1.2 Million City Settlement With Rikers Inmates Who Accused Guard of Rape*, N.Y. 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).

152. See Richard Khavkine, *Landfill Hazard: No Escaping Methane Risk to Workers on Rikers Island*, THE CHIEF (Jan. 2, 2020), <https://thechiefleader.com/stories/landfill-hazard-no-escaping-methane-risk-to-workers-on-rikers-island,3760> [<https://perma.cc/CT9M-QQSQ>]; *Riker's Island Use as Dump Denounced*, N.Y. TIMES, Nov. 27, 1938, at L13, <https://www.nytimes.com/1938/11/27/archives/rikers-island-use-as-dump-denounced-state-correction-board-raises.html> [<https://perma.cc/9MHS-R6R5>]; *COPELAND URGES WIDER SMOKE DRIVE; Senator Says Public Must Be Educated on the Menace to Health of Impure Air. Fumes a Problem at Jail: Board Finds Rikers Island Will Not Be Habitable if Dump Fires Continue*, N.Y. TIMES, Oct. 29, 1931, at 25, <https://www.nytimes.com/1931/10/29/archives/copeland-urges-wider-smoke-drive-senator-says-public-must-be.html> [<https://perma.cc/7Q7J-NYUX>]; *Rikers Island Dumping Nuisance*, N.Y. TIMES, July 8, 1894 at 9; Jarrod Shanahan & Jayne Mooney, *New York City's Captive Work Force: Remembering the Prisoners Who Built Rikers*, 56 INT'L J. L., CRIME & JUST. 13, 21 (2019) (detailing that at the turn of the last century, Rikers Island was vastly expanded by dumping coal ash and other waste into the shoals of the island. Prisoners were forced to do the hard dangerous work of adding this toxic fill).

153. Bruno Gallo, *Airport Noise Footprint Exposed, Path to Mitigation Unclear*, 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).

154. See Raven Rakia, *A Sinking Jail: The Environmental Disaster that is Rikers Island*, 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.

155. *Daily Inmates in Custody*, NYC OPEN DATA (July 1, 2022), <https://data.cityof-newyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb> [<https://perma.cc/WR42-YNA8>]; see also Lippman Commission Report, *infra* note 166, at 25.

156. N.Y.C. DEP'T OF CORR, POPULATION DEMOGRAPHICS FY22 QTR. 3 (2022), https://www1.nyc.gov/assets/doc/downloads/pdf/FY22_Q3_DEMOGRAPHICS.pdf [<https://perma.cc/P3PM-DCWF>].

157. See CITY OF NEW YORK, N.Y., LOCAL LAW 193 (2019), <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYAdmin/0-0-0-128553> [<https://perma.cc/TEX3-VCGH>] (The neighborhoods specifically identified in Local Law 193 of 2019 are South Bronx, Brownsville, East New York, Harlem, and Bedford-Stuyvesant.); see also COMM'N ON CMTY. REINVESTMENT AND THE CLOSURE OF RIKERS ISLAND, REPORT 25 (2021),

that the harms inflicted by incarceration at Rikers falls “disproportionately on communities of color.”¹⁵⁸

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.¹⁵⁹ 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.¹⁶⁰ Meanwhile, prosecutors continued to request pre-trial detention, and judges continued to send vulnerable people to Rikers Island.¹⁶¹

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.¹⁶² *Renewable Rikers* gives us a way to imagine what this

<https://www1.nyc.gov/assets/hra/downloads/pdf/hra-docs/Commission-Community-Reinvestment-Report.pdf> [<https://perma.cc/C4HE-P8RZ>] (identifying priority neighborhoods).

158. See, e.g., Letter from The Hon. Jonathan Lippman, in INDEP. COMM’N ON N.Y.C. CRIM. JUST. AND INCARCERATION REFORM, A MORE JUST N.Y.C. (2017), <https://static1.squarespace.com/static/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf> [<https://perma.cc/S5M5-MJX5>].

159. 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>].

160. KATE McMAHON, 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>].

161. Nick Pinto, *Judge Tried to Send Immunocompromised Homeless Man Accused of Stealing Blanket to Rikers*, INTERCEPT (Sept. 28, 2021, 5:35 PM), <https://theintercept.com/2021/09/28/rikers-island-crisis-judges-bail/> [<https://perma.cc/2NBW-NH2K>]; Gloria Pazmino, *Amid Rikers Island Crisis, District Attorneys Accused of Failing to Act*, SPECTRUM NEWS (Sept. 23, 2021, 9:36 PM), <https://www.ny1.com/nyc/all-boroughs/politics/2021/09/24/rikers-island-nyc-crisis-district-attorneys-accused-of-failing-to-act-high-bail-requests> [<https://perma.cc/C2HC-5MHF>].

