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A Foe More than a Friend: Law and the Health of the American Urban Poor

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A FOE MORE THAN A FRIEND: LAW AND THE HEALTH OF THE AMERICAN URBAN POOR

David Ray Papke & Mary Elise Papke***

ABSTRACT

Social epidemiologists insist fundamental social conditions play a large role in the health problems of the American urban poor, but these well-intentioned scholars and practitioners do not necessarily appreciate how greatly law is intertwined with those social conditions. Law helps create and maintain the urban poor's shabby and unhealthy physical environment, and law also facilitates behaviors among the urban poor that can result in chronic health conditions. Then, too, law shapes and configures the very poverty that consigns the urban poor to the inner city with its limited social capital and political clout. Overall, law creates and perpetuates the health problems of the urban poor more than it eliminates or ameliorates them. Social epidemiologists and others concerned with improving the urban poor's health might therefore approach law as a foe more than a friend.

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INTRODUCTION

Social epidemiology emerged as a major subfield in public health during the final quarter of the twentieth century.¹ Social epidemiologists maintained that consideration of a broader historical and social context should be essential in understanding the health of a population sector,² and they noted in particular “the tendency of health outcomes to line up on a steady slope from the have-leasts to the have-mosts.”³ For groups such as the urban poor, they insisted, one had to “travel upstream” to the true sources of poor health.⁴ One had to appreciate that collective health “is shaped to a significant degree by fundamental social conditions.”⁵

In the contemporary United States, law is intimately intertwined with the urban poor’s fundamental social conditions, and its functions are virtually uncountable. As subsequent discussions in this Article will illustrate, law provides for zoning, licensing, inspecting, and warning, and it also separates, regulates, polices, and penalizes. Then, too, law prohibits, bans, and deters, while it also supports, pays, compensates, and reimburses. When the sociologist Austin Sarat conducted his now-classic study of the legal consciousness of the “welfare poor,” a sub-set of the urban poor, he found “the law is all over” the welfare poor’s lives.⁶ Law was not a “distant abstraction” but rather “an irresistible and inescapable presence.”⁷

But is it possible to capture the dominant or most important role of law in the fundamental social conditions that lead to the urban poor’s health disparities and to their relative health inequity vis-à-vis the middle and upper classes? Our answer to the question might be surprising in light of the way Americans usually cast law as a positive force in social life. Throughout the nation’s history, political leaders and government officials in the United States have unreflectively placed law on an ideological pedestal and assumed it is used for good things.⁸ Imbued with this assumption, one well-intentioned health scholar has even produced a

1. See LISA F. BERKMAN & ICHIRO KAWACHI, *SOCIAL EPIDEMIOLOGY* xiii (2000).

2. See THEODORE H. TULCHINSKY & ELENA A. VARAVIKOVA, *THE NEW PUBLIC HEALTH: AN INTRODUCTION FOR THE TWENTY-FIRST CENTURY* 117 (2000).

3. Scott Burris, *From Health Care Law to the Social Determinants of Health: A Public Health Law Research Perspective*, 159 U. PA. L. REV. 1649, 1652 (2011).

4. See Nancy Krieger, *Proximal, Distal, and the Politics of Causation: What’s Level Got to Do with It?*, 98 AM. J. PUB. HEALTH 221, 221 (2008).

5. Scott Burris, *Law in a Social Determinants Strategy: A Public Health Law Research Perspective*, 126 PUB. HEALTH REP. 22, 22 (2011).

6. Austin Sarat, “. . . *The Law Is All Over:*” *Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J. L. & HUMAN. 343, 343 (1990).

7. *Id.* at 345.

8. See David Ray Papke, *Postmodern Decline? The Belief in a Rule of Law as a Tenet of American Ideology*, 1 ATHENS J. L. 221, 223-25 (2015).

winning but naïve “legal toolkit for reducing health disparities.”⁹ Yet law need not be placed on a pedestal or packed up in a useful toolkit when it comes to its role in the fundamental social conditions of the urban poor. We argue that law in general is central in the creation, development, and extension of the very social conditions that result in the urban poor’s health problems.

This Article has three parts. Part I explores the unhealthy physical environment in which the urban poor live, especially in the urban poor’s neighborhoods and housing, and underscores law’s role in maintaining this environment.¹⁰ Part II examines law’s facilitation of unhealthy behaviors within the urban poor’s physical environment.¹¹ Part III considers the actual poverty of the urban poor and law’s importance in the nature and configuration of that poverty.¹²

Overall, laws are not intentionally used to oppress the urban poor, and laws might be, and often are, changed in hopes of improving the urban poor’s collective health. However, these self-styled progressive laws are often woefully ineffective. Additionally, the courts often toss out efforts to use law to effect positive change, citing to constitutional principles and endorsing the relatively unbridled consumption of goods and services.¹³ Law is much more important in creating and perpetuating the urban poor’s unhealthy social conditions than it is in ameliorating them. Those seeking to improve the health outcomes and relative health status of the urban poor should realize law supports unhealthy social conditions more than it corrects them. The social epidemiologist committed to health equity for the urban poor might recognize law as a foe more than a friend.

I. PHYSICAL ENVIRONMENT

When social epidemiologists consider the collective health of a sector of the population, they sometimes observe that “place matters.”¹⁴ “Place” includes not only features of the physical environment, such as green space and housing, but also features of the social environment such as, alcohol

9. Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J. L. & PUB. POL’Y 47, 66 (2014).

10. *See infra* Part I.

11. *See infra* Part II.

12. *See infra* Part III.

13. Theorists of consumer culture warn that the consumption of goods and services is not a trivial matter but rather central in consumers’ creation of social and political identities. *See generally* GEORGE RITZER, *THE McDONALDIZATION OF SOCIETY: AN INVESTIGATION INTO THE CHANGING CHARACTER OF CONTEMPORARY SOCIAL LIFE* (1993); ROBERTA SASSATELLI, *CONSUMER CULTURE: HISTORY, THEORY, AND POLITICS* (2007).

14. *See* ROLF PENDALL ET AL., *A LOST DECADE: NEIGHBORHOOD POVERTY AND THE URBAN CRISIS OF THE 2000s* 1 (2011); Darrell J. Gaskin et al., *Disparities in Diabetes: The Nexus of Race, Poverty, and Place*, 104 AM. J. PUB. HEALTH 2147, 2151 (2014).

consumption and interpersonal violence.¹⁵ The physical and social aspects of place combine in countless ways, but it might nevertheless be helpful to address the two aspects separately. First, what are the most important features of the urban poor's physical environment, and how do these features relate to the urban poor's health?

For many of the urban poor, the physical environment has taken the form of "depressed neighborhoods – those with at least 40 percent of residents below poverty line," at least since the 1990s.¹⁶ Law and legal institutions have crucial roles in this physical environment, and laws and legal institutions routinely create or maintain many of the unhealthy features of the urban poor's neighborhoods.

Urban parks and recreation areas are neighborhood features that are notoriously inadequate, especially in impoverished neighborhoods.¹⁷ The problems with parks and recreation areas began to develop in the second half of the twentieth century, as cities began to deteriorate and middle and upper class Americans moved to the suburbs with their green subdivisions and manicured cul-de-sacs.¹⁸ When city governments faced severe economic problems in the 1990s, mayors and city lawmakers addressed their budget woes by, among other things, slashing park-spending.¹⁹ Even the federal government failed to sustain a professed commitment to urban parks and recreation areas. Congress enacted the Urban Park and Recreation Program ("UPARR"), but the program's annual funding declined and then stopped altogether in 2002.²⁰ As a result, inner-city residents lost facilities for much-needed exercise and opportunities for relieving stress.²¹

In contrast to parks and recreation areas, the ubiquitous, trash-strewn vacant lots of the inner city, where buildings have collapsed or burned

15. See Ana V. Diez Roux, *Neighborhoods and Health: What Do We Know? What Should We Do?*, 106 AM. J. PUB. HEALTH 430, 430 (2016).

16. See Tanvi Misra, *The Growth of Concentrated Poverty Since the Recession*, in 3 *Infographics*, ATLANTIC CITYLAB (Mar. 31, 2016), <http://www.citylab.com/housing/2016/03/how-concentrated-poverty-has-risen-since-the-recession-in-3-infographics/475812/> [<https://perma.cc/2ESY-WE5Z>]. The five American cities with the largest percentages of their residents living in distressed neighborhoods are, in order, Camden, New Jersey; Cleveland, Ohio; Gary, Indiana; Youngstown, Ohio; and Hartford, Connecticut. See Richard Florida & Aria Bendix, *Mapping the Most Distressed Communities in the U.S.*, ATLANTIC CITYLAB (Feb. 26, 2016), <http://www.citylab.com/politics/2016/02/mapping-distressed-communities-in-the-us/471150/> [<https://perma.cc/2KHJ-2EZ2>].

17. See PAUL M. SHERER, *THE BENEFITS OF PARKS: WHY AMERICA NEEDS MORE CITY PARKS AND OPEN SPACE* 8 (2006).

18. See *id.* at 5.

19. See *id.* at 12.

20. See *Urban Park & Recreation Recovery (UPARR)*, NATIONAL PARK SERVICE, <https://www.nps.gov/uparr> [<https://perma.cc/62F5-TX48>].

21. See SHERER, *supra* note 17, at 13-14.

down, are among the physical “stressors” the urban poor encounter.²² In fact, it makes a difference if vacant lots have been replanted. One study found that “in-view proximity to a greened vacant lot decreases heart rate compared with in-view proximity to a nongreened vacant lot,” and the authors noted that consistently elevated heart rates over a lifetime can lead to heart problems caused by inflammation and damage to the cardiovascular system.²³ Had local government officials been more willing to police the lots or, at least, to insist on their rehabilitation as green spaces, they might have reduced stress and thereby contributed positively to the urban poor’s health.²⁴

The commercial fabric of the inner city is often as shabby as its green spaces. Shops in the South Bronx or the inner cities of Chicago, Illinois and Milwaukee, Wisconsin—to cite three impoverished areas—are often small and cramped. The shops’ actual number and variety of goods in the shops are also limited. Common businesses include barbers, hair salons, nail salons, discount tobacco outlets, and cheap cell phone stores. Some shops surprisingly sell only tobacco products and cell phones.

