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Whole of Government, Society and Person

THE LEGAL PATH TO A WHOLE OF GOVERNMENT OPIOIDS RESPONSE: PART 6

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Executive Summary

Having a drug problem is not just about the drugs. A person with an opioid or other substance use disorder may have many other challenges as well as countervailing strengths and resources for coping and returning to full well-being. A strong, well-coordinated public response to substance use disorder (SUD) and overdose considers the whole person involved and aims to address all their challenges and support all their strengths. Effective drug treatment is important to recovery, but so are housing, a vocation, family ties, community reintegration, and a sense of hope for the future. Likewise, dangerous drug use is not simply an individual failing. The United States has an unparalleled rate of drug use and drug death, which can only be properly understood as reflecting conditions in our whole society. Overcoming unhealthy drug use in America requires Whole of Government action across domains of health care, drug policy, public health, housing, education, economic development, and tax policy to change the social conditions that impel too many people into risky and self-harming behavior. In this final paper in our series, we turn to the question of how social structural factors influence the opioid epidemic — and what law can do about them.

Introduction

So far, the reports in this series have addressed the many ways law can get in the way of (or support) a "Whole of Government" (W-G) response to substance use disorders and drug overdose. W-G is shorthand for broad efforts that are well-coordinated. Looking beyond better cooperation between health and criminal justice agencies explicitly tasked with drug-related work, W-G points to other sectors like housing, education, social support, and economic development as having important contributions to make. In that way, W-G also widens the lens on the opioid crisis; it points to the deeper social drivers of unhealthy individual drug use — such as economic and racial inequality — and to the broader set of challenges individual drug users face — homelessness, inaccessible mental health care, criminal records — as they struggle with dangerous drugs and substance use disorder. In this final paper in our series, we turn to the question of how social structural factors influence the opioid epidemic — and what law can do about them.

We begin by introducing a simple framework showing how a Whole-of-Government strategy can support action addressing both the Whole Person and the Whole Society. We then show how a Whole Person approach recognizes that individuals with SUD are more than just their diagnosis: they have a broader range of needs that may interfere with their recovery and important capacities that may support it; the tools of law can be used to support comprehensive and flexible responses that can work with people in all their complexity. Looking beyond the individual, we then show how a Whole Society approach looks upstream at how our social and economic conditions produce so much downstream SUD, and how law can both change unhealthy structural factors and reduce their negative effects.

SUD: Seeing the Whole Person in the Whole Society

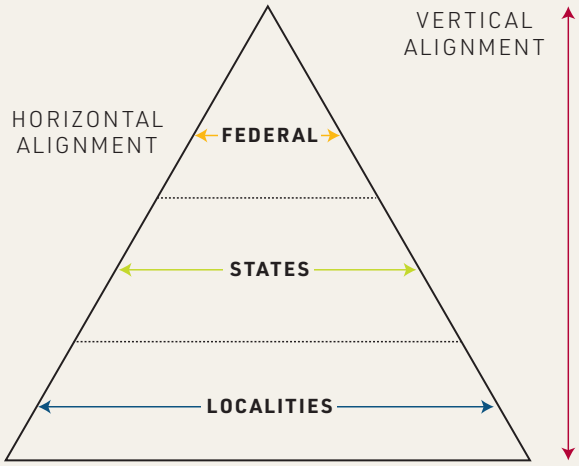
A person who has been using opioids unsafely for a while is not just at risk of overdose, and they don't just have a drug problem. Their use could be causing, or be caused by, untreated mental illness. Their mental illness could be related to economic distress: not having a job or worrying about money — or adverse child experiences visited upon them by parents facing these kinds of troubles. Chances are, if they are having money problems, they are having housing problems, or they have lost their housing, and all that will be complicating or sundering their social support networks. If some part of their identity — their race, class, gender identity, disability, sexual orientation — is stigmatized along with their drug use, they will be facing rejection and blame as they seek help and support. If they have been using drugs for a long time, they likely have multiple health problems from hepatitis to serious

wound infections, and they also probably have some record of police involvement, maybe even convictions that bar them from certain housing and other benefits. Providing that person with a slot in drug treatment, no matter how effective that treatment mode is, will not address the other problems that have gotten them into or helped keep them in a chronic pattern of unhealthy drug use. This person doesn't just need treatment — they need an intervention approach that aims to deal with all their interlocking challenges and the resources of strength and resilience that have kept them going this long — a response that addresses the whole person, not just the drug user.

