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Civic Tenderness: Love's Role in Achieving Justice

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Civic Tenderness: Love's Role in Achieving Justice

A dissertation submitted in partial fulfillment
of the requirements for the degree of
Doctor of Philosophy in Philosophy

by

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Abstract

Martha Nussbaum's work *Political Emotions: Why Love Matters for Justice* identifies the role that compassion plays in motivating citizens in a just society. I expand on this discussion by considering how attitudes of indifference pose a challenge to the extension of compassion in our society. If we are indifferent to others who are in situations of need, we are not equipped to experience compassion for them. Building on Nussbaum's account, I develop an analytic framework for the public emotion of *Civic Tenderness* to combat indifference.

Civic tenderness is an orientation of concern that is generated for people and groups that are vulnerable in our society. For example, while we are all vulnerable to having material needs, some people are more vulnerable depending on their personal, social, political, economic, or environmental situations. I focus on two social injustices that largely affect African American and African descended people in America—poverty and the American Criminal Justice System.

Whereas compassion responds to suffering, tenderness responds to vulnerability. Since occupying a situation of suffering implies having been vulnerable to suffering, vulnerability is prior to suffering and tenderness is prior to compassion. Civic tenderness is the expansion of tenderness among a society's members, institutions, or systems. I argue that its expansion is initiated and sustained by a process called *tenderization*. Tenderization adjusts our perception of situations of vulnerability and motivates us to protect the vulnerable.

Additionally, I propose a plan to initiate this process. I suggest that the state's role will be to increase the recognition of situational vulnerability for groups like the

imprisoned and the impoverished. This recognition encourages the society to adopt legislation considerate of the historical circumstances that caused a particular group's vulnerability. In addition to legislative safety nets, I suggest the state should tenderize its citizens in order to reintegrate vulnerable citizens into society by giving them a sense of self-respect.

As an exercise in non-ideal political theory, this research draws on social/political philosophy, moral and social psychology, and political science to provide an interdisciplinary perspective of the problem and possible solutions.

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Writing *Civic Tenderness* has been one of the most challenging things I have ever done. Four years ago, when I set out to develop Civic Tenderness I did not yet understand much about the undertaking. I was unaware of how low the project would take me: there was much confusion, frustration, anger, sadness, and anxiety. I was also unaware of the abundance of joy I'd experience when I'd complete a paragraph or hearing that my advisor Dr. Warren Herold liked my ideas or thought they were "on the right track." Yet, four years later, here I sit writing the acknowledgments for the project. The journey has been full of many challenges and triumphs both large and small in scale. More importantly, my journey was made possible only through the undeserved love, support, and encouragement many of you have extended to me throughout this period—providing me with light and meaning, when there was none.

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I've been lucky to receive perspectives from people of different nations having

presented material on civic tenderness in Canada and having conversations about tenderness and justice with citizens of Ireland and Spain. My time in Europe was also inspirational in other respects as their magnificent architecture reminded me of the power that buildings can have to make us experience powerful emotions such as awe and wonder.

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warriors to fight on my behalf; always reminding me to “keep the faith”. To my Mom and Sister Jordan I love you both to life and I appreciate all of the support (and meals) you guys gave over writing this project.

Thank you all and I love you.

Dedication

For the homeless, the impoverished, the incarcerated, and all those who are civically vulnerable before the American Criminal Justice system.

For Josiah Makai Clardy and my late Uncle Louis Nordorf; two of the most tender people I have ever met.

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Introduction

In *Political Emotion*, Martha Nussbaum addresses the question of whether or not, for all intents and purposes, a society committed to justice should cultivate civic emotions in its citizens. She argues that for societies that aspire to achieve justice, the cultivation of political emotions are a necessary part of its realization. Her thought is that principles of justice themselves are not enough to motivate citizens to actualize a just society, a society partly illustrated by John Rawls in *A Theory of Justice*.¹ Because societies are made up of real people and not angels or disembodied spirits, a society must have a way of appealing to the motivational structure of humans to which emotions are central. Throughout the work, Nussbaum emphasizes that if a society is to actualize Rawls' principles then it must take this fact seriously. Nussbaum dedicates a considerable amount of time exploring how a nation like ours, one that has made commitments to the freedom and well being of its citizens, could take advantage of public resources to cultivate pro-social emotions that are important to the sustainability of the just society—sympathy and compassion.