Two particularly common types of businesses are (1) alcohol outlets in the form of bars and liquor stores and (2) corner grocery stores. Legally licensed and protected by law enforcement, the alcohol outlets obviously facilitate and benefit from alcohol use. Drinking too much over time can lead to not only alcoholism but also high blood pressure, stroke, fatty liver, cirrhosis, pancreatitis, and alcoholic hepatitis.²⁵ In addition, according to a study done in Boston, Massachusetts, interpersonal violence increased in and around alcohol outlets.²⁶ Poor neighborhoods with concentrations of bars and liquor stores have higher levels of violent crime.²⁷

Also legally licensed and legitimate, the corner grocery stores are convenient for daily shopping, but the stores do not offer the range of fresh fruit and vegetables, available in larger supermarkets.²⁸ Instead of healthy foods, the stores proffer less healthy food and beverage products, such as

22. Eugenia C. South et al., *Neighborhood Blight, Stress, and Health: A Walking Trial of Urban Greening and Ambulatory Health Rate*, 105 AM. J. PUB. HEALTH 909, 909 (2015).

23. *Id.* at 909, 911.

24. *See id.* at 913.

25. *See Alcohol’s Effects on the Body*, NAT’L INST. ALCOHOL ABUSE & ALCOHOLISM, <https://www.niaaa.nih.gov/alcohol-health/alphas-effects-body> [https://perma.cc/LBP3-AQWQ] (last visited Nov. 27, 2016).

26. Robert Lipton et al., *The Geography of Violence, Alcohol Outlets, and Drug Arrests in Boston*, 103 AM. J. PUB. HEALTH 657, 657 (2013).

27. *Id.* at 662.

28. *See* Lauren Fiechtner et al., *Effects of Proximity to Supermarkets on a Randomized Trial Studying Interventions for Obesity*, 106 AM. J. PUB. HEALTH 557, 561 (2016).

snacks, soft drinks, and canned or frozen foods.²⁹ Since the stores are often the only ones in their neighborhoods, this could have serious consequences for what residents buy and ultimately eat.³⁰

The inventory and practices of the inner-city convenience stores are major factors in what has been called the “food desert” of the inner city.³¹ According to the United States Department of Agriculture, almost twenty-four million people live in areas without ready access to fresh, healthy, and affordable food, and the great majority of people living in these “food deserts” are poor or have low incomes.³² The immediate environments may not be quite as barren as the “food desert” metaphor connotes, but local food environments vary tremendously in quality, with inner-city neighborhoods often offering relatively unhealthy food. As a result, the residents of these neighborhoods often turn to sugary and processed foods, the consumption of which increases the likelihood of obesity.³³

Ideally, the urban poor could harvest fresh fruit and vegetables from community gardens or urban farms.³⁴ But inner-city neighborhoods are among the most polluted in the nation and hardly ideal for gardening or farming. In fact, the “dirtiest” zip code in California, as measured by the federal Environmental Protection Agency’s toxic release inventory, is in poor, mostly African American South Central Los Angeles.³⁵

29. See Shannon N. Zenk et al., *Relative and Absolute Availability of Healthier Foods and Beverage Alternatives Across Communities in the United States*, 104 AM. J. PUB. HEALTH 2170, 2172 (2014). One study of New York City found that only eighteen percent of grocery stores in a minority neighborhood carried healthy foods compared with fifty-eight percent in a white area. See C.R. Horowitz et al., *Barriers to Buying Healthy Foods for People with Diabetes*, 94 AM. J. PUB. HEALTH 1549, 1549 (2004).

30. See Penny Gordon-Larson, *Food Availability/Convenience and Obesity*, 5 ADVANCED NUTRITION 809, 812 (2014); Zenk et al., *supra* note 29, at 2174.

31. See Neil Wrigley et al., *Assessing the Impact of Improved Retail Access on Diet in a Food Desert*, 39 URB. STUD. 2061, 2061-82 (2002).

32. U.S. DEP’T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 22 (2009).

33. See Danhong Chen, Edward C. Jaenicke, & Richard J. Volpe, *Food Environments and Obesity: Household Diet Expenditure Versus Food Deserts*, 106 AM. J. PUB. HEALTH 881, 885 (2016).

34. See Elizabeth Royte, *Urban Farming Is Booming, But What Does It Really Yield?* ENSIA (Apr. 27, 2015), [ensia.com/features/urban-agriculture-is-booming-but-what-does-it-really-yield/ \[https://perma.cc/4TED-XGA4\]](https://perma.cc/4TED-XGA4). For a review of the traditional legal issues that surface in urban farming, see MARTHA H. CHUMBLER, SORELL E. NEGRO & LAWRENCE E. BECHLER, URBAN AGRICULTURE: POLICY, LAW, STRATEGY, AND IMPLEMENTATION (Martha H. Chumblers et al. eds., 2015).

35. See Robert Bullard, *Residential Segregation and Urban Quality of Life*, in ENVIRONMENTAL JUSTICE: ISSUES, POLICIES, AND SOLUTIONS 77 (Bunyan Bryant ed., 1995).

The sources of pollution include private industry, legal and illegal dumpsites, and even hazardous waste facilities.³⁶ A large literature concerns the physical location of locally unwanted land uses and has even spawned the acronym “LULU.”³⁷ These Locally Unwanted Land Uses are abundantly present in the neighborhoods in which the urban poor live.³⁸

As one determined environmentalist has noted, “[a] patchwork of laws, regulations, executive orders, and agency policies at both the federal and state levels address environmental injustice.”³⁹ These existing laws and regulations are complicated, do not generally provide for direct relief, and, as a result, are difficult for low-income communities to use.⁴⁰ In hopes of improving the situation, President Bill Clinton issued Executive Order 12898 in 1994, which required all federal agencies (1) to collect data about the health and environmental impact of their actions on low-income populations and (2) to develop strategies and programs to achieve environmental justice to the extent possible.⁴¹ Clinton’s efforts were well-intentioned, but executive orders do not necessarily produce change—or, at least, enough of it.⁴² The siting of LULUs in the inner city continues, and LULUs continue to extract a psychological as well as a physical toll from the urban poor.⁴³

Although the percentage is declining, twenty-five percent of the urban poor live in public housing.⁴⁴ The construction of public housing began in the United States during the 1930s with great hope and enthusiasm.⁴⁵ Americans of that era even had some rudimentary sense that the fortunate should help those who had fallen on hard times during the Great Depression.⁴⁶ This sense of collective responsibility disappeared in the

36. See Bunyan Bryant, *Issues and Potential Policies and Solutions for Environmental Justice: An Overview*, in ENVIRONMENTAL JUSTICE: ISSUES, POLICIES, AND SOLUTIONS, *supra* note 35, at 10.

37. See Alex Geisinger, *The Benefits of Development and Environmental Injustice*, 37 COLUM. J. ENVTL. L. 205, 207 (2012).

38. See *id.* at 209.

39. *Id.* at 212.

40. See *id.*

41. See DENNIS C. CORY & TAUHIDUR RAHMAN, ENVIRONMENTAL JUSTICE AND FEDERALISM 2 (2012).

42. See John Hudak, *Obama’s Executive Orders; A Reality Check*, BROOKINGS (Jan. 30, 2014), <https://www.brookings.edu/blog/fixgov/2014/01/30/obamas-executive-orders-a-reality-check/> [<https://perma.cc/2HSG-9SBX>]; see also Geisinger, *supra* note 37, at 213.

43. See Geisinger, *supra* note 37, at 219, 221-22.

44. See Robert M. Buckley & Alex F. Schwartz, *Housing Policy in the U.S.: The Evolving Sub-National Role*, 30 (Int’l Aff. at The New Sch. Working Paper, Paper No. 2011-06, 2011).

45. See NATHANIEL S. KEITH, POLITICS AND THE HOUSING CRISIS SINCE 1930 36-37 (1973).

46. See *id.*

decades following World War II, and the “projects,” as they came to be known, increasingly housed the poorest of the poor.⁴⁷ Furthermore, members of the middle and upper classes started to see public housing, not as a societal entitlement for their fellow Americans, but rather as an individual hand-out, as something more comparable to a welfare payment than to an abode providing security and a sense of connectedness for those who considered it “home.”⁴⁸

By Reagan’s presidency in the 1980s, public housing had fallen from favor.⁴⁹ Federal funding declined, and federal legislators grew less enamored with building and renovating public housing, emphasizing instead vouchers and subsidized units in mixed-income developments.⁵⁰ Not surprisingly, given the shifting legal regime, public housing began to deteriorate. Repairs lagged and severe accidents occurred, most notably those involving small children falling from the upper floors of poorly-maintained project towers.⁵¹ Public housing also served as an incubator for urban gangs. For example, Chicago’s large projects were a factor in the city’s terrible gang problem.⁵² The courtyards, a design feature in which public housing architects had taken great pride, became ideal sites for drug-dealing because they were shielded from public view. As a result of the violence that spilled over from drug sales, the courtyards became more dangerous than idyllic.⁵³

Beyond the obvious physical dangers, other aspects of public housing made the projects unhealthy. They are plagued by poor heat, bad ventilation, and lingering dampness that leads to the growth of mold and fungus.⁵⁴ A Boston study found that the mold and fungus caused or exacerbated asthma among the residents, who routinely requested transfers to other public housing complexes in order to avoid asthma “triggers.”⁵⁵

47. See J. A. STOLOFF, *A BRIEF HISTORY OF PUBLIC HOUSING* 1 (2004).

48. See *id.* at 6.

49. See Peter Dreier, *The New Politics of Housing*, 63 J. AM. PLAN. ASS’N 5, 6-7 (1997).

50. See Daniel Hertz, *American Housing Policy’s Two Basic Ideas Pull Cities in Opposite Directions*, ATLANTIC (Oct. 14, 2015), <http://www.theatlantic.com/business/archive/2015/10/america’s-housing-policy-contradictions/410332/>.html [https://perma.cc/82PY-TYJJ].