The idea of "whole person health" (also called "whole health" or "whole person") has been gaining traction for some time. It may be defined as "an approach that considers multiple dimensions of the patient and their context, including biological, psychological, social, and possibly spiritual and ecological factors, and addresses these in an integrated fashion that keeps sight of the whole" (Thomas, Mitchell, Rich, & Best, 2018). Promoting this approach, Surgeon General Vivek Murthy has emphasized "providing the tools and resources that individuals and communities need to face today's challenges before they develop downstream consequences" (Murthy, 2023). The approach is applicable to any condition, from diabetes to hypertension, because no person is just their disease and even something as theoretically simple as adhering to a medication plan actually depends on all sorts of contextual factors driving the patient's behavior. A whole person viewpoint also recognizes that people using drugs also have something to contribute to their own health and that of others. Current and former drug users have long taken active roles in treatment (e.g., 12 step and other peer recovery support models (Eddie et al., 2019)) and harm reduction (Kerr et al., 2006), and it important to see past the stigma to the many strengths, forms of expertise and motivation that drug users can contribute.

Like people with SUD, the United States doesn't just have a drug problem. The United States has far more people suffering from their drug use than peer countries (Baumgartner, Gumas, & Gunja, 2022; Ho, 2019). Looking at the country invites the same sort of inquiry as a look at the individual: what else is going on? Why is there so much more drug-related mortality here than anywhere else? The flood of oxycodone that pharma companies unleashed under lax Food and Drug Administration (FDA) and Drug Enforcement Agency (FDA) oversight was a uniquely United States factor but doesn't explain why the country was so vulnerable or why the crisis persists. The individual risk factors do provide a guide to other social drivers or the way our society is organized in ways that make it so hard for people to be healthy (Galea & Vlahov, 2002; Link & Phelan, 1995).

DEFINING WHOLE-OF-GOVERNMENT



Through the Whole-of-Government approach, we gain an improved understanding of the design and implementation of conventional drug policy. The W-G perspective provides both a lens through which to critique current levels of alignment and misalignment between different levels of government or agencies at the same level, and a normative tool designed to structure reforms. What is required for effective policy making is comprehensive, coordinated government action across the different agencies at one level of government (be it federal or state), what we term *horizontal* W-G, and between different levels (federal, state, tribal, and local), what we term *vertical* W-G.

People feel stress, depression, and anxiety because, for too many, America has become a very hard place to thrive. Chronic stress is a predictable problem in a country where people can work 40 hours each week and still not make enough money to address their basic needs, where their working hours are unpredictable and their housing takes half their pay or more, and where their kids are not safe at school. They may be in despair about what has happened with their communities, cut off from their neighbors and worried that nothing can get better. People facing serious stress or mental illness have trouble getting mental health care because they live in a place with a broken mental health system. Feckless politicians are whipping up anxiety about just about every aspect of society, and undermining trust in government. Meanwhile, a culture of blame and stigma persists about substance use disorders, in which the barriers and challenges people face are projected onto them as moral failings, poor decisions, or racial or class characteristics. These attitudes become justifications for social inaction and disdain. Recognizing that the whole

society can and should make changes points to legal levers we can pull to address the social factors that drive what have been aptly called “deaths of despair” (Case & Deaton, 2021).

This big picture can feel overwhelming. It is hard enough to provide basic health care and drug treatment for people at risk of overdose. How can health, social service, or criminal justice workers deal with so many other problems for an individual patient, let alone change society? These are hard questions, and despite the broad impact of the “deaths of despair” research on how people think about the crisis, many experts write off action addressing social factors as unlikely to make a difference (Humphreys et al., 2022). That’s wrong, both morally and practically.

We think Americans can and should take on the social drivers of our opioid problem for two very good reasons. First, it is possible to treat each patient as a whole person and deal with the broader set of challenges they face. That’s how many of our peer countries manage drug problems, and how many health care providers and social workers try to work in spite of our uncooperative health care and social service systems (Bourgois, Holmes, Sue, & Quesada, 2017). We will highlight a whole set of actionable policy changes already referenced in other reports in this series that can help the health system treat the whole person and also begin to reduce the structural pressures on people that drive unsafe opioid use. The second reason is even simpler: if the health system and policymakers don’t start to methodically address the root causes of our opioid epidemic, with individual patients and with our whole society, the United States will continue to fail to stem the tide of drug-related harm. No amount of dealing with symptoms will be as effective as preventing the disease in the first place. Even the objection that changing social determinants will take too long fails when we consider that we have been throwing resources at symptoms for more than two decades without success.

Whole Person: legal responses to complicated people with multifaceted challenges

A whole person strategy for SUD recognizes that every person whose substance use threatens their health has their own set of intersecting risk factors, including their genes, their socioeconomic position, their race and gender expression, their state of overall mental health, and the conditions of the markets where they get their drugs. Health care providers, social workers, police, prosecutors, and judges all have the opportunity to engage, but unfortunately a whole person approach can be difficult to put into practice in our fractured health and social services system. Doctors don’t normally provide housing. Judges don’t have jobs to offer, nor police officers food stamps to distribute. From the W-G perspective, many simple steps — like “prescribing” housing for SUD patients or providing safe injection spaces — are often not authorized or downright illegal. More broadly, the many systems and agencies that need to work together are not doing so; changing the law won’t remove all the barriers, but it can help.