The idea that the state should use its resources to cultivate citizens' emotions is not a completely novel idea. In part one of the book, Nussbaum examines proposals for such a state as set forth by August Comte, John Stuart Mill and Rabindranath Tagore. Each of these thinkers proposes a "Religion of Humanity" that attempts to outline the role of the state in the cultivation of pro-social civic emotions. Nussbaum extrapolates some very important insights from their work to establish the foundation on which her account builds.

¹ John Rawls, "A Theory of Justice, Rev. Ed," *Cambridge, MA: Belknap* 5 (1999).

Nussbaum maintains that compassion is “a painful emotion directed at the serious suffering of another creature or creatures”² and it is fundamental to her project because the experience of compassion is an area of apparent commonality and overlap between humans and other animals. By drawing on our kinship with other animals, Nussbaum’s analysis of compassion expands traditional accounts of human compassion and it involves four components: (i) seriousness, (ii) nonfault, (iii) similar possibilities, and (iv) eudaimonistic thought.

Nussbaum says that, “First there is a thought of *seriousness*: in experiencing compassion the person who feels the emotion thinks that some one else is suffering in some way that is important and nontrivial.”³ So, if Mal does not think that Stacy’s complaint about their situation is really serious, then Mal will not have compassion for their griping.⁴ This is not to say that the seriousness of the situation is dependent upon Stacy’s perception of their situation. Some predicaments, such as that of a comatose hospital patient, are really serious for a person in them and they themselves are unaware. In these situations, we think a person’s situation to be serious and typically have compassion for the person despite the fact that the person in the predicament may not think their situation to be serious.

² Martha C. Nussbaum, *Political Emotions* (Harvard University Press, 2013). P. 142.

³ Ibid, p. 142-3.

⁴ A part of me wonders about whether there is a gendered element to this. What I have in mind here is that in a patriarchal society where particular values are attached to gendered conceptions of manliness, individuals might be conditioned to not take seriously the kinds of sufferings that other individuals experience. Young boys in America, for instance, are taught that “little boys don’t cry” or to “be tough” even when they occupy a position of suffering. The failure to meet this criterion of toughness or manliness might result in severe and sometimes even harsh (i.e. bullying) indifference by male peer onlookers.

Nussbaum also maintains that when we experience compassion we usually make some implicit judgment about how much responsibility a person bears for causing their circumstances. She says, “When we think that a person brought a bad situation on him- or herself, this thought would appear to inhibit the formation of [compassion].”⁵ Presumably, this non-fault element of compassion explains why we typically don’t feel compassion if we think the person’s predicament chosen or self-inflicted. This is why, for instance, many of you do not feel compassion for the poor, who you believe brought poverty upon themselves.

The third element of compassion is a thought of similar possibilities. Traditional analyses of compassion maintain that when we experience compassion, we think that our possibilities and the possibilities of the person suffering are similar. Nussbaum does not believe that this thought is conceptually necessary for our experiencing compassion such as our compassion for the sufferings of animals that aren’t much like ourselves at all.⁶ However, she does think that this component has considerable importance in undoing the denial of our animal natures in that it may be able to remove barriers to compassion that have been created by artificial social divisions. So although this component of compassion isn’t absolutely necessary, it is important in that its absence constitutes a sign of grave danger by decreasing the likelihood that we will experience compassion for some other creature.

The “Eudiamonistic thought” is a thought or judgment that places the suffering of others among the important parts of the life of the person that is experiencing the

⁵ Nussbaum, M.C. (2013), p. 143.

⁶ Nussbaum (2001).

emotion.⁷ The motivation for including this component in her conception is the fact that “the things that occasion a strong emotion in us are things that correspond to what we have invested with importance in our thoughts, implicit or explicit, about what is important in life, our conception of flourishing.”⁸ In other words, it is important to deem others important.

However, we must break barricades of indifference to fully experience civic compassion. Our society is largely indifferent to the circumstances of our vulnerable comrades—people affected by the American Criminal Justice System and people who are poor.⁹ For example, African Americans account for a disproportionate number of Americans who are homeless and who are incarcerated. Since the 1970s the U.S. penal population has grown from around 300,000 to more than 2 million. About 840,000 or 40.2 percent of that population is Black.¹⁰ In my own hometown of Los Angeles, California,

⁷ What Nussbaum identifies as the eudaimonistic thought has similarities to what Nel Noddings as described in *Caring* as caring “circles and chains”. We might wonder how this is different from the first of the four components, seriousness. The thought is that in placing the suffering of another among the important parts of one’s life thereby makes it a serious matter to the person experiencing the emotion. When I take something serious, it is because it is important to me. However, while seriousness entails importance, importance does not entail seriousness. For example, I may judge it an important matter to read a particular book that has enjoyed a place in the philosophical cannon for centuries. However, this might not be a serious matter as one may put it off for long periods of time and sometimes indefinitely.