51. See Comm. on Injury & Poison Prevention, *Falls from Heights: Windows, Roofs, and Balconies*, 107 PEDIATRICS 1188, 1188 (2001).

52. Whet Moser, *Why Are There So Many Gang Members in Chicago?*, CHI. MAG. (Jan. 27, 2012), www.chicagomag.com/Chicago-Magazine/The-312/January-2012/Why-Are-There-So-Many-Gang-Members-in-Chicago/ [https://perma.cc/D5S3-DVTC].

53. See STOLOFF, *supra* note 47, at 16.

54. See Erin Ruel et al., *Is Public Housing the Cause of Poor Health or a Safety Net for the Unhealthy Poor?*, 87 J. URB. HEALTH 827, 827 (2010).

55. NAT’L HEART & LUNG INST., *PUBLIC HEALTH IN PUBLIC HOUSING* vi (2005).

According to a report from the Urban Institute, a study of public housing residents revealed “a population in shockingly poor health” and “a situation that seems to be worsening rapidly over time as residents grow older.”⁵⁶ And if the seriousness of those laments is not striking enough, public housing is particularly unhealthy for children. On average, according to a Canadian study, children in public housing have poorer health outcomes than other children living in the same neighborhoods and communities in which the public housing is located.⁵⁷ Children in public housing have low immunization rates and high teenage pregnancy rates.⁵⁸ The differences from other children in the same general neighborhoods are less pronounced for toddlers and preschoolers, but the differences increase for school-age children, that is, for children who most likely have lived in public housing for longer periods of time.⁵⁹ The only encouraging thought is that children in public housing located in areas with middle-class populations rather than in areas with concentrations of poverty had better health and education outcomes.⁶⁰ Public housing can provide a “place of residence,” but it appears that public housing can be somewhat less dangerous and unhealthy if it is located in a better “place.”

Because of public housing’s decline and the shortage of “affordable” units in mixed-income developments, the great majority of the urban poor rent in deteriorating multi-story duplexes, triplexes, and apartment buildings.⁶¹ This housing might originally have been built for middle and upper class citizens, but over the years the housing has come to be rented by poor people, a process known in the secondary literature as “filtering.”⁶² Prompted by the federal Housing Act of 1964 and the Housing and Urban Development Act of 1965, virtually all cities have enacted housing codes designed to address safety, sanitation, and health concerns in this housing.⁶³ The codes are voluminous and seem “based on an implicit promise to

56. CARLOS A. MANJARREZ, SUSAN J. POPKIN & ELIZABETH GUERNSEY, POOR HEALTH: ADDING INSULT TO INJURY FOR HOPE VI FAMILIES 2 (2007).

57. Patricia J. Martens et al., *The Effect of Neighborhood Socioeconomic Status on Education and Health Outcomes for Children Living in Social Housing*, 104 AM. J. PUB. HEALTH 2103, 2109 (2014).

58. *See id.* at 2107.

59. *Id.* at 2109.

60. *Id.*

61. For a description of this housing in Baltimore, Maryland; Boston, Massachusetts; and Buffalo, New York, see H. Lawrence Ross, *Housing Code Enforcement and Urban Decline*, 6 J. AFFORDABLE HOUSING & COMMUNITY DEV. 29, 30 (1996).

62. *See id.* at 40.

63. *See* Stephen J. Polaha, *Housing Codes and the Prevention of Urban Blight – Administrative and Enforcement Problems and Proposals*, 17 VILL. L. REV. 490, 493-94 (1972).

provide a middle-class house to city residents of all income levels.”⁶⁴ Despite this, many absentee landlords elude local authorities who want the landlords to bring their properties up to code, and overworked code inspectors grant exceptions, delay actions, and generally under-enforce the law.⁶⁵

One particular danger in the urban poor’s dilapidated rental housing is lead. Due to lead pipes and lead solder, lead can appear in drinking water, but “the most substantial threats are still lead-based paint and lead contamination in soil.”⁶⁶ Lead-based paint has not been legally sold in the United States since 1978,⁶⁷ but it lurks in many older structures in the inner city, sometimes under more recent paint jobs.⁶⁸ Dust and chips from the lead-based paint appear on the floors, in the window jams, and in the soil adjacent to the houses, and the paint can poison those who inhale the dust or ingest the chips.⁶⁹

The groups most at risk for lead exposure are recent immigrants and, of course, the urban poor.⁷⁰ Adults and older children are vulnerable, but younger children are even more so because they ingest more lead and absorb it more efficiently.⁷¹ Not surprisingly, researchers have found that “children living in Zip codes with higher poverty rates had a greater proportion of elevated blood lead levels, while children in more affluent Zip codes were much less likely to suffer that fate.”⁷²

As lead builds up in the body over time, the ramifications can be severe. High levels of exposure to lead can cause lead toxicity, symptoms of which include abdominal colic, anemia, encephalopathy, and even death.⁷³ Also, even lower levels of lead toxicity can seriously harm children’s intellectual

64. Ross, *supra* note 61, at 32.

65. *See id.* at 38-39.

66. Brady Dennis, *In Some Zip Codes 1 in 7 Children Suffer from Dangerously High Blood Lead Levels*, WASH. POST (June 15, 2016), <http://www.washingtonpost.com/news/to-your-health/wp/2016/06/15/in-some-zip-codes-1-in-7-children-suffer-from-dangerously-high-blood-lead-levels/> [https://perma.cc/77PR-BWGF].

67. *See* Lindsay F. Wiley, *Rethinking the New Public Health*, 69 WASH. & LEE L. REV. 207, 243 (2012).

68. *See generally id.*

69. *See* Carla Campbell et al., *Public Health and Law Collaboration: The Philadelphia Lead Court Study*, 103 AM. J. PUB. HEALTH 1271, 1271 (2013).

70. *See* Lisa M. Cleveland et al., *Lead Hazards for Pregnant Women and Children: Part I*, 108 AM. J. NURSING 40, 40 (2008).

71. *See* Bruce P. Lanphear et al., *Low-Level Environmental Lead Exposure and Children’s Intellectual Function*, 113 ENVIR. HEALTH PERSP. 894, 898 (2005).

72. Dennis, *supra* note 66.

73. *See* Lanphear et al., *supra* note 71, at 897.

function, resulting in lowered intelligence, behavioral problems, and diminished school performance.⁷⁴

Although funding is always difficult to come by, local, state, and federal governments have launched programs to identify and abate the lead hazard in inner-city housing, a costly and time-consuming process that can, depending on local standards, involve covering or removing lead-based paint such that there will be no threat of lead exposure for at least twenty years.⁷⁵ When the United States Congress fleetingly focused on the problem in 1992, the Congress enacted the Residential Lead-Based Paint Hazard Reduction Act.⁷⁶ The Act requires landlords to inform tenants of any lead-based paint hazards before allowing tenants to sign leases.⁷⁷ Landlords even have at their disposal a federally-approved lead hazard pamphlet prepared by the Environmental Protection Agency, and they are required to give a copy to prospective tenants.⁷⁸ If a landlord knowingly violates the Act, the landlord may be required to reimburse the tenant for all court costs and also pay the tenant up to three times the amount of any damages the tenant had finding a new place, moving again, and so forth.⁷⁹

Although well-intentioned, the federal statute is an example of how an appealing new law accomplishes little in the long run. The statute's notification requirement is especially ineffective. Many poor tenants do not know of the requirement or do not want to risk losing an apartment by asking about lead-based paint. For their part, many landlords are only too willing to leave the notification forms in their back pockets.

People who have lead poisoning or have watched their children suffer from it could of course initiate a personal injury action against their landlords.⁸⁰ In litigation related to lead-paint poisoning, the tenant could claim that the landlord's negligence had accidentally caused the lead paint to chip or otherwise deteriorate, and, as a result, the tenant or the tenant's family member had sustained a personal injury. That injury, arguably, could merit compensation for inconvenience, pain and suffering, and

74. *See id.* at 894.

75. *See* David J. Jones, *Primary Prevention and Health Outcomes: Treatment of Residential Lead-Based Paint Hazards and the Prevalence of Childhood Lead Poisoning*, 71 J. URB. ECON. 151, 153 (2012).

76. Residential Lead-Based Paint Hazard Reduction Act, 42 U.S.C. 63A, §§ 4851-4856 (2012).

77. *See id.* at § 4852d(a).

78. *See id.*

79. *See id.* at § 4852d(b).

80. *See* Wiley, *supra* note 67, at 243.

medical bills. In the case of severe lead-paint poisoning, the latter could be immense.⁸¹

But from a tenant's perspective, personal injury lawsuits of this sort are difficult to win.⁸² The claimant must file them within the statutorily allowed time frame and show a specific landlord in the chain of ownership was responsible for the tenant's personal injuries. However, since lead-paint poisoning does not lead to a signature injury or illness, plaintiffs in a lead-paint lawsuit against a landlord encounter difficulty proving causation.⁸³ Then, too, many inner-city landlords—especially those of the Mom and Pop variety—do not have what lawyers call “deep pockets.”⁸⁴ That is, the landlords do not have enough assets to make the large payments a successful personal injury case involving lead paint poisoning might prompt.

Starting in the 1990s, local governments in various states began arguing that paint companies had created a public nuisance with their lead-based products.⁸⁵ A public nuisance is a broader type of wrong than might be committed by an individual landlord who has failed to maintain her rental property. A public nuisance is an interference with a right of the community or public at large.⁸⁶ Two authors aptly referred to public nuisance as a “super tort.”⁸⁷ Causation requirements are loosened almost to the point of strict liability, and “[a]t least in theory, public nuisance plaintiffs, who are alleging harm to the public at large rather than to any particular individual or class of individuals, need only prove causation at the population level.”⁸⁸

In particular, local governments have asked that paint companies pay substantial damages and that the monies be used for lead-based paint abatement, that is, covering or scraping off the old paint.⁸⁹ Courts in California seemed receptive to the arguments and demands of local governments, and in 2011, several California local governments reached an \$8.7 million settlement with the paint companies.⁹⁰ Courts in a half dozen

81. For an overview of medical care expenditures necessitated by lead paint poisoning, see Jones, *supra* note 75, at 161.