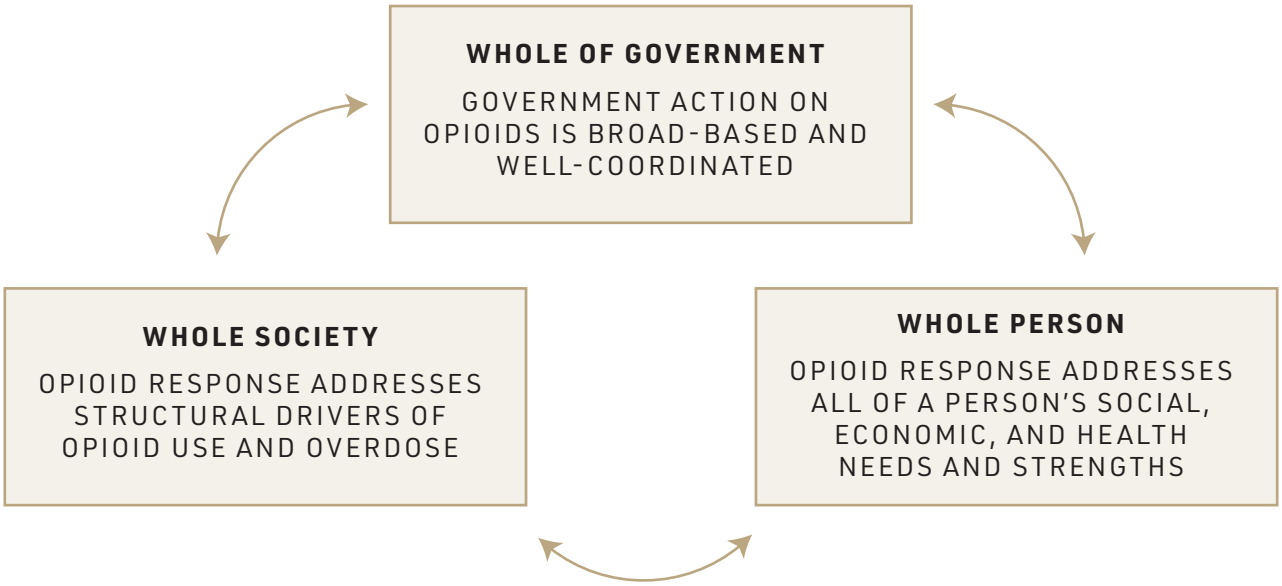


Figure 1: The Whole Picture

Other papers in this series have highlighted ways that reforms to improve W-G coordination can enhance the capacity of our health care system to address the whole person. These include, for example:

- Building a new Ryan White-like funding model that gives providers the resources they need to comprehensively treat all a patient's needs, including housing, nutritional supports, and other care coordination not traditionally provided through Medicaid.
- Removing regulatory restrictions that limit methadone treatment in all relevant care settings, including allowing licensed physicians to prescribe methadone and reforms to make a default "take-home" approach to methadone maintenance treatment.
- Make telehealth for medication for opioid use disorder (MOUD) a fully accepted mode of access.
- Removing legal barriers to comprehensive overdose prevention centers so that people not only have sterile equipment for drug use but also a safe place to consume their drugs.
- Amending laws and changing implementation practices to prevent child welfare laws related to drug use during pregnancy from being a barrier to prenatal or other treatment for drug users who are pregnant.
- Expanding Medicaid everywhere so people with or at risk of developing substance use disorders have access to behavioral health, pain care, and SUD treatment as needed.
- Change Medicaid enrollment rules and practices so that eligible people can get covered quickly (including people going in and out of incarceration) and stay covered without bureaucratic interruptions.

The US health care system is largely made up of private rather than government providers and institutions, a major cause of care fragmentation (Terry, 2020), particularly for people with dual diagnoses of mental illness and SUD (Anthony, Catterson, & Campanella, 2021) and a major hurdle for a Whole of Government approach to improving treatment. Although our health care institutions are largely private, a W-G lens can still help us see ways that law can improve the incentives for coordination and cooperation in health care, and not just with other providers but also social services. For example, Patient-Centered Medical Homes, encouraged by Section 2703 of the Affordable Care Act, have the potential to improve behavioral health integrated care (Kessler et al., 2014). Medicaid Section 1115 waivers that promote coordinated care between public carceral facilities and private Medicaid managed care providers have considerable potential (Centers for Medicare & Medicaid Services, 2023), as do a raft of other Section 1115 waivers that states can apply for to demonstrate the potential for improving care coordination and upstream determinants (Kaiser Family Foundation, 2023).

A whole person approach doesn't just require change in the health system; it requires changes in attitudes, too. One cannot treat the whole person until one sees — and accepts — the whole person. There is room for innovation in health care, such as deploying tools like the medical vulnerability assessment questionnaire (Bourgois et al., 2017) to help clinicians and social service providers recognize broader vulnerabilities and manage the biases that lead to racial and other disparities in care. But law has played an important role in perpetuating negative, stigma-ridden visions of people who use drugs.