162. N.Y.C. Comptroller, NYC Department of Corrections FYs 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/j098zd988?locale=en [<https://perma.cc/DZ5F-G98C>]. In 2021, the Department of Corrections had 7,288 Correction Officers. *Compare N.Y. CITY DEP’T OF CORR., UNIFORM PERSONNEL DEMOGRAPHICS DATA (2021)*

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).¹⁶³ 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.¹⁶⁴ The Lippman Commission was explicitly tasked with considering racial justice as part of "tak[ing] our criminal justice system out of the shadows – and finally address[ing] the institutional racism which has plagued it for far too long."¹⁶⁵ The next year, the Lippman Commission issued its first report titled *Criminal Justice and Incarceration Reform: A More Just New York*.¹⁶⁶ Among its most prominent recommendations were closing the Rikers Island Correctional facility which

<https://www1.nyc.gov/assets/doc/downloads/pdf/FINAL%202021%20DOC%20STAFF%20DEMOGRAPHIC%20REPORT.pdf> [<https://perma.cc/ZJ8R-F9CS>] and *Average Daily Population*, N.Y.C. Dep't of Corr. (2021) [<https://www1.nyc.gov/site/doc/about/average-daily-population-2021.page>] [<https://perma.cc/6YKF-RWHG>] (showing average daily jail population was less than 6,000), 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).

163. Press Release, New York City Council, Speaker Mark-Viverito Delivers 2016 State of the City Address (Feb. 11, 2016), <https://council.nyc.gov/press/2016/02/11/47/> [<https://perma.cc/JAM5-ZUQU>].

164. Gloria Pazmino, *Lippman Announces Members of Criminal Justice Commission*, POLITICO (Mar. 17, 2016), <https://www.politico.com/states/new-york/city-hall/story/2016/03/lippman-announces-members-of-criminal-justice-commission-032484> [<https://perma.cc/N8Q9-8P8N>].

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/5b6de4731aef1de914f43628/t/5b96c6f81ae6cf5e9c5f186d/1536607993842/Lippman%2BCommission%2BReport%2BFINAL%2BSingles.pdf> [<https://perma.cc/S5M5-MJX5>].

had become a “stain on our great city,”¹⁶⁷ and eliminating cash bail entirely.¹⁶⁸ 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.¹⁶⁹

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 2026.¹⁷⁰ When he signed the legislation, then-Mayor Bill DeBlasio declared that “the era of mass incarceration [wa]s over.”¹⁷¹ Part of implementing that legislation involved adopting decarceration as an official policy goal.¹⁷² 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 REMPEL & KRISTAL RODRIGUEZ, BAIL REFORM REVISITED: THE IMPACT OF NEW YORK’S AMENDED BAIL LAW ON PRETRIAL DETENTION 2-4 (2020), https://www.courtinnovation.org/sites/default/files/media/document/2020/bail_reform_revisited_05272020.pdf [<https://perma.cc/ZF5X-QZGN>] (providing more details).

169. Jonathan Lippman & Melissa Mark-Viverito, *Closing Rikers Island is a Moral Imperative*, N.Y. TIMES (March 31, 2017), <https://www.nytimes.com/2017/03/31/opinion/closing-rikers-island-is-a-moral-imperative.html> [<https://perma.cc/4FVJ-67QM>].

170. Press Release, N.Y.C. Council, Council Votes on Historic Legislation to Close Rikers Island (Oct. 17, 2019), <https://council.nyc.gov/press/2019/10/17/1818/> [<https://council.nyc.gov/press/2019/10/17/1818/>]; but see Rachel Holiday-Smith, *Manhattan Jail Design Forges Ahead Even as Plan to Replace Rikers is Delayed Until 2027*, CITY (Oct. 19, 2020, 8:02 PM), <https://www.thecity.nyc/2020/10/19/21524219/manhattan-jail-tombs-replace-rikers-delayed-nyc> [<https://perma.cc/2HRZ-K98J>] (discussing that among the many impacts that COVID-19 had on New York City, it also delayed this critical deadline for closing Rikers Island. Rikers is now slated to be closed by August 2027); see also Rachel Holiday-Smith & Reuven Blau, *Close-Rikers Jail Plan Faces Pandemic-Driven Delay as Budget’s Cut by \$500M*, CITY (Dec. 8, 2020, 9:01 PM), <https://www.thecity.nyc/2020/12/8/22164575/close-rikers-jail-plan-faces-pandemic-driven-delay-as-budgets-cut> [<https://perma.cc/A938-JYE7>] (detailing further delays that have been floated, indicating that the City has suggested delaying closing Rikers by another two years).