82. See Wiley, *supra* note 67, at 243.

83. *Id.*

84. See *Deep Pocket*, FINDLAW LEGAL DICTIONARY, <http://dictionary.findlaw.com/definition/deep-pocket.html> [<https://perma.cc/9Q99-CD9W>].

85. See Wiley, *supra* note 67, at 237.

86. RESTATEMENT (SECOND) OF TORTS § 821B (1979).

87. Victor E. Schwartz & Phil Goldberg, *The Law of Public Nuisance*, 45 WASHBURN L. J. 541, 552 (2006).

88. Wiley, *supra* note 67, at 237.

89. See Jones, *supra* note 75, at 153.

90. See Wiley, *supra* note 67, at 245.

other states, meanwhile, rejected the application of public nuisance notions to the problem of lead-paint poisoning, noting that lead-based paint was a legitimate product when the paint companies sold it and that the paint companies no longer legally owned or controlled the paint when people contracted lead poisoning.⁹¹ Hence, claims that called for corporate accountability and could have positively affected large swaths of inner cities crashed on the shoals of conventional legal principles and reasoning of the market economy.

Overall, the physical environment of the inner city is often unhealthy, and law and legal institutions are complicit. The substandard parks, vacant lots, hazardous waste sites, and deteriorating housing derive from penurious government decisions, and law and legal institutions ensure these features of the physical environment will continue as they are. The inner city's grocery stores and alcohol outlets seem likely to continue their sale of unhealthy foods and beverages with the law's sanction. Indeed, government taxes these businesses, eagerly adding the resulting revenue to general funds. Complete legitimization of all the features of the urban poor's physical environment would be impossible, but law and legal institutions provide a useful veneer of legitimacy.

II. SOCIAL ENVIRONMENT

When scholars assert "place matters" with regard to a population sector's health, they have in mind not only the physical setting but also behavior and social norms in that physical setting.⁹² Hence, the urban poor's health problems in part come from their neighborhoods and housing *and* in part from their activities and undertakings in those fixed settings. Just as law and legal institutions play roles in the urban poor's unhealthy neighborhoods and housing, law and legal institutions adversely affect the urban poor's unhealthy social environment.

Those unsympathetic to the urban poor often see their unhealthy behavior as a matter of choice,⁹³ but just how much "choice" do the urban poor have? Many of the unhealthy activities and undertakings begin when inner-city residents are young, and we normally question the young's ability to choose maturely and intelligently. Then, too, many of the young

91. See Amanda Bronstead, *Lead Paint Litigation is Beginning to Fade*, NAT. L. J., Aug. 21, 2007, at 17; Robert Tyson & Morgan Van Buren, *Lead Paint Litigation & the Future of Public Nuisance Law*, TYSON & MENDES LLP, <http://www.tysonmendes.com/blog-lead-paint/> [<https://perma.cc/RBE9-4RUB>].

92. See Gaskin et al., *supra* note 14, at 2151.

93. See Nicholas Kristof, *It's Not Just About Bad Choices*, N.Y. TIMES, June 14, 2015, at SR1.

follow the lead of adult role models, and these adult role models might be continuing the bad choices they started when they were young.

As for the adults themselves, some of their behavior develops into severe compulsiveness and perhaps even addiction. Addicts are comparable to children in that we question their ability to make choices thoughtfully and intelligently. Some of the urban poor come to “need” whatever it is that is making them sick, and when matters reach this state, something more complicated than choice is controlling the decisions people make.

More generally, those living in poor neighborhoods are more likely to experience stressful life events than those in middle and upper-class neighborhoods.⁹⁴ These stressors include not only the physical features of the environment discussed in the previous Part of this Article, but also the exposure to disturbing or disorienting social behaviors. The latter include “vandalism, litter or trash in the streets, vacant housing, groups of teenagers hanging out, burglary, people selling drugs, and people getting robbed.”⁹⁵ In addition, stressful interactions abound with landlords and with government functionaries such as police, welfare officials, and child welfare investigators, among others. If many people in the inner city seem “stressed-out” as they make their way through their daily lives, the impression they convey may actually reflect their psychological state. One study even found mothers’ exposure to “preconception, stressful life events (PSLEs)” is greatest in disadvantaged neighborhoods and contributes to prematurity and low birth weights for babies.⁹⁶

Adding further to stress is the residential instability of people in impoverished urban communities. Eviction of poor people unable to pay their rent is surprisingly common and a study undertaken in Milwaukee, Wisconsin found that roughly a quarter of all renters’ moves during a two-year period were involuntary.⁹⁷ Additionally, one-eighth of Milwaukee renters “experienced at least one forced move – formal or informal eviction, landlord foreclosure, or building condemnation – in the two years prior to being surveyed.”⁹⁸ Laws sympathetic to landlords’ interests and local courts of course aided and sped up the process, but “off-the-books” evictions taking place in the shadow of the law probably outnumbered formal ones.⁹⁹

94. See Whitney P. Witt et al., *Neighborhood Disadvantage, Preconception Stressful Life Events, and Infant Birth Weight*, 105 AM. J. PUBLIC HEALTH 1044, 1046 (2015).

95. Danielle German & Carl A. Latkin, *Exposure to Urban Rats as a Community Stressor among Low-Income Urban Residents*, 44 J. COMMUNITY PSYCHOL. 249, 251 (2016).

96. See Witt et al., *supra* note 94, at 1048.

97. See MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 296 (2016).

98. *Id.* at 330.

99. See *id.*

The eviction of poor people falls most heavily on women and especially women of color. In Milwaukee, women from inner-city neighborhoods were evicted twice as frequently as men from the same neighborhoods,¹⁰⁰ and while women from inner-city neighborhoods make up only nine percent of Milwaukee's population of roughly 600,000, women from poor black neighborhoods made up thirty percent of all evicted tenants.¹⁰¹ "Among Milwaukee renters, over 1 in 5 black women report having been evicted in their adult lives, compared with 1 in 12 Hispanic and 1 in 15 white women."¹⁰²

Evictions are extraordinarily stressful for individuals and for the communities that experience them. Eviction causes psychological instability for people who invested in their homes and in getting to know neighbors.¹⁰³ Depression and, in extreme cases, even suicide can follow.¹⁰⁴ Evictions and the concomitant moves disrupt daycare arrangements and school enrollments, and the relocations have a way of shredding whatever has been developed as a neighborhood social network.¹⁰⁵ A single eviction can destabilize not only the block where the eviction occurs, but also the new block where the evictee squeezes in.¹⁰⁶ Frequent relocations, more generally, harm neighborhood cohesion and connectedness.¹⁰⁷

In addition to moves within inner-city communities, a great deal of movement occurs into and out of the communities. In particular, large numbers of young women and especially young men move frequently from the inner city to jail or prison after being convicted of a crime and then back to the inner city after serving their sentences. Many of the young men are in decidedly poor health.¹⁰⁸ The prevalence of infectious diseases in prison populations is four to ten times greater than it is in the general population, and the disparity in chronic diseases even larger.¹⁰⁹ The diseases travel with the men and women who have served their sentences back into their home communities, and a surprising percentage of women

100. *See id.* at 331.

101. *See id.* at 298.

102. *Id.* at 299.

103. *See id.* at 296.

104. *See id.* at 298.

105. Elizabeth Gudrais, *Disrupted Lives*, HARVARD MAG., Jan.-Feb., 2014, at 38.

106. *See* DESMOND, *supra* note 97, at 70.

107. *Id.* at 298.

108. Cynthia Golembeski & Robert Fullilove, *Criminal (In)Justice in the City and Its Associated Health Consequences*, 95 AM. J. PUB. HEALTH 1701, 1703 (2005).

109. *Id.* at 1701.

and men return to these home communities without knowing their HIV serostatus.¹¹⁰

Above and beyond the stressful relocations among the urban poor, alcohol consumption and drug use are perhaps the most obvious contributors to an unhealthy lifestyle. As already discussed in Part I, duly licensed and properly zoned alcohol outlets are among the most common businesses in the inner city, and these bars and liquor stores contribute to alcohol abuse and related health problems virtually as a matter of course.¹¹¹ Evidence predictably suggests that people in disadvantaged neighborhoods experience more alcohol problems.¹¹²

Drugs are also widely available in the inner city, albeit not through licensed outlets. Addiction can result, and, depending on the drug used, secondary health problems can manifest. Those who “choose” to inject heroin, for example, run the additional risk of contracting HIV/AIDS from dirty needles.¹¹³ A study completed in San Francisco found neighborhoods that were poorer than surrounding areas also had larger clusters of heroin users and, sadly, higher rates of HIV infection.¹¹⁴ Researchers in Atlanta found HIV to be associated with higher levels of poverty and even identified a single geographic cluster that contained sixty percent of all the HIV cases in the entire metropolitan area.¹¹⁵

As is the case with alcohol consumption and drug use, cigarette-smoking is more prevalent among the poor and working poor. For the last twenty years, people living below the poverty line have been roughly fifty percent

110. *Id.* at 1701-02. Serostatus is defined as: “The state of either having or not having detectable antibodies against a specific antigen, as measured by a blood test (serologic test). For example, HIV seropositive means that a person has detectable antibodies to HIV; seronegative means that a person does not have detectable HIV antibodies.” *Serostatus* <https://aidsinfo.nih.gov/education-materials/glossary/1632/serostatus> [<https://perma.cc/K974-6C2V>].

111. See Lipton, et al., *supra* note 26, at 657; see generally NAT’L INST. ALCOHOL ABUSE & ALCOHOLISM, *supra* note 25.

112. See Katherine J. Karriker-Jaffee et al., *Income Inequality, Alcohol Use, and Alcohol-Related Problems*, 103 AM. J. PUB. HEALTH 649, 654 (2013).