Criminalization of drug use and the stigma, moralizing and blame it embodies certainly has influenced the way health and social service providers see and interact with drug users (Muncan, Walters, Ezell, & Ompad, 2020; van Boekel, Brouwers, van Weeghel, & Garretsen, 2013). As NIDA Director Nora Volkow has written, "Punitive policies around drugs mark people who use them as criminals, and so contribute to the overwhelming stigma against people contending with an often-debilitating and sometimes fatal disorder..." (Volkow, 2021).

Decisively rejecting criminalization would be a giant step toward better treatment of people who use drugs (Dasgupta, 2023; Gottschalk, 2023). It can start with de facto decriminalization through decisions not to make arrests or prosecute cases for minor drug possession offenses (Del Pozo et al., 2021; Stevens, Hughes, Hulme, & Cassidy, 2022), and reforming child welfare laws and enforcement so that pregnant drug users are not afraid to seek prenatal and other care (McCourt et al., 2022).

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Signaling a step back from arrest is also important to remove barriers to accessing services like syringe exchange, and to create sufficient social space to allow the founding and operation of drug user-led organizations like the Vancouver Area Network of Drug Users and Vocal NY User's Union.

Laws that remove barriers to government benefits and services can give willing providers tools to help the whole person and can remove the barriers that make holistic treatment difficult or impossible. Removing restrictions on services like housing for people with a record of drug law violations would make it that much easier for care providers to help meet those needs. Federal regulations for public housing still mandate denial of housing for current drug users, without any finding that the drug use is causing harm to others or the premises; the same rules bar people who have been evicted for drug use in the past three years, regardless of whether they were causing problems in the first place or have recovered from a substance use disorder (24 CFR §982.553). These regulations are broadly written, for example not defining the time limits of "current" drug use, and leave considerable discretion for local housing agencies to make stricter rules (Purtle et al., 2020). The Department of Housing and Urban Development has stated denying housing purely on the basis of a criminal record violates the Fair Housing Act (McCain, 2022), but many local public housing agencies have a long way to go to implement this guidance (Muñoz-Jones & Widra, 2023).

Pardon or expungement of past drug law convictions is another way to help, since a criminal record can be a disqualifier for various jobs and licenses, including, ironically, a license to run a commercial cannabis business (Yang, Berg, & Burris, 2023). In 2022, President Biden issued a blanket pardon of federal convictions for simple cannabis possession (The White House, 2022). That was an important gesture, but most such convictions arise under state law, and more than half the states have yet to do the same. Even in the states that have, the ease of the process (and so impact) vary. For maximum impact, the process should be universal, automatic, and not require any action or request from the person being cleared. New York's cannabis decriminalization law included automatic expungement for convictions arising from possessing up to 16 ounces or selling up to 25 grams of cannabis (N.Y. Crim. Pro. § 160.50 (McKinney 2021)) and a process to through which individuals can seek to havce other convictions vacated or dismissed (N.Y. C.P.L Law § 440.46(a) (McKinney 2021)).

There is no overstating the moral and practical imperative to help individuals deal with their full range of problems, but in the larger perspective this will never be a substitute for creating communities where people have fewer problems in the first place. That's why we conclude with an exploration of the relationship among social determinants of health, structural factors, W-G approaches, and the law.

Law in a Whole Society Response

Drug use and its patterns of harm in America reflect the state of the society (Galea & Vlahov, 2002), and law has an important place in the whole society picture. Law is a key mechanism through which power, wealth, income, and education are allocated in society, and then law operates every day to sort people to different exposures and protections based on their social position (Burris, Kawachi, & Sarat, 2002). The growth of economic inequality in this country over the past half century has been caused in significant degree by legal changes: in the tax code, which became drastically less progressive and redistributive; in labor law, which has become far less enabling of union organizing and collective bargaining; and in election law, which has allowed the steady expansion of gerrymandered, "safe" districts that do not reflect the diversity of populations or political views (Peterson Institute for International Economics, 2020). There is increasing evidence of the broad impact of politics and policies on health and well-being — and vice versa. Egalitarian policies, more progressive health and social welfare systems, strong labor influence, and well-functioning democratic life all go together (Chung & Muntaner, 2006; Jennifer Karas Montez et al., 2020; J. K. Montez, Cheng, & Grumbach, 2023; Jennifer Karas Montez et al., 2022; Muntaner et al., 2011; Navarro et al., 2006; Raphael & Bryant, 2004; Wilkinson & Pickett, 2009; D. A. Wolf, Monnat, & Montez, 2021; D. A. Wolf, Montez, & Monnat, 2022).

Law visits harm on people both directly and by omission. Arrest and incarceration are characteristic traumas regularly visited on people who use drugs, but law also does harm by failing to take action to reduce vulnerability and forestall harmful behavior by others. Princeton University sociologist Matthew Desmond has recently made the case powerfully that one of the ongoing forces maintaining people in poverty is common, if not systematic, economic predation on the poor through conditions law can address, like exploitative rents, predatory lending, and relentless court fines and fees (Desmond, 2023).