⁸ Ibid, p.145.

⁹ These groups are not here meant to capture the entire scope of vulnerable citizens. In fact, in our society, there are other groups that are civically vulnerable such as Black Americans (in virtue of the fact that they are Black), children and elderly, people who identify as LBGTQIA, women, etc., who I think that the program of civic tenderness would affect in a positive way. However, I do not have the space in this project to address every vulnerable group that our society contains. However, it is my hope that what might, in principle, be learned from my insights into civic tenderness, may be usefully applicable to the situation and circumstances of these other vulnerable groups in our society.

¹⁰ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2012).

African American citizens account for roughly 41 percent of the city's homeless population, despite only making up around 9 percent of the city's total population.¹¹ Unemployed persons, welfare recipients, and ex-convicts lives are shockingly socially scrutinized. We blame them and in the process make perfectly clear our denial of their situations as unjust. We highlight the few instances in which people ascend to the top, in order to prove to ourselves and to others that that kind of success is open to all, regardless of the circumstances. We do not extend our compassion to people that have allegedly brought harm to themselves or others. An orientation of indifference that we direct toward the suffering of victims of systematic injustice creates a difficulty for the outward extension of civic compassion because it distorts our ability to accurately assess the severity of their circumstances and whether a person is or is not responsible for the predicament in which they find themselves.¹² So, we might wonder whether the cultivation of compassion should be supplemented by the cultivation of a more basic emotion. Civic tenderness is that emotion.

Civic Tenderness is prior to civic compassion. Compassion is a response to a perceived need. Tenderness is response to perceived vulnerability. Insofar as current need implies vulnerability, vulnerability to having some need precedes actually having the need. By raising the awareness of those who are left vulnerable to daily lives endured with structural oppression, or *tenderizing* our society, the cultivation of civic tenderness can supplement the cultivation of civic compassion by dissolving the insensitivity and

¹¹ Ross Clarke Niva Dorell, "Skid Row," (Netflix, 2007).

¹² The tendency to blame people for the harm that they have allegedly done to themselves is a typical result of the so-called "fundamental attribution error" or "correspondence bias." When we become tender we are nearer to the perspective of others and that way we are less likely to make the attribution error. I develop this point in chapter 3.

emotional callousness generated by our indifference and make people more sensitive to systematic injustices as causes of predicaments that would normally be dismissed as an individual's own fault. Without altering this indifference it seems that civic compassion cannot fully be experienced.

As a response to vulnerability, civic tenderness alters indifference, enabling us to experience civic compassion and other empathic emotions such as sympathy. My aim, then, is to explain what civic tenderness is and how it can be effectively enacted.

Historically philosophers have typically thought that we first need to know what an ideal society would be like in order to know what changes an imperfect society needs to make. As a result political philosophy has been oversaturated with ideal theory.¹³ How do we get *there* from where we are, we ask? But the need for civic tenderness has arisen from the seriousness of current injustices in our society. We have grown numb to a number of social ills including the infections of our society's institutions and the callousness of the hearts of our fellow man. This will be an exercise in nonideal theory. So, if successful, our exercise will result in principles that we should rely on to meet the injustices in our current world. We do not need to know what is best in order to work toward a society that is better than the one we have at present.

There are at least two reasons that our thinking should be rooted in nonideal theory rather than ideal theory. First, beginning with an illustration of an ideal society runs the risk of overlooking the injustices of our nonideal world. Political theories that ask us to make race invisible don't have the conceptual resources needed to confront and grapple

¹³ John Rawls, "Justice as Fairness," *The philosophical review* (1958); Bernard Williams, "The Idea of Equality," (1962); Robert Nozick, *Anarchy, State, and Utopia*, vol. 5038 (Basic books, 1974).

with contemporary racial injustice, for instance.¹⁴ Starting with the kinds of disadvantages imposed say, on impoverished people because of their vulnerable position in our society examines the real problems and complaints of our society.