113. See Don C. Des Jarlais et al., *Syringe Service Programs for Persons Who Inject Drugs in Urban, Suburban, and Rural Areas*, 64 MORBIDITY & MORTALITY WKLY. REP. 1337, 1337 (2015). For a commentary on programs providing clean needles for those who inject opioids and heroin, see Don C. Des Jarlais, *Research, Politics, and Needle Exchanges*, 90 AM. J. PUB. HEALTH 1392, 1392-94 (2000).

114. See Alexis N. Martinez et al., *Spatial Analysis of HIV Positive Injection Drug Users in San Francisco, 1987 to 2005*, 11 INT’L J. ENV’T RES. PUB. HEALTH 3937, 3937-38 (2014).

115. See generally Brooke A. Hixson et al., *Spatial Clustering of HIV Prevalence in Atlanta, Georgia and Population Characteristics Associated with Case Concentrations*, 88 J. URB. HEALTH 129, 133 (2011).

more likely to smoke than those who live at or above the poverty line.¹¹⁶ One particular indication that smoking has increasingly become a special problem among the poor is the prevalence of smoking among Medicaid recipients. They are over fifty percent more likely to be smokers than are individuals with private insurance.¹¹⁷ A sense among government officials of where smoking has come to be concentrated contributed to the controversial proposal to ban all smoking in public housing.¹¹⁸

Poor African Americans are unfortunately three times more likely to smoke menthol cigarettes.¹¹⁹ Menthol cigarettes produce a soothing sensation in the throat, and people who smoke them inhale more deeply and for longer periods of time than do smokers of non-menthol cigarettes, thereby increasing the likelihood of throat and lung cancer.¹²⁰ Also, the poor, on average, smoke more cigarettes per day while successful attempts to quit smoking are less common.¹²¹ Due to this smoking-related behavior, the urban poor have a greater likelihood of asthma, heart disease, stroke, and lung cancer in particular, due to direct or secondhand inhalation of cigarette smoke.¹²²

Education campaigns, government regulations, and law reform have created a “remarkable half-century long public health success story of declining overall rates of smoking,”¹²³ but it is uncommon to find educational themes or new regulations that hold any special promise for reducing smoking among the urban poor. One example of promising law reform is the Family Smoking Prevention and Tobacco Control Act, enacted in 2009, which required cigarette packaging to have color graphics depicting the negative health consequences of smoking.¹²⁴ These graphics included pictures of diseased lungs, or haggard, nicotine-addicted people smoking through holes in their tracheas, possibly making them more

116. See Gary A. Giovino, *Epidemiology of Tobacco Use in the United States*, 21 ONCOGENE 7326, 7333 (2002); Demographics, ORAL CANCER FOUND., <http://oralcancerfoundation.org/understanding/tobacco/demographics/> [<https://perma.cc/UK4V-3A2M>].

117. See Helen A. Halpin et. al., *Medicaid Coverage for Tobacco-Dependence Treatments*, 25 HEALTH AFF. 550 (2006).

118. See Sabrina Tavernise, *Socioeconomic Divide in Smoking Rates*, N.Y. TIMES, Nov. 13, 2015, at A24.

119. See ORAL CANCER FOUND., *supra* note 116.

120. See *id.*

121. See Rosemary Hiscock et al., *Socioeconomic Status and Smoking: A Review*, 1248 ANNALS N.Y. ACAD. SCI. 107, 109-10 (2012).

122. See *id.* at 107.

123. Keith Humphreys, *Why the Wealthy Stopped Smoking but the Poor Didn't*, WASH. POST (Jan. 14, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/01/14/why-the-wealthy-stopped-smoking-but-the-poor-didnt/> [<https://perma.cc/V26K-WCZZ>].

124. Family Smoking Prevention and Tobacco Control and Federal Retirement Reform, Pub. L. No. 111-31, § 2013, 123 Stat. 1776, 1845 (2009).

effective deterrents for poorly-educated smokers than prosaic warning messages.¹²⁵

This bold, health-oriented legislation quickly encountered difficulty in the courts. Five tobacco companies challenged the requirements for graphic warnings. The United States Court of Appeals in Washington, D.C. struck down the graphic warnings requirement in 2012, invoking constitutional guarantees, as did the majority of the courts that considered public nuisance actions against lead-based paint companies.¹²⁶ The United States Congress, the court said, had not stated a “substantial interest” driving the regulations, or shown that the graphic warnings advanced the goal of smoking reduction.¹²⁷ Hence, according to the court, Congress had unconstitutionally restricted the tobacco companies’ commercial speech rights.¹²⁸ Even the conduct of “Big Tobacco,” it seems, occurs under the umbrella of protected individual rights and liberties, and the manufacture and sale of cigarettes remains both legal and profitable.

Food selection and eating habits also contribute to health disparities in the inner city. As noted earlier, the urban poor tend to shop in corner grocery stores instead of larger supermarkets.¹²⁹ The latter are more likely to display and sell fresh fruit and vegetables. The corner grocery stores, by contrast, feature mostly junk food and processed foods, and customers not surprisingly buy and consume large quantities of each.¹³⁰

Diets of this sort contribute to obesity, which in turn increases the likelihood of cardiovascular disease, hypertension, certain cancers, and especially diabetes.¹³¹ Diabetes is common in neighborhoods with high concentrations of poverty, and living in high-poverty neighborhoods increases the odds of having diabetes for whites as well as for African Americans.¹³² However, since African Americans are more likely to live in

125. See Ronald R. Sylvester, *R.J. Reynolds Tobacco v. FDA: The D.C. Circuit Tells the FDA to Butt Out of the Tobacco Companies’ Business, Causing the Graphic Image Requirement of the Family Smoking Prevention and Tobacco Control Act to Go Up in Smoke*, 46 CREIGHTON L. REV. 777, 801 (2013); Danielle Weatherby & Terri R. Day, *The Butt Stops Here: The Tobacco Control Act’s Anti-Smoking Regulations Run Afoul of the First Amendment*, 76 ALB. L. REV. 121, 123-24 (2013).

126. See *R.J. Reynolds Co. v. F.D.A.*, 696 F.3d 1205, 1222 (D.C. Cir. 2012).

127. See *id.*

128. See *id.*

129. See Olga Khazan, *Why Don’t Convenience Stores Sell Better Food?*, ATLANTIC (Mar. 2, 2015), <http://www.theatlantic.com/health/archive/2015/03/concerning-the-market/386327/> [<https://perma.cc/3Q8T-7KYC>]; see also Fiechtner et al., *supra* note 28, at 557, 562.

130. See Khazan, *supra* note 129.

131. CYNTHIA L. OGDEN ET AL., OBESITY AND SOCIOECONOMIC STATUS IN ADULTS: UNITED STATES, 2005-2008, NAT’L CTR. HEALTH STAT., 1 (Dec. 2010).

132. See Gaskin et al., *supra* note 14, at 2151.

high-poverty neighborhoods than whites, this can create the false impression that diabetes is linked to race rather than to socioeconomic class.¹³³

One frequently hears of the nation's "obesity epidemic,"¹³⁴ but, for purposes at hand, it should be underscored that the epidemic has ravaged different sectors of the population unequally. The prevalence of obesity increases the poorer a population is, and this is especially true for women. A full forty-two percent of women with income below 130 percent of poverty are obese, and this trend is similar across racial and ethnic groups.¹³⁵ As for children, obesity rates increased by ten percent for American children aged ten to seventeen between 2003 and 2007, but the rate increased twenty-three percent for low-income children during the same period.¹³⁶ Rates of what is called "severe obesity" were, as of 2009, roughly 1.7 times greater for poor children and adolescents than for other children and adolescents.¹³⁷

Financial considerations are contributors to the urban poor's unhealthy obesity. Nutritionists have pointed out that healthier foods cost more than foods with larger amounts of fat or sugar.¹³⁸ A carton of orange juice, for example, costs over four times as much as a comparably-sized jug of sugary soda.¹³⁹ The former, of course, is much healthier than the latter in the long run, but in the short run the sugary soda fulfills energy needs at a lower cost. The low cost of energy-dense foods and drinks helps explain why the urban poor purchase and consume them. According to nutritionist Adam Drewnowski, "the key variable, however, is not the macronutrient composition of the diet; rather, what might predict obesity is low diet cost."¹⁴⁰ As Part III of this Article will explain, work and welfare laws

133. *See id.* at 2152.

134. *See generally* Scot Burton et al., *Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants*, 96 AM. J. PUB. HEALTH 1669, 1669 (2006); Youfa Wang & May A. Beydoun, *The Obesity Epidemic in the United States – Gender, Age, Socioeconomic, Racial/Ethnic, and Geographic Characteristics: A Systematic Review and Meta-Regression Analysis*, 29 EPIDEMIOLOGIC REV. 6, 6 (2007); Lisa R. Young & Marion Nestle, *The Contribution of Expanding Portion Sizes to the U.S. Obesity Epidemic*, 92 AM. J. PUB. HEALTH 246, 246 (2002).

135. *See* OGDEN ET AL., *supra* note 131, at 2.

136. *See Relationship Between Poverty and Obesity*, FOOD RES. & ACTION CTR., <http://frac.org/initiatives/hunger-and-obesity/are-low-income-people-at-greater-risk-for-overweight-or-obesity/> [<https://perma.cc/GD8J-RDP2>].

137. *Id.*

138. Adam Drewnowski, *Obesity, Diets, and Social Inequalities*, 67 NUTRITION REV. S36, S36 (2009).

139. *See id.* at S37.

140. *Id.*

doom some Americans to poverty, and this law-induced poverty leads to the purchase and consumption of cheaper, albeit less healthy, foods.