Law operates actively to create vulnerabilities and sort people to differing exposures and outcomes based on their social position. Law constituted chattel slavery, and ever since has been consistently used in ways that re-subordinate or undermine economic and educational opportunity for Black people (Alexander, 2010; Blackmon, 2008; Rothstein, 2017). Race was behind the US decision to reject universal health care after World War II and one of the reasons that so many were excluded when Medicaid

was enacted into law. Ten states continue to reject Medicaid expansion for the same reason the Affordable Care Act of 2010 became politically toxic — most of the newly insured would be Black people (Grogan & Park, 2017; Lanford & Quadagno, 2016; Jennifer Karas Montez, 2020).

Drug laws apply to all users of controlled substances, and drug use is not dramatically skewed by race (Substance Abuse and Mental Health Services Administration, 2021), but race and class consistently shape who is subject to arrest and incarceration (Tiger, 2017). School discipline systems apply to all pupils, but for Black students discipline tends to be harsher — harsh enough to interfere with educational success and launch children into a "school to prison" pipeline (K. C. Wolf & Kupchik, 2016). Books like Richard Rothstein's "The Color of Law" powerfully depict the continuing intergenerational consequences of policies like mortgage red-lining and discrimination in housing in the form of lost chances for Black families to build intergenerational wealth that post-war federal lending programs seeded for white families only (Rothstein, 2017).

As these examples suggest, "social determinants of health" or structural factors" or "social position" — by whatever name — are not distant, abstract untouchable verities: they are vulnerabilities and exposures, and immunities and advantages – that happen to people every day. They have their effect on health and well-being in the day-to-day experiences that grind people down or lift them up. Laws and their enforcement are part of that web of experiences, and that means that policy change can lead to substantial and rapid improvement. We run through a set of examples here that make the case that legal action is a very practical way to act now to create healthier environments for humans.

Money is an effective short-term treatment for poverty

Poverty is bad for health generally (Brady, Kohler, & Zheng, 2023), but there is compelling evidence that income support mechanisms that put more money into the pockets of lower income people make their lives and health better. Legal epidemiology research over the past five years has shown positive health effects for a variety of programs:

- Temporary Assistance for Needy Families (TANF) is associated with a reduction in child maltreatment (Spencer et al., 2021).
- Minimum wage increases reduce suicide rates (Kaufman, Salas-Hernández, Komro, & Livingston, 2020), STI incidence (Ibragimov et al., 2019), HIV cases (Cloud et al., 2019), heart disease (Van Dyke, Komro, Shah, Livingston, & Kramer, 2018), and infant mortality and low birthweight (Komro, Livingston, Markowitz, & Wagenaar, 2016).
- The earned income tax credit (EITC) improves birth outcomes, and more generous EITCs have a greater effect (Markowitz, Komro, Livingston, Lenhart, & Wagenaar, 2017).
- The expanded Child Tax Credit provided during the COVID-19 pandemic increased food sufficiency and improved mental health among adults with children, and the effect was strongest among the most marginalized groups (Batra, Jackson, & Hamad, 2023).

A recent experiment with a $500/month guaranteed income in Stockton, California, explored how economic security improves quality of life: compared to the control group, people receiving the guaranteed income "reported lower rates of income volatility ..., lower mental distress, better energy and physical functioning, greater agency to explore new opportunities related to employment and caregiving, and better ability to weather pandemic–related financial volatility" (West & Castro, 2023). These are the typical stress-related phenomena that wear people down and drive deaths of despair (Geronimus, 2023) and health research illustrates what should be obvious: if economic distress causes a wide variety of harms, its absence should be associated with the absence of those harms.

The COVID-era expanded Child Tax Credit (CTC) provided a natural test of government's capacity to rapidly provide economic assistance at a large scale. The credit expanded eligibility to families with little or no income, benefitting the poorest families and making its distribution more racially equitable. It was unrolled rapidly, using 2019 and 2020 tax records to determine eligibility and directly deposit the credit on a monthly basis. In its first six months, nearly more than $90 billion went to millions of households, lifting 5.3 million people out of poverty, including 2.9 million children (Burns & Fox, 2022). In politics, the effort to make this highly effective program permanent ran into dubious assertions that it would reduce the incentive for people to work and politicians who were shocked, shocked at the estimated $12 billion cost of making the regular $2,000 tax credit fully refundable to people with low or no incomes. As Desmond is the latest to make clear, however, the richest country in the world has the money to address poverty. For example, the home mortgage interest deduction still costs over $20 billion and lifts no one out of poverty.