171. Bill de Blasio, Mayor of New York City, Mayor de Blasio Holds Media Availability on the Approval of the Plan to Close Rikers Island (Oct. 17, 2019) (transcript available at <https://www1.nyc.gov/office-of-the-mayor/news/493-19/transcript-mayor-de-blasio-holds-media-availabiltiy-the-approval-the-plan-close-rikers> [<https://perma.cc/3M8Q-SAF3>]).

172. N.Y.C. MAYOR’S OFF. CRIM. JUST., SMALLER, SAFER, FAIRER: A ROADMAP FOR CLOSING RIKERS ISLAND 7-8 (2018), <https://criminaljustice.cityofnewyork.us/reports/smaller-safer-fairer-copy/> [<https://perma.cc/Y9E5-KMS6>].

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.”¹⁷³ One distinctive aspect of this campaign was that it was led by people with lived experience with incarceration on Rikers Island.¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶ This was the genesis of *Renewable Rikers*—a true embodiment of the Jemez principle that communities speak for themselves.¹⁷⁷

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.¹⁷⁸ 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.¹⁷⁹ What emerged was a transformative, restorative vision for a new way of doing things—a new way of siting polluting

173. #CLOSERikers, JUSTLEADERSHIPUSA, <https://jlusa.org/campaign/closerikers/> [<https://perma.cc/4D97-69DL>].

174. See *Movement to Close Rikers Island*, URB. JUST. CTR., <https://fa.urbanjustice.org/about/closerikers/> [<https://perma.cc/X999-UYT8>] (displaying one famous photograph showing advocates holding a banner that proclaims “We survived Rikers. Rikers will not survive us!”).

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).

176. Costa Constantinides & Melissa Iachan, *The Energy Behind the Renewable Rikers Vision*, GOTHAM GAZETTE (Dec. 11, 2019), <https://www.gothamgazette.com/overview/130-opinion/8979-energy-behind-renewable-rikers-vision> [<https://perma.cc/Ry3U-YM6Y>]; Urban Justice Center, *Issue Brief #6: The Future of Rikers Should Be Determined By The People and Communities Harmed By Its Legacy*, https://fa.urbanjustice.org/wp-content/uploads/sites/22/2021/01/IB_6.pdf [<https://perma.cc/SJY8-3LVK>].

177. SW. NETWORK FOR ENV’T & ECON. JUST., JEMEZ PRINCIPLES FOR DEMOCRATIC ORGANIZING (1996), <https://www.ejnet.org/ej/jemez.pdf> [<https://perma.cc/PYG9-24T4>].

178. JUSTLEADERSHIPUSA, *supra* note 173.

179. NYPLU Celebrates as City Council Passes the Renewable Rikers Act, N.Y. LAW. FOR THE PUB. INT. (Feb. 12, 2021), <https://www.nylpi.org/nylpi-celebrates-as-city-council-passes-the-renewable-rikers-act/> [<https://perma.cc/5LUX-8YTX>].

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*.¹⁸⁰ 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.¹⁸¹ 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.¹⁸² 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.¹⁸³

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).¹⁸⁴ Twice a year, the

180. I have written elsewhere about the *Renewable Rikers* plan itself. See Rebecca Bratspies, *Renewable Rikers: A Plan for Restorative Environmental Justice*, 66 *LOY. L. REV.* 371, 372 (2021).

181. CITY OF NEW YORK, N.Y., LOCAL LAW 16 (2021), <http://nyc.legistar1.com/nyc/attachments/26f07d23-c124-44b6-ac00-5860aef8631f.pdf> [<https://perma.cc/MKT3-T6FU>]; CITY OF NEW YORK, N.Y., LOCAL LAW 17 (2021), <http://nyc.legistar1.com/nyc/attachments/6f859e04-8ba6-4349-9d7d-df823f67a2bd.pdf> [<https://perma.cc/Y95C-ASZ4>]; CITY OF NEW YORK, N.Y., LOCAL LAW 31 (2021), <http://nyc.legistar1.com/nyc/attachments/40aae8db-a218-4976-8e42-5719bc06e3c0.pdf> [<https://perma.cc/D994-CP4M>].