The unhealthy food that has attracted pronounced attention in recent years is the sugary soft drink. According to New York City Health Commissioner D. Thomas Farley, sugary soft drinks are “the largest source of added sugars in our diets.”¹⁴¹ Forty-six percent of the residents of the Bronx consume at least one sugary soft drink a day, and if any one of those residents simply drank a sixteen ounce serving rather than a twenty ounce serving, she would save 14,600 calories a year – the equivalent of seventy chocolate candy bars.¹⁴²

Public health reformers have proposed new laws to control the purchase and consumption of sugary soft drinks in hopes of reducing obesity. These laws would tax the purchase of sugary soft drinks and place limits on the drinks’ sizes, but the reformers have had difficulty convincing voters and legislators that these are good ideas.¹⁴³ While a soda tax proposal carried in Berkeley, California, similar proposals have failed in other cities.¹⁴⁴ The beverage industry strongly opposes soda taxes, and the industry spent \$7.7 million in hopes of defeating a soda tax in San Francisco and another \$1.4 million in a losing campaign in nearby Berkeley.¹⁴⁵ The beverage industry spent over \$117 million nationally to stop or roll back soda taxes between 2009 and 2014.¹⁴⁶

Mayor Michael Bloomberg of New York City encountered the power and determination of beverage companies and fast-food chains when he tried to control consumption of sugary soft drinks. Bloomberg proposed in 2012 that restaurants, delis, movie theaters, and sports venues not be allowed to sell sugary soft drinks in containers larger than sixteen ounces.¹⁴⁷ The New York City Board of Health enthusiastically endorsed

141. *NYC Passes Ban on Supersized Sugary Drinks*, TODAY (Sept. 12, 2012, 5:57 PM), <http://www.today.com/health/nyc-passes-ban-supersized-sugar-drinks-995552> [https://perma.cc/DP6H-SCQM].

142. *See id.*

143. *See* Margot Sanger-Katz, *Pointing to Cash, Not Health, to Make a Soda Tax Palatable*, N.Y. TIMES, Apr. 4, 2016, at A1.

144. *See id.* Philadelphia enacted a soda tax in June 2016, but Mayor Jim Kenney insisted it should be seen as a new revenue source rather than as a health program. *See* Margot Sanger-Katz, *Philadelphia Finds Winning Strategy for Soda Tax, and Other Cities Notice*, N.Y. TIMES, June 17, 2016, at A21.

145. *See* Adam Nagourney, *Berkeley Officials Outspent But Optimistic in Battle over Soda Tax*, N.Y. TIMES, Oct. 8, 2014, at A16.

146. *See id.*

147. *See* Jonathan Allen, *New York OKs Nation’s First Ban on Super-Sized Sugary Drinks*, REUTERS (Sept. 13, 2012, 3:43 PM) <http://af.reuters.com/article/commodities/News/idAFL1E8KD4R020120913> [https://perma.cc/5VRW-67BA].

Bloomberg's proposal.¹⁴⁸ However, opponents including the American Beverage Association argued that the sixteen ounce restriction arbitrarily interfered with consumer preferences, and the New York Court of Appeals vacated the prohibition, holding that the Board of Health had exceeded the scope of its regulatory authority.¹⁴⁹ One academic saw the Court of Appeals' decision as a rejection of an unappealing variety of paternalism,¹⁵⁰ and in some circles Mayor Bloomberg was dubbed "Nanny Bloomberg."¹⁵¹

In reality, the proposed restrictions were not really that forceful in the first place. Even if Bloomberg had carried the day, consumers could still have purchased large jugs of sugary soft drinks at grocery stores instead of fast-food restaurants and, even at the latter, consumers could simply have purchased two sixteen ounce cups of soda instead of one thirty-two ounce cup. It is difficult to believe that the Bloomberg plan would have reduced the consumption of sugary soft drinks, much less altered the urban poor's drinking and eating habits. When pressed on the ultimate effectiveness of his plan, Bloomberg himself admitted it was only a "speed bump" designed to get consumers to slow down in their buying and, presumably, their drinking of sugary soft drinks.¹⁵²

What's more, Bloomberg's proposals might actually have played into the common attribution of obesity to the personal failures of obese people. These people, Bloomberg and the reformers seemed to be saying, just cannot control themselves. They drink sugary soft drinks too frequently, and they consume too much of these unhealthy beverages. The benevolent government is therefore doing them a favor by limiting how many ounces of sugary soft drinks they can purchase and consume.¹⁵³ Bloomberg's opponents, meanwhile, successfully argued for the type of unreflective consumption so common among modern-day consumers.

In general, law and legal institutions are complicit in the creation and perpetuation of a stressful social environment in the inner city. Law licenses, authorizes, and tolerates certain behaviors that lead to drug addiction, alcoholism, and obesity. When in a handful of areas lawmakers

148. *See id.*

149. *N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y. Dep't of Health & Mental Hygiene*, 16 N.E.3d 538, 541 (2014).

150. *See* David Adam Friedman, *Public Health Regulation and the Limits of Paternalism*, 46 CONN. L. REV. 1687, 1690 (2014).

151. *See id.* at 1689.

152. *See id.* at 1739.

153. The tendency to hold obese people personally responsible for their obesity dovetails to some extent with class and racial biases. Poor people of color who happen to be obese are in this sense double and/or triple-marginalized. *See* Lindsay F. Wiley, *Shame, Blame, and the Emerging Law of Obesity Control*, 47 U.C. DAVIS L. REV. 121, 161 (2013).

and public health officials have attempted to tax or otherwise control unhealthy behavior, courts have not necessarily been receptive to these attempts. On balance, the law is a negative force in the urban poor's unhealthy social environment.

III. POVERTY

Rundown housing in deteriorating neighborhoods and the actions and reactions of people in those neighborhoods are undeniably part of the urban poor's unhealthy social conditions. But is it possible to look "even further upstream" and ask why people actually live in this "place," in this type of particular physical and social environment? Part of the reason is that through exclusionary zoning the newer, second-ring suburbs keep the poor out,¹⁵⁴ but, on a deeper level, the urban poor do not relocate to a better physical and social "place" because they are impoverished. They lack, or are denied, the resources necessary to move.¹⁵⁵ Without escaping poverty, the urban poor will not find a better "place," and without dramatic changes in their "place," the urban poor cannot eliminate their health disparities or secure a greater degree of health equity. Work and welfare laws define and extend the poverty that is at the heart of the dilemma the urban poor face.

Relative wealth or poverty for the most part derives from two basic types of income: (1) income from capital and (2) income from wages and wage substitutes.¹⁵⁶ Unfortunately for the urban poor, they have almost no capital and therefore no income from it. At best, a poor American has a couple thousand dollars in a low-interest savings or checking account.¹⁵⁷ She might also own assorted pots and pans, kitchen equipment, a laptop, a television, and some inexpensive beds and furniture. But these possessions add up to almost nothing and cannot be used to generate income. For the poorest Americans, prominent economist Thomas Piketty has observed, "[t]he very notions of wealth and capital are relatively abstract The inescapable reality is wealth is so concentrated that a large segment of society is virtually unaware of its existence, so that some people imagine that it belongs to surreal or mysterious entities."¹⁵⁸

This means that the urban poor must look to the second type of income, namely, income from wages and wage substitutes. But the urban poor's lack of employment or employment for low wages severely limits their

154. See David Ray Papke, *Keeping the Underclass in Its Place: Zoning, the Poor, and Residential Segregation*, 50 URB. LAW. 787, 789-97 (2009).

155. For one social epidemiologist's efforts to define "poverty," see Nancy Krieger, *A Glossary for Social Epidemiology*, 55 EPIDEMIOLOGY COMMUNITY HEALTH 693, 695 (2001).

156. See THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 18, 238 (2014).

157. *Id.* at 259.

158. *Id.*

ability to acquire wealth through wages. Under current laws, the working poor are not guaranteed much of a wage.¹⁵⁹

No bright line exists between the truly impoverished and the working poor. Many of those in poverty temporarily take low-paying jobs or look on with approval when family members take such jobs. The low pay of fast-food workers has received the most attention, but minimum wages also abound in childcare, home healthcare, gas stations, and corner grocery stores.¹⁶⁰ One indicator of the difficulty of living on pay from these jobs is that nearly three-quarters of those receiving public support are either employed or members of a family headed by someone who is employed.¹⁶¹ According to one study, forty-six percent of childcare workers, forty-eight percent of home healthcare workers, and fifty-two percent of fast-food workers receive some variety of public assistance.¹⁶² Government support subsidizes low-wage employers; people who work for them are forced to apply for the rest of what they need from the state.¹⁶³

Critics frequently point out how small the federally required minimum wage is. It is currently set by law at \$7.25 per hour.¹⁶⁴ A full-time employee working forty hours a week for every single week of the year would earn \$15,080 annually—an amount above the poverty line for an individual but below the poverty line for a family of two.¹⁶⁵ With adjustments for inflation, the federal minimum wage reached its highest level in 1969, and that peak minimum wage is of course much higher than the minimum wage of the present.¹⁶⁶

The federal minimum wage is only one part of the calculus because what people receive as a minimum wage is established by a combination of federal, state, and local laws. In recent years, dozens of states and cities have set their minimum wage above \$7.25, and a good number of these states and cities have raised the minimum wage to \$10.00 an hour or higher.¹⁶⁷

159. See *Current State of Minimum Wage*, LEADERSHIP CONF. ON CIV. & HUM. RTS., <http://www.civilrights.org/publications/reports/minimum-wage/current-state-of-minimum-wage.html> [https://perma.cc/L26P-W9U4].

160. See Rachel L. Swarns, *Proposed Raise for Fast-Food Employees Divides Low-Wage Workers*, N.Y. TIMES, July 27, 2015, at A14.

161. See Patricia Cohen, *Counting Up Hidden Costs of Low Pay*, N.Y. TIMES, Apr. 13, 2015, at D1, D3.

162. *Id.*

163. *Id.*

164. See Noam Scheiber, *Give to Those at the Bottom? Sure, as Long as They Stay There*, N.Y. TIMES, June 10, 2015, at B2.

165. See LEADERSHIP CONF. ON CIV. AND HUM. RTS., *supra* note 159.

166. *5 Facts About the Minimum Wage*, PEW RES. CTR., <http://www.pewresearch.org/fact-tank/2015/07/23/5-facts-about-the-minimum-wage/> [https://perma.cc/T9ER-XBKA].