Law can protect the poor from economic exploitation

One of the reasons that it is better not to be poor is that being poor in America exposes people to near constant risk of some business or government agency taking away the little they have. Poorer people need credit as much or

more than the better off, but face "predatory lending" — a variety of lending devices and practices, including making loans to borrowers that they probably cannot afford to repay; inducing a borrower to repeatedly refinance a loan in order to charge additional fees; and concealing the true nature or terms of a loan (Pew Charitable Trusts, 2023). Payday loans are a frequently used form of short-term credit, with 12 million borrowers every year (Pew Charitable Trusts, 2013). Payday loans are expensive, so borrowers often end up spending more in interest and fees than they borrowed in principle. States can protect consumers from exaggerated interest rates and unfair terms, and some have (Pew Charitable Trusts, 2023). The same goes for bank overdraft fees as a routine resort for short-term credit, which tend to be even more expensive than payday loans (Zernik, 2018), but can be regulated by states (e.g., N.Y. COMP. CODES R. & REGS. tit. 3 §§ 32.1-32.2 (2019)).

Being poor, especially a poor person of color, means that too often financial deprivation comes in the form of an encounter with the police or other government authority. The imposition of legal financial obligations, which include fees, fines, and bail, in connection with criminal justice charges or civil offenses has become a widespread phenomenon in the United States (Martin, Sykes, Shannon, Edwards, & Harris, 2018). Municipal offenses like traffic and "quality of life" violations can have significant economic city operations. In 2015 the Justice Department found that in Ferguson, Missouri, "revenue generation is stressed heavily within the police department, and that the message comes from City leadership" (United States Department of Justice & Civil Rights Division, 2015). Using poor people as municipal ATMs is unjust (and, it seems, fiscally unwise (Menendez, Crowley, Eisen, & Atchison, 2019)). States can stop these practices through legislation, and some have (Fines and Fees Justice Center, 2022).

A wide range of reforms can make judicial and administrative processes fairer and less harmful to lower income people. Some of these laws include provisions capping fine amounts (e.g., MO. ANN. STAT. § 479.353 (West, 2019)); prohibiting court costs for indigent defendants (CAL. PENAL CODE § 688.5 (West, 2019)); requiring the reinstatement of drivers' licenses that were suspended for failure to pay certain fees or fines (D.C. Code Ann. § 50-2302.08 (West, 2018); allowing waivers or reduced fees or costs for low-income individuals (WASH. REV. CODE ANN. § 10.01.160 (West, 2023)); allowing participation in community service as an alternative to paying fees or fines (TEX. CODE CRIM. PROC. ANN. art. 45.049 (West, 2019)); and allowing installment plans (TENN. CODE ANN. § 55-50-502 (d) (West, 2022)). Rhode Island eliminated costs, assessments, and fees for people serving 30 or more days in prison, along with waiving or reducing court costs based on indigency (12 R.I. Gen. Laws Ann. 18-1-3 (West, 2022). Although two cities experimented with the idea several decades ago, as far as we can determine no US jurisdictions have adopted the European model of "day fines," in which monetary penalties are set in terms of a number of days of the offender's annual income (Kantorowicz-Reznichenko, 2018).