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”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.”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.¹⁸⁷ JATC was the first permanent jail built on Rikers Island and formerly served as a 1200 bed jail.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.¹⁸⁹ In December 2021, just as he was leaving office, Mayor DeBlasio made a second, much more extensive transfer to DCAS.¹⁹⁰ This second transfer involved 43 acres of vacant land on the island.¹⁹¹

Local Law 16 also mandates that the city establish a Rikers Island advisory committee.¹⁹² This advisory committee is composed of 15 members—six government officials and nine members of the public.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.

187. Press Release, City of New York Dep’t of Corr., Transfer of James A. Thomas Ctr. to Dep’t of Citywide Services, <https://www.nyc.gov/site/doc/media/james-thomas-center.page> [<https://perma.cc/5NKA-LN5E>].

188. *Id.*

189. *Renewable Rikers Coalition Welcomes Announcement on Island’s First Land Transfer, Urges Mayor de Blasio to Transfer Additional, Unused Rikers Acreage Before Term Ends*, N.Y. LAW. FOR THE PUB. INT. (July 13, 2021), <https://www.nylpi.org/renewable-rikers-coalition-welcomes-announcement-on-islands-first-land-transfer-urges-mayor-de-blasio-to-transfer-additional-unused-rikers-acreage-before-term-ends/> [<https://perma.cc/A9HF-WZYY>].

190. Press Release, City of New York Dep’t of Corr., Dep’t of Corr. Transfers Rikers Island to Dep’t of Citywide Admin. Services (Dec. 30, 2021), <https://www.nyc.gov/site/doc/media/doc-transfers-rikers-land.page> [<https://perma.cc/2CEU-3GSL>].

191. *Id.*

192. LOCAL LAW 16, *supra* note 181, at 3.

193. *Id.* at 3–4.

term planning and sustainability or their designees.¹⁹⁴ Of the public members, two are mayoral appointments and seven are appointed by the City Council speaker.¹⁹⁵ 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.”¹⁹⁶ At least three of the public members must have expertise in environmental justice or sustainability.¹⁹⁷ 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.”¹⁹⁸

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.¹⁹⁹

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.*

199. *See, e.g.*, VIRGINIA EUBANKS, AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR (2018).

solutions.²⁰⁰ 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.²⁰¹

By bringing such an array of epistemic diversity to the collective endeavor, this Committee will almost certainly explore new paths in policy-making. This is particularly important because skewed problem-formation can encode bias into seemingly neutral systems, producing significantly biased downstream effects.²⁰² Research shows that diversity of experience and perspective is particularly valuable in "problem posing, problem construction or hypothesis generation."²⁰³ And, decisions made at these early stages can have "a profound impact" on how policy choices impact various communities, most notably already marginalized communities.²⁰⁴ 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,²⁰⁵ it is particularly important that the *Renewable Rikers*

200. Max Nathan & Neil Lee, *Cultural Diversity, Innovation, and Entrepreneurship: Firm-Level Evidence from London*, 89 *ECON. GEOGRAPHY* 367 (2013).

201. LOCAL LAW 193, *supra* note 157.

The Commission on Community Investment and the Closure of Rikers Island was created by Local Law 193 of 2019. The Commission is tasked with making recommendations about ways to invest in the communities that have been "disparately impacted by mass incarceration to address the drivers of mass incarceration." *Id.* Eleven of the members must either have been formerly incarcerated or directly impacted by incarceration. *Id.*

202. DONALD MARTIN ET AL., PARTICIPATORY PROBLEM FORMATION FOR FAIRER MACHINE LEARNING THROUGH COMMUNITY BASED SYSTEMS DYNAMICS 1 (INT'L CONF. ON LEARNING, 2020), <https://arxiv.org/pdf/2005.07572.pdf>, [<https://perma.cc/CRW6-SP4B>].

203. Justin Sulik et al., *The Diversity Gap: When Diversity Matters for Knowledge*, 17 *PERSP. PSYCH. SCI.* 1, 1 (2021) (arguing that epistemic and cognitive diversity is good for complex problem solving).