167. See Cohen, *supra* note 161, at D3.

What impact would higher minimum wages on the national, state, or local levels have on the urban poor? Economists heatedly debate the question, and one commentator described current raises in the minimum wage as “an economics experiment the country has rarely if ever seen before.”¹⁶⁸ Would it apply to all low-wage jobs or just to, for example, fast-food workers? Does it make a difference what percentage labor costs are of local businesses’ overall costs? Most importantly, what difference does the actual size of the proposed minimum wage hike make? Past hikes have been much smaller than what some states and cities have in recent years required.¹⁶⁹

Raising the minimum wage would have the greatest impact on those currently employed, on the so-called “working poor.” But there would be ramifications for others as well. According to the nonpartisan Congressional Budget Office:

Increasing the minimum wage would have two principal effects on low-wage workers. Most of them would receive higher pay that would increase their family’s income, and some of those families would see their income rise above the federal poverty threshold. But some jobs for low-wage workers would probably be eliminated, the income for most workers who became jobless would fall substantially, and the share of low-wage workers who were employed would probably fall slightly.¹⁷⁰

As for those currently unemployed—the majority of the urban poor—a higher minimum wage would obviously not lift any of them, temporarily or permanently, out of poverty.

Medicaid, food stamps, and the earned-income tax credit are all important to the urban poor as they struggle to make ends meet, but the programs designed to at least partially substitute for wages are Aid to Families with Depending Children (AFDC) and its replacement Temporary Assistance for Needy Families (TANF).¹⁷¹ Many Americans negatively characterize the direct cash subsidies from these programs as “welfare.” According to welfare scholar and law professor Tonya Brito, “[n]otwithstanding the broad range of governmental aid programs that

168. Noam Scheiber, *Raising the Floor for Wages Moves Economy Into Unknown*, N.Y. TIMES, July 27, 2015, at A1.

169. *Id.*

170. *The Effects of a Minimum-Wage Increase on Employment and Family Income*, CONG. BUDGET OFF., <https://www.cbo.gov/publication/44995> [<https://perma.cc/XE9Y-HWJX>].

171. See Emily Badger, *If You’re Trying and Not Succeeding, the Welfare System Today Gives You Basically Nothing*, WASH. POST (May 13, 2014), <https://www.washingtonpost.com/news/wonk/wp/2014/05/13/the-ever-narrowing-definition-of-americas-deserving-poor/> [<https://perma.cc/2WVJ-4JP4>].

exist, at a gut level when people say welfare they mean AFDC and its successor program Temporary Assistance to Needy Families”¹⁷²

Despite heated rhetoric about the size of welfare payments and the character of welfare recipients,¹⁷³ the United States is “not much of a welfare state”¹⁷⁴ Benefits and entitlements among European social democracies have traditionally been much larger and remain so even with contemporary European budget woes and worries about large numbers of refugees thought to be welfare-seekers.¹⁷⁵

The reasons for the limited welfare program involve both financing methods and, more generally, American attitudes regarding welfare and welfare recipients. Dating back to the 1930s, the nation chose to finance its welfare system chiefly through an income tax rather than through a national sales tax, which would have been more regressive for the poor.¹⁷⁶ However, surveys show the income tax is the least popular type of tax, and, as a result, elected lawmakers are hesitant to expand and promote it.¹⁷⁷ This makes it difficult to use the income tax for public expenditures, welfare among them.¹⁷⁸

American leaders in both major parties have for decades attempted to reduce or even eliminate welfare. In the 1980s, the Republican Ronald Reagan, for example, promoted a welfare reduction program called “Up From Dependency.”¹⁷⁹ In the 1990s, the Democrat Bill Clinton promised when he was running for President to “end welfare as we know it.”¹⁸⁰ And in this decade, current Republican Speaker of the House Paul Ryan has proposed greatly reducing the length of time a person could receive welfare.¹⁸¹ The argument that welfare is more of a problem than a solution

172. Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 233 (2000).

173. See MARC ALLEN EISNER, *THE AMERICAN POLITICAL ECONOMY: INSTITUTIONAL EVOLUTION OF MARKET AND STATE* 161 (2nd ed. 2014); DAVID STOESZ & HOWARD JACOB KARGER, *RECONSTRUCTING THE AMERICAN WELFARE STATE* xxvi (1992).

174. Eduardo Porter, *Income Inequality is Costing the U.S. on Social Issues*, N.Y. TIMES, Apr. 28, 2015, at B1.

175. *Id.*

176. See MOLLY C. MICHELMORE, *TAX AND SPEND: THE WELFARE STATE, TAX POLITICS, AND THE LIMITS OF AMERICAN LIBERALISM* 36 (2012).

177. *See id.* at 138.

178. See MONICA PRASAD, *THE LAND OF TOO MUCH: AMERICAN ABUNDANCE AND THE PARADOX OF POVERTY* 250 (2012).

179. See Eduardo Porter, *The Republican Party’s Strategy to Ignore Poverty*, N.Y. TIMES, Oct. 27, 2015, at B1, B7.

180. *Id.*

181. *Id.*

“has solidified into a core tenet influencing social policy in the United States but also around the world.”¹⁸²

Most generally, middle and upper-class Americans tend to assume that people are autonomous and able to realize their full potential.¹⁸³ Americans are disposed to the idea that individuals are responsible for their own economic situations.¹⁸⁴ This attitude contrasts with that of many Europeans who tend to favor structural explanations for poverty over ones emphasizing individual responsibility.¹⁸⁵ If an American is fortunate enough to receive welfare, meanwhile, “[w]elfare policy and discourse draw distinctions between ‘deserving poor’ (those who have not been able to provide for themselves because of circumstances beyond their control) and the ‘undeserving poor’ (able-bodied individuals who do not work).”¹⁸⁶ If you give welfare to the latter, the thinking seems to be, they will become even lazier and never work hard enough to provide for themselves and their families.¹⁸⁷

The centerpiece of current American welfare policy dates from the 1990s. As a candidate, Bill Clinton promised extensive welfare reform in his acceptance speech at the Democratic National Convention in 1992.¹⁸⁸ As president, he kept his promise by guiding the Personal Responsibility and Work Reconciliation Act (PRWORA) through Congress.¹⁸⁹ Under PRWORA, TANF replaced AFDC as the nation’s preeminent welfare program.¹⁹⁰

The PRWORA legislation and the substitution of TANF for AFDC dramatically changed the ways the states receive welfare money. The legislation ended the prior practice of matching grants and turned instead to

182. Eduardo Porter, *The Myth of Welfare’s Corrupting Influence on the Poor*, N.Y. TIMES, Oct. 20, 2015, at B1.

183. See Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J. L. & FEMINISM 317, 321 (2014).

184. See WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR 160 (1996).

185. See *id.*

186. See Brito, *supra* note 172, at 235.

187. See Porter, *The Myth of Welfare’s Corrupting Influence on the Poor*, *supra* note 182, at B6.

188. Bill Clinton, Acceptance Speech to the Democratic National Convention (July 16, 1992), 4PRESIDENT.ORG, <http://www.4president.org/speeches/billclinton1992acceptance.htm> [https://perma.cc/9VMT-9UM3].

189. See Porter, *The Republican Party’s Strategy to Ignore Poverty*, *supra* note 179, at B7; see also Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 FAM. L. Q. 519, 527 (1996).

190. Robert A. Moffitt, *The Temporary Assistance for Needy Families Program*, in MEANS-TESTED TRANSFER PROGRAMS IN THE UNITED STATES 291 (Robert A. Moffitt ed., 2003).

block grants.¹⁹¹ Current block grants have not adjusted for inflation, and, as a result, the block grants have lost more than a third of their buying power over a twenty-year period.¹⁹² More subtly, the block grant approach allows the states to spend money from the grants on government programs other than cash payments to the poor.¹⁹³ “On average, states use only about half of their funds under the TANF program to fund its core objectives: Provide the poor with cash aid or child care, or help connect them to jobs.”¹⁹⁴

Who might actually expect to receive TANF payments? Eligibility standards, income limits, and benefit rules are all different than they used to be, and the most striking changes involve limits on how long recipients might receive welfare and their obligation to work.¹⁹⁵ Hence, a recipient could be cut off when her authorized time to receive welfare expired, or sanctioned for failing to seek or find employment. The overall effect transformed welfare from an entitlement for mothers with minor children into a financial holding pattern for job-seekers. The number of poor families headed by single mothers receiving welfare plummeted by sixty-three percent.¹⁹⁶ PRWORA was “a fundamental redirection in government support systems for American families.”¹⁹⁷

Some commentators note that the number of families receiving welfare declined by two-thirds between 1996 and 2014,¹⁹⁸ and argue that TANF has successfully reduced American poverty. In reality, today only twenty-six percent of families with children in poverty now receive cash payments, down from sixty-eight percent at the time TANF was instituted.¹⁹⁹ What’s more, poor families now on welfare only receive about one quarter of the amount necessary to lift them out of poverty.²⁰⁰ Welfare today helps fewer people in poverty but has not reduced it.

While the role of social policies and laws in the creation of poverty and in concomitant health disparities is troubling enough, social policies and

191. *See id.* at 299.

192. *See* Porter, *The Republican Party’s Strategy to Ignore Poverty*, *supra* note 179, at B7.

193. *See* Moffitt, *supra* note 190, at 299.

194. Porter, *The Republican Party’s Strategy to Ignore Poverty*, *supra* note 179, at B7.

195. *See* Moffitt, *supra* note 190, at 301.

196. *See* Badger, *supra* note 171.

197. Legler, *supra* note 189, at 519.

198. *See* Pam Fessler & Chris Lehman, *20 Years Since Welfare’s Overhaul, Results Are Mixed*, NPR (Aug. 22, 2016, 4:35 AM), <http://www.npr.org/2016/08/22/490245470/20-years-since-welfares-overhaul-results-are-mixed> [<https://perma.cc/BG65-EZ4K>].

199. *See* Porter, *The Republican Party’s Strategy to Ignore Poverty*, *supra* note 179, at B7.