Second, the principles of a political theory should take seriously the motivational and cognitive capacities of human beings. The mechanisms and institutions of our society, if they are going to be just, will need to work in harmony with our motivational and cognitive talents and deficiencies. We can orchestrate this harmony with thoughtful analyses of how our society's institutions can redirect our energies toward more tender attitudes and dispositions regarding our fellows.

It's not that ideals don't belong in nonideal theory but rather that their function is different. Their role is one where they "can be tested in experience because the standards they try to set are internal to our conception of what we are trying to do—solve a problem, meet a complaint— and we could discover, through reflection on the consequences of following the ideal, that we misconceived the problem, that our proposed solution was confused or incoherent."¹⁵ Ideals are not viewed as standards of assessment but instead they embody solutions to identified problems in our society.

In the first chapter of the work I begin with an analysis of vulnerability. If, *prima facie*, civic tenderness is a response to a perceived vulnerability, we do well to have an understanding of what vulnerability is. What is vulnerability? Is vulnerability passive? If not, how is it active? What are the dangers attached to vulnerability? How does it look in a civic space? At times, we only talk about individual behavior and act as if political and

¹⁴ Elizabeth Anderson, *The Imperative of Integration* (Princeton University Press, 2010); Charles Wade Mills, *The Racial Contract* (Cornell University Press, 1997).

¹⁵ Anderson, *The Imperative of Integration*.

economic structures don't exist. But sometimes people do all they can to prevent themselves from falling into precarious positions yet still find themselves occupying them and are unable to change their situation by themselves. But the truth is that, some people are left situationally vulnerable to daily lives endured with structural oppression *because* they are less insulated from the results of luck within a society. Whatever our notion of civic vulnerability turns out being, it should speak intimately to these elements.

In the second chapter I ponder over indifference. What is indifference? Is it an attitude? Is it an emotion? Is it a dimension? What causes indifference? How might societal indifference look? It is hard to deny that there is an indefensible indifference towards victims of structural oppression—in particular, the imprisoned and the impoverished. Too many of us believe that something is wrong with the poor. Far too frequently have I heard the thought that if an individual is in poverty then this means that there is something wrong with that person's character, or they must have bad habits or a bad lifestyle and that they have made the wrong choices. This stigma that we attach to unemployed persons or welfare recipients counts in favor of my point. In *The Rich and The Rest of Us: A Poverty Manifesto*, Cornel West and Tavis Smiley maintain that, "We react and respond to the poor as if they are afflicted with some flesh-eating virus and are highly contagious. We deny poverty because we are afraid—afraid that saying the word somehow puts us at risk."¹⁶ Our insistence upon poverty being a necessary character flaw contributes to our deep indifference and in most cases prevents us from realizing how lives are shaped—though in no way dictated or determined—by the larger circumstances in which people find themselves such as social, economic, and historical forces. These alleged misbehaviors of

¹⁶ Cornel West, *The Rich and the Rest of Us* (Hay House, Inc, 2012).

the poor are transformed from adaptations to poverty in to the character failings that are supposed to account for poverty in the first place. Admittedly, this raises a prima facie problem: if people are motivated to actively scrutinize these groups, how is it that the society is indifferent toward them? But it is precisely the precarious life circumstances of the vulnerable that is failing to make a claim on them. That is why they are indifferent.

In the third chapter I introduce my notion of *civic tenderness* and the process of tenderization. Is tenderness an emotion? Is it an orientation? What is the relationship between tenderness and compassion? What is the relationship between tenderness and empathy? How exactly does the tenderization process work? Unlike compassion that arises from perceived suffering, tenderness is a certain kind of response that arises from a perceived vulnerability. It is important to understand that tenderness is more than just a positive affective feeling state. It can also make people more physically tender in their motor behavior.

Generally, the reasons that we have for behaving tenderly are constituted by the vulnerability of the beloved. When we track the reasons that we have for tenderness, we are not only more willing to respond with more tender activity but it also makes you more able to engage in tender behavior. The process of what I call *tenderization* provides us with a useful mechanism by which we can cultivate other empathic public emotions.

After the conceptual terrain has been thoroughly laid out, I segue into the applied portion of the process of tenderization. In the fourth chapter of the dissertation I explore the problems that the American Criminal Justice System poses for vulnerable citizens in our society. I give particular emphasis to problems these systems pose for the community of Black persons in America. In doing so, I engage questions such as what is the purpose

prison? How are prisoners vulnerable? How does tenderness work in this case? Does a more tender society than ours include prisons? In other words, does the program of civic tenderization prescribe prison abolition or prison reform?