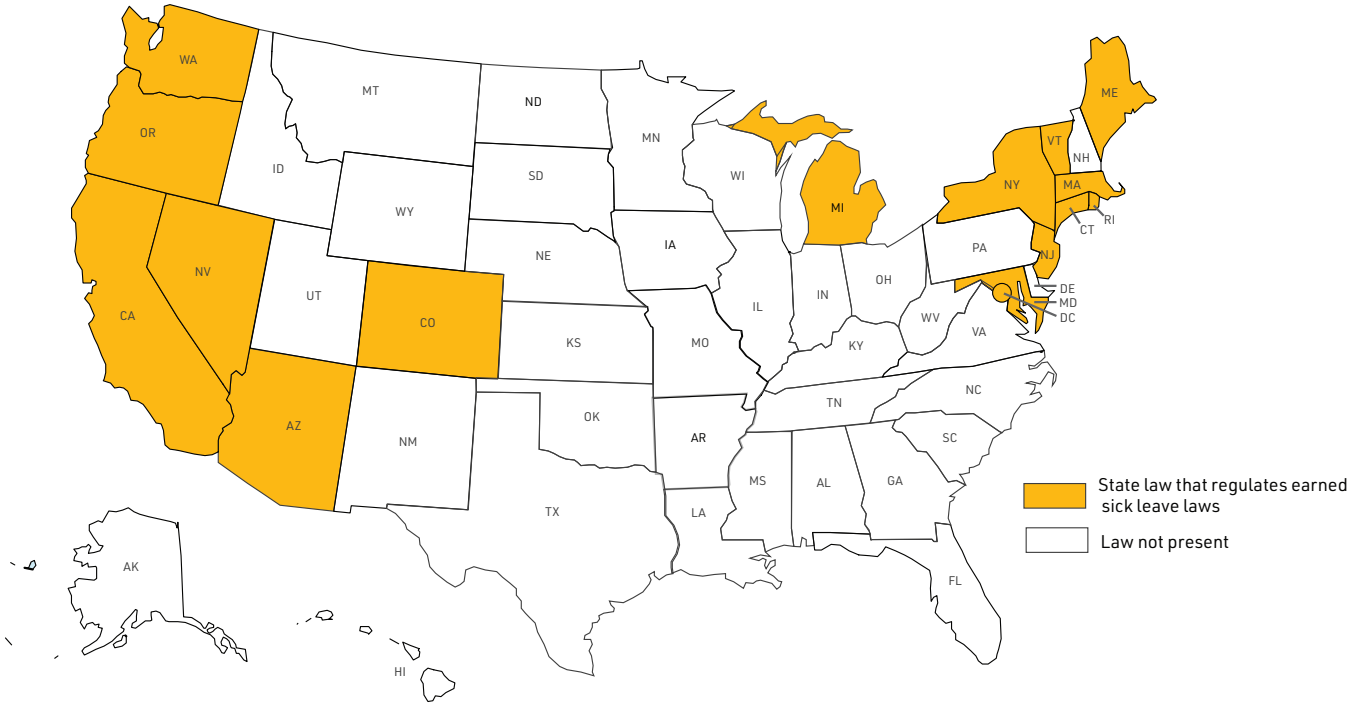

Figure 2: As of January 1, 2021, 16 jurisdictions have a state law that regulates earned sick leave (LawAtlas, 2021).

More progressive tax policies can fund the social investment we need to eliminate "deaths of despair" and promote the welfare of everyone

Tax policy is at the center of many of the factors that drive deaths of despair or make them harder to address. Local governments are strapped, which is why they are tempted to fund their operations with fines and fees. In many state governments, "fiscal hawks" committed to smaller government and lower taxes hold sway (Kemp, Grumbach, & Montez, 2022; Jennifer Karas Montez, 2020). Our health and social service system are coping with ever-larger problems with smaller and smaller budgets. Proven mechanisms for reducing poverty and its many perils for people and communities can't be expanded because current revenue cannot support them. But the fact that money is not in agency budgets or legislative coffers does not mean that the United States is too poor to end poverty and severe financial hardship. On the contrary. The money is there, and a renewed willingness to raise the revenue needed to solve problems is the main barrier to action.

Matthew Desmond offers a concise but telling list of how tax reform could bring an actual end to poverty in America (Desmond, 2023). He starts with the cost, which he puts loosely at $177 billion per year. Then he lays out what we would get, which would include more generous funding for the sort of income transfer programs we already know work, but also real progress toward ending homelessness and eviction, schools that were not preoccupied with caring for traumatized and needy children, and more stable and safe neighborhoods. And finally, the question of where to find the money. Nearly $200 billion sounds like a lot, but he notes that the "IRS now estimates that the United States now loses more than $1 trillion a year in unpaid taxes, most of it owing to tax avoidance by multinational corporations and wealthy families." Over the past 60 years, the progressivity of our income tax has narrowed dramatically, and as it has done so the tax rates paid by the poor have gone up and the taxes paid by the rich have gone down. Just uncapping the amount of income liable to the Social Security tax would produce $64 billion. Imagine if we treated capital gains just like ordinary income? We've already noted the $25 billion that could come from ending the home mortgage interest deduction. Another useful comparator is the sort of tax breaks for corporations regularly on the agenda in Congress, which the Center on Budget and Policy Priorities has costed out at $15 billion/year (R & D breaks), $33 billion/year (full expensing of equipment), $20 billion/year (greater deductibility of interest payments) (Cox, Marr, Calame, & Hingtgen, 2023).

Before the reader writes this off as hopelessly idealistic and unrealistic, just recall the expanded Child Tax Credit, which effectively spent more than $90 billion in less than a year and made an immediate difference in millions of people's lives. It can be done, and it makes everyone — even those who pay higher taxes — better off.

Across all policies, prefer the humane, equitable, and supportive over the punitive and deregulatory

Along with the strong evidence that inequality is bad for health (Wilkinson & Pickett, 2009), we have seen a growing body of research suggesting that policies focused on broadly supporting social welfare seem to be associated with higher levels of generalized social welfare (Chung & Muntaner, 2006; Muntaner et al., 2011; Navarro et al., 2006). In the United States, new research has brought strong support to a rather simple and obvious idea: if you want your community to thrive, then use law and policy to protect residents from unhealthy exposures, support them in times of trouble, and smooth the path to education, work, and stable housing in communities equipped with parks, transportation, shops, and the other basic amenities of comfortable life. (Oh, and democracy also matters; places that look like this also tend to be places where people feel they have a real say in the workings of government (J. K. Montez et al., 2023).) We've already reviewed the evidence of how specific income support programs improve health, but a recent series of studies led by Jennifer Karas Montez has shown the drastic differences in health between the places that follow this approach and the places that veered toward passive government and commercial deregulation (Jennifer Karas Montez, 2017; Jennifer Karas Montez et al., 2020; Jennifer Karas Montez, Hayward, & Wolf, 2017; Jennifer Karas Montez, Hayward, & Zajacova, 2019; Jennifer Karas Montez et al., 2022; Jennifer Karas Montez, Zajacova, et al., 2019; D. A. Wolf et al., 2021; D. A. Wolf et al., 2022). The dramatic declines in life expectancy in the United States are not the result of a nationwide decline: states with more supportive social policies have continued to see their life expectancies increase; declining "national" life expectancy is concentrated in places that are tougher to live in. Since 1984, the gap between the best and worst states for life expectancy has increased from less than five years to seven years (in 2017). And there's a pattern: generally speaking, states that have become more conservative across a wide range of policies have seen life expectancy stagnate or decline; those that have moved or remained on the more progressive side have seen their life expectancies improve. Take for one example the difference between Connecticut and Oklahoma, which had the same life expectancy in 1959 (71.1 years), but by 2017 were five years apart (80.7 in Connecticut versus 75.8 in Oklahoma) (Jennifer Karas Montez et al., 2020).