200. *See* Porter, *The Myth of Welfare’s Corrupting Influence on the Poor*, *supra* note 182, at B7.

laws also contribute to socioeconomic inequality, which fosters additional health inequity. “In fact, recent cross-national evidence suggests that the greater the degree of socioeconomic inequality that exists within a society, the steeper the gradient of health inequality.”²⁰¹ The steepness of the health gradient, in other words, relates to the socioeconomic equality in a society.²⁰² “Simply stated, it is not just the size of the economic pie but how the pie is sliced that matters for population health.”²⁰³

While the United States has the greatest private wealth of any country in the world,²⁰⁴ *New York Times* financial columnist Eduardo Porter is correct in noting that the nation “does an exceptionally dismal job of sharing [wealth] broadly among Americans.”²⁰⁵ The richest ten percent of the population owns more than seventy percent of the wealth, and half of that is owned by the richest one percent.²⁰⁶ Poor Americans, meanwhile, have virtually no wealth.²⁰⁷ Overall, economic inequality in the United States is at its highest level since the 1930s.²⁰⁸

Findings demonstrating the linkage of socioeconomic inequality and health inequity are convincing. Researchers have, for example, found an association between economic inequality and the unhealthy consumption of cigarettes.²⁰⁹ Other studies have found an association between economic inequality and the frequency of alcohol consumption, volume of alcohol consumed, drinking to get drunk, and death from alcohol-attributed illnesses.²¹⁰ Researchers even demonstrated that mortality itself is related

201. Norman Daniels, Bruce P. Kennedy & Ichiro Kawachi, *Why Justice Is Good for Our Health: The Social Determinants of Health Inequalities*, 128 DAEDALUS 215, 215 (1999).

202. *See id.* at 221.

203. *Id.*

204. Erik Sherman, *America is the Richest, and Most Unequal Country*, FORTUNE (Sept. 30, 2015, 4:28 PM), <http://fortune.com/2015/09/30/america-wealth-inequality/> [https://perma.cc/U8TB-878T].

205. *See* Eduardo Porter, *What Debate on Inequality Is Missing*, N.Y. TIMES, May 5, 2015, at B1.

206. *See generally* Stephen Erlanger, *Taking on Adam Smith (and Karl Marx)*, N.Y. TIMES, Apr. 19, 2014, at BU1, BU3.

207. *See id.*

208. *See* Michael Kraus, Shai Davidai & A. David Nussbaum, *American Dream? Or Mirage?*, N.Y. TIMES, May 3, 2015, at SR9.

209. *See generally* Sandro Galea et al., *Neighborhood Income and Income Distribution and the Use of Cigarettes, Alcohol, and Marijuana*, 32 AM. J. PREVENTIVE MED. S195, S195-02 (2007).

210. *See* Frank J. Elgar et al., *Income Inequality and Alcohol Use: A Multilevel Analysis of Drinking and Drunkenness in Adolescents in 34 Countries*, 15 EUR. J. PUB. HEALTH 245, 245-50 (2003).

to a society's degree of economic inequality.²¹¹ Societies with pronounced economic inequality have higher levels of mortality.²¹²

Why do these associations exist? What is it about economic inequality that hurts the urban poor's health? Some social epidemiologists hypothesize that the poor live in greater isolation and that their lack of support from others is bad for their health.²¹³ Other suggest that economic inequality leads the poor to compare themselves to those who are better off, and these comparisons spawn disappointment and even despondency, attitudes which are hardly conducive to good health.²¹⁴ Prospects for upward mobility create optimism, but when people have little hope for upward mobility, they invest less in their health and in leading healthy lives.²¹⁵ According to distinguished law professor Richard Delgado, the American poor are facing semi-permanent poverty.²¹⁶

Regardless of the pathways and connections between economic inequality and health inequity, income inequality itself is unlikely to decline. Economic inequality has grown substantially during the last twenty-five years, and "[i]t seems that almost every day there's a new report showing that incomes and wealth continue to grow for the richest while everyone else struggles to make do."²¹⁷ As a result the comparatively poor health of the urban poor will likely grow even worse.

This is not to say poverty and economic inequality are inevitable or the products of immutable economic rules. Although the reform of wage and welfare laws that would be necessary to reduce urban poverty and economic inequality in general is not currently even in the discussion stage, a shift in policy thinking could result in legal changes affecting poverty and economic inequality. As Thomas Piketty reminds us: "The history of inequality is shaped by the way economic, social, and political actors view what is just and what is not, as well as by the relative power of those actors and the collective choices that result."²¹⁸ The problem is that the most

211. See JEANNINE COREIL, CAROL A. BRYANT & J. NEIL HENDERSON, *SOCIAL AND BEHAVIORAL FOUNDATIONS OF PUBLIC HEALTH* 52 (2001).

212. See generally John Lynch et al., *Income Inequality and Mortality: Importance to Health of Individual Income, Psychological Environment, or Material Conditions*, 320 *BMJ* 1200, 1200-04 (2000).

213. See COREIL, BRYANT & HENDERSON, *supra* note 211, at 52.

214. See Karriker-Jaffee et al., *supra* note 112, at 649.

215. See Atheendar S. Venkataramani et al., *Economic Opportunity, Health Behaviors, and Mortality in the United States*, 106 *AM. J. PUB. HEALTH* 478, 483 (2016).

216. See Richard Delgado, *The Myth of Upward Mobility*, 68 *U. PITT. L. REV.* 879, 900-01 (2007).

217. Gillian B. White, *Is There a Better Way to Think About Income Inequality?*, ATLANTIC CITYLAB (Apr. 6, 2016), <http://www.citylab.com/politics/2016/04/is-there-a-better-way-to-think-about-income-inequality/477213/> [<https://perma.cc/GG55-42SG>].

218. PIKETTY, *supra* note 156, at 20.

powerful actors and lawmakers of recent times have used law less to reduce inequality than to define, continue, and perhaps increase it.

CONCLUSION

Health disparities and inequity are special burdens for the contemporary urban poor. From a social epidemiologist's perspective, the disparities and inequity derive in good part from the urban poor's fundamental social conditions. Law, it seems, is fully intertwined with these fundamental social conditions, usually supporting or, at minimum, tolerating them.

Indeed, as previous sections of this Article have detailed, law is implicated in many of these social conditions' most unhealthy components. Law, for example, zones and licenses the thriving liquor stores and discount cigarette outlets, while budget laws fail to fund the parks or address hazardous land uses adequately.²¹⁹ Federal laws are consciously phasing out traditional public housing, while local housing codes for private rental housing routinely go unenforced.²²⁰ Law facilitates the evictions of poor people, thereby contributing to their stress, and law allows the virtually unbridled sale of unhealthy food and drinks linked to obesity.²²¹ Most generally, wage and welfare laws shape urban poverty and concomitantly lead to increases in income inequality,²²² and, through it all, law has a legitimizing effect, leaving a stamp of approval on whatever social conditions it is supporting.

None of this is to argue that law cannot be used or changed in ways that improve the social conditions and the concomitant health outcomes and inequity that grow out of them. Laws involving lead paint poisoning, the consumption of sugary soft drinks, and even minimum wages can be seen as efforts in that regard. These legal interventions derive from middle and upper-class preferences and incorporate society's power differentials and social biases, but health-related laws do not unremittingly attempt to keep the urban poor in an unhealthy state.

The problem is that progressive legal interventions rarely reach and alter fundamental social conditions. One can imagine legal changes that would do so. The much-discussed universal minimum guaranteed income springs to mind,²²³ and then, too, a multi-faceted domestic Marshall Plan would

219. *See supra* notes 25-43, 17-21, and accompanying text.

220. *See supra* note 65, and accompanying text.

221. *See supra* notes 97-107, 129-53 and accompanying text; *see generally supra* Part II.

222. *See discussion supra* Part III.

223. *See generally* Eduardo Porter, *Plan to End Poverty Is Wide of the Target*, N.Y. TIMES, June 1, 2016, at B1.

change social conditions and inner-city health dramatically.²²⁴ However, these kinds of bold proposals for legal change find little traction in the court of public opinion. Opponents of proposed laws that would establish minimum guaranteed income or launch a domestic Marshall Plan castigate the proposals as wasteful spending, government over-reaching, and excessive paternalism.²²⁵ The urban poor, the argument goes, should pull themselves up by their bootstraps and not rely on handouts. In this nation, the argument continues, individuals are free to build and shape their success on their own terms, and government must honor the rights and liberties that make such individual success possible.²²⁶

Hence, the urban poor are left with what amounts to health-related legal tinkering, and most of the proposals that successfully make their way through federal, state, and local legislatures are uninspiring. For example, bans on school bake sales, limits on the donation of high-fat foods to homeless shelters, and additional labels on potato chips are superficial, narrowly-focused, and feeble, not to mention “virtually ‘dead on arrival’ politically.”²²⁷ Others are ineffective when they are applied, and still others are invalidated when the courts invoke what they take to be constitutional guarantees and protections.²²⁸

While law has many functions and multiple motivations, law’s dominant role related to the urban poor’s troubling health disparities and inequity is the creation and perpetuation of unhealthy social conditions. Social epidemiologists rightfully insist that fundamental social conditions must be considered when trying to improve a sector of the population’s health. But they need to appreciate that law is central in those social conditions. Social epidemiologists must look into the eyes of law and recognize it as a foe more than a friend in the struggle for improved health for the urban poor.

224. African American spokesmen, in particular, have promoted this idea. *See, e.g.*, Ron Daniels, *A Domestic Marshall Plan to Transform America’s “Dark Ghettos,”* 37 BLACK SCHOLAR 10, 10-13 (2007).

225. The tendency to cast these types of public health laws and regulations as “paternalistic” seems to have become more common after the publication of *Nudge: Improving Decisions about Health, Wealth, and Happiness*. RICHARD THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008). One law review devoted an issue to public health paternalism and its various types and categories. *See generally* David Adam Friedman, *Public Health Regulation and the Limits of Paternalism*, 46 CONN. L. REV. 1687 (2014).

226. *See generally* Friedman, *supra* note 225.

227. James G. Hodge et al., *New Frontiers in Obesity Control: Innovative Public Health Legal Interventions*, 2 DUKE F. L. & SOC. CHANGE 1, 4 (2013).

228. For a discussion of courts eliminating graphic warnings on cigarette packages or size limits on sugary soft drinks, see *supra* Part II.