204. Martin, *supra* note 202, at 1.

205. SW. NETWORK FOR ENV'T & ECON. JUST., *supra* note 177. Indeed, "let people speak for themselves" is Principle 3 of the Jemez Principles for Democratic Organizing. *Jemez Principles for Democratic Organizing* (1996), <https://www.ejnet.org/ej/jemez.pdf>

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.²⁰⁶ 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*.²⁰⁷ *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.²⁰⁸ At that meeting, mayoral representatives, including the office of climate and environmental justice,²⁰⁹ met with representative from the departments of environmental protection, buildings, corrections, sanitation and parks and six of the nine public appointees.²¹⁰ The meeting was virtual and was held

[<https://perma.cc/G9VQ-2DB7>]. For an explanation and elaboration of the Jemez Principles, see José Bravo, *Listening to the Frontlines: The Jemez Principles* in CLIMATE, JUSTICE AND ENERGY SOLUTIONS (Dargan M. W. Frierson, ed., undated).

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

207. *Lex lata*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/acref/9780191758256.001.0001/acref-9780191758256-e-1869?rkey=WPUHKb&result=1> (last visited Jul. 22, 2022) [<https://perma.cc/C35X-NK2E>]; *Lex ferenda*, OXFORD REFERENCE, <https://www.oxfordreference.com/view/10.1093/acref/9780191758256.001.0001/acref-9780191758256-e-1868?rkey=o40Yct&result=1> (last visited Jul. 22, 2022) [<https://perma.cc/9WVV-5S3W>].

208. Iachan, *supra* note 206.

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

210. *Id.*

nine months after the legislatively imposed deadline.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.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.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.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.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.²¹⁶ Despite her erstwhile strong support for closing Rikers, Speaker Adams’s failure to appoint critical

211. *Id.*

212. Gabrielle Fonrouge, *NYC Shutting Down Rikers Facility Over Staffing Crisis, Conditions*, N.Y. POST (June 17, 2022), <https://nypost.com/2022/06/17/nyc-closing-rikers-island-facility-over-staffing-crisis/> [<https://perma.cc/6BZE-P8EC>]. The Otis Bantum facility had been slated for closure before Covid. *NYC Closing Manhattan Detention Complex, Otis Bantum Correctional Center on Rikers Island*, CBS.COM (Oct. 10, 2020), <https://www.cbsnews.com/newyork/news/manhattan-detention-complex-closing/> [<https://perma.cc/BR7N-HKHN>]. The December 2022 deadline has come and gone without the Adams administration turning over any more lands to DCAS.

213. See Samantha Maldono, *City Jails Won’t Turn Over Shuttered Rikers Island Building on Path to Green Island*, THE CITY (June 29, 2022), <https://www.the-city.nyc/2022/6/22/23179271/nyc-doc-keeping-shut-rikers-building> [<https://perma.cc/YS4D-GHEQ>].

214. *Id.* (quoting Melissa Iachan).

215. *Id.*

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

217. *Council Approves Borough-Based Jail Plan, Clearing Path to Close Rikers*, Brooklyn Daily Eagle (Oct. 20, 2019), <https://brooklyneagle.com/articles/2019/10/17/liveblog-the-historic-vote-to-construct-four-new-jails-is-today-heres-how-its-going/> [<https://perma.cc/UE55-728L>].

218. See, e.g., Carrie Menkel-Meadows, *Restorative Justice: What is it and Does it Work*, 3 ANN. REV. L. & SOC. SCI. 161, 164 (2007).

219. HOWARD ZEHR, CHANGING LENSES: RESTORATIVE JUSTICE FOR OUR TIMES 32-35 (2015).

220. Brian J. Preston, *The Use of Restorative Justice for Environmental Crime*, 35 CRIME L. J. 1, 2 (2011).

221. Richard J. Wallsgrave, *Restorative Energy Justice*, 40 UCLA J. ENV'T. L. & POL. 133, 179-80 (2022); Helen H. Kang, *Looking Toward Restorative Justice for Redlined Communities Displaced by Eco-Gentrification*, 26 MICH. J. RACE & L. 23, 40-42 (2021).

222. For a compelling discussion of how environmental justice holds the potential to do this more generally, see Sumudu Atapattu & Carmen G. Gonzalez, *The North-South Divide in International Environmental Law: Framing the Issues*, INT'L ENV'T LAW & THE GLOBAL SOUTH 1, 13 (2015) (Shawkat Alam et al. eds., 2015).

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

223. Darren McCauley & Raphael Heffron, *Just Transition: Integrating Climate, Energy and Environmental Justice*, 119 ENERGY POL'Y 1, 1 (2018) (describing a just transition as including distributional, procedural, and restorative justice).