The list of policies included in the analysis is long and ranges broadly, including abortion, criminal justice, gun control, "health and welfare" (such as CHIP access and Medicaid expansion), education spending and school choice, public and private labor laws (e.g., paid leave, minimum wage, right to work), civil rights protections, environment (including state NEPAs and solar tax credits), tax laws (progressivity and credits), housing and transportation, and a miscellany of protective measures like smoking controls and motorcycle helmet requirements. Across the board being more protective or supportive is tied to longer lives. People are healthier when it is harder to get guns, easier to get an abortion, taxes are more steeply progressive, tobacco controls are more protective, workers have more rights, and people are better protected against discrimination based on race, sexual orientation, or other traits.

Of course, the story is not quite as simple as "red states bad, blue states good." There are important stories about education policy and NIMBYism in these data, too. More educated people do better regardless of state, and so big metropolitan areas with lots of highly educated residents do well even when their state overall is going down — and individuals' education advantages give them what Montez called "a personal firewall" against contextual factors like state policy (Jennifer Karas Montez, Hayward, & Zajacova, 2021). Less educated people lack this protection, and so are more powerfully affected by the policy conditions of the places they live. In states red, blue, and purple, educated, well-off people use their political and economic resources to block efforts to build affordable housing and transportation systems that would benefit those with fewer resources.

The bottom line is the same as the top line: as a general matter, legislators at any government level looking to improve overall health in the community should aim to use law and policy to protect residents from unhealthy exposures, support them in times of trouble, and smooth the path to education, work and stable housing in communities equipped with parks, transportation, shops and the other basic amenities of comfortable life.

Finally, pursue equity and racial justice

Law has been a persistent mechanism of discrimination, producing severe and chronic health disparities and inequities. And yet for decades now, American law has forbidden the sort of de jure discrimination exemplified by policies like Jim Crow and red lining. Yet, notwithstanding the Supreme Court's insistence on a "colorblind" Constitution ("Students for Fair Admissions, Inc. v. President and Fellow of Harvard College," 2023), facially "neutral" laws continue to be applied in ways that discriminate based on race, sexual orientation, and other aspects of people's identity.

The pervasive and continuing inequitable application of law, whether intentional or inadvertent, requires explicit, self-conscious action by both advocates and policymakers. Along with considering the evidence about how law causes harm and how changing law can create healthier conditions, one must also systematically explore how both problems and solutions may be operating inequitably. A guide for changemakers developed by ChangeLab Solutions succinctly sets out some "best practices" (2019). These include recognizing fundamental drivers of health inequity (structural discrimination, income inequality and poverty, disparities in opportunity, disparities in political power and governance that limits meaningful participation), learning from the past and using that broad focus to guide all action for change.

Law can be deployed in ways that address all the drivers of inequity. Law is a basic way to make large scale change in social conditions, and to sustain those changes over time. It can stand as an important expression of a community's rejection of bias, injustice and unfairness. It can help us direct our attention to structural factors and not blame individuals or leave them to sink or swim on their own. It can be used, as we have detailed above, to change the distribution and use of money, opportunity and power. It can actively undo the harms policy has helped do in the past (ChangeLab Solutions, 2019; Coates, 2014), as Evanston, Illinois, has done with its reparations policy (City of Evanston, 2023). Desmond makes a powerful point when he argues that in the case of eliminating poverty, what's lacking is not the way, but the will.

Conclusion

The millions of people caught up in unhealthy drug use need effective government help now, and most of our project reports have gone into detail about how laws can be changed to remove barriers and increase concerted action across government lines today. But the United States has had a severe opioids problem for more than two decades, and it was not the first instance of widespread drug-related harm, so it has to be obvious that there are no quick fixes. Care and support for individuals will be more effective if they embrace the whole person, both their needs and capacities, but responding to immediate needs is not stemming the flow of new people into trouble. Root causes must be addressed – but defining the root causes of the problem as drug trafficking and drug use has also failed. If the nation wants things to change with substance abuse, things that make people vulnerable to the harm will have to change. The United States has work to do to become a place where everyone not only has no reason to use drugs dangerously, but also many good reasons not to. There is much that legal change can do to start this process of national reinvestment in the needs and welfare of all its people. ◆

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