The problems that prisons pose for our society are not disconnected from the problems that arise from poor economic conditions.¹⁷ In the fifth and final chapter of this work, I investigate the question of what is the poverty problem in America? In what ways are impoverished persons vulnerable? What is the relationship between vulnerability and responsibility? What does the process of tenderization have to do with influencing economic trends? The importance of a program that does this is not merely important to the community of populations that are majorly affected, but it is also of the utmost importance to the sustenance of our society as a whole.

¹⁷ Ibid.

Chapter 1: Civic Vulnerability

Vulnerability and sociality are conditions that none of us escapes. Our humanity inherently involves having bodily and other material needs. We all need food, drink, and shelter, for example. At various times in our lives we “are exposed to physical illness, injury, disability, and death.”¹⁸ We are also vulnerable to threats that our natural environment poses which is evidenced by devastating natural disasters such as Hurricane Katrina in 2005 and the 2010 earthquake in Haiti.

We are not merely embodied beings; we are social beings too. As Martha Nussbaum notes, as humans, “we live for and with others and regard a life not lived in affiliation with others to be a life not worth living.”¹⁹ We can, and do, experience violence, oppression, exploitation, manipulation, political violence and rights abuses at the hands of others. It is because we are social beings that we are vulnerable to being affected by others in various ways such as neglect, abuse, violence, or lack of care. The variety of forms that vulnerability takes on makes it a difficult concept to define.

On first thought, we might think of vulnerability as a universal capacity for suffering that is inherent to our embodiment. That is to say that, “To be vulnerable is to be fragile, to be susceptible to wounding and to suffering; this susceptibility is an ontological condition

¹⁸ Catriona Mackenzie, Wendy Rogers, and Susan Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy* (Oxford University Press, 2014). P. 1.

¹⁹ Martha C Nussbaum, "Human Functioning and Social Justice in Defense of Aristotelian Essentialism," *Political theory* 20, no. 2 (1992). P.219.

of our humanity”²⁰ or that vulnerability is “a universal, inevitable enduring aspect of the human condition.”²¹ It is true that all members of our society are vulnerable to a variegated range of inherent threats or harms. Still, what makes some people or groups—such as people who are poor or people who, because of their racial or gendered identities, stand a higher likelihood of contact with the criminal justice system or to be convicted of crimes—more vulnerable is their diminished capacity to protect themselves. Thinking of the universality of vulnerability in this way masks the identification of the context-specific needs of particular groups or individuals within populations at risk in American society. Consequently, so broadly construed, vulnerability is of limited use in responding to specific vulnerabilities in our society.

While some vulnerability is inherent to embodiment, other vulnerabilities may be caused or exacerbated by the social, political, or economic situations of individuals or social groups.²² This means that vulnerability takes on a social or relational character that encapsulates the contingent susceptibility of particular persons or groups to specific kinds of harm or threat by others.

Focusing on the social dimension of vulnerability rather than the vulnerability of embodiment suggests different responses to the question, “what is vulnerability?” On one hand, vulnerability is characterized by an emphasis on features common to our embodiment and so suggests an equal susceptibility to suffer. On the other hand, vulnerability is characterized by inequalities of power, dependency, capacity, or need and

²⁰ Mackenzie, Rogers, and Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy*. P. 4.

²¹ Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," *Yale Journal of Law & Feminism* 20, no. 1 (2008). P. 8.

²² Robert E Goodin, *Protecting the Vulnerable: A Re-Analysis of Our Social Responsibilities* (University of Chicago Press, 1986). P. 124.

renders some members of society more vulnerable to harm or exploitation by others. Importantly, both characterizations identify distinct features of vulnerability and the relation between them should be incorporated in to our analysis if it is going to be satisfactory. The first aim of the present chapter, then, is to explore the social dimension of vulnerability. I call this civic vulnerability. Ultimately, (as I argue in Chapter 3) civic tenderness is a response to civic vulnerability. So, our account of civic vulnerability should include an analysis of why civic vulnerability should be responded to. So we also have an additional aim of explaining how civic vulnerability generates duties of justice.

Vulnerability: Sources and States

One helpful way to integrate both characterizations of vulnerability and to distinguish between the distinct, and in some cases overlapping, modes of vulnerability is through taxonomizing the different sources and states of vulnerability. A satisfactory taxonomy of vulnerability will acknowledge both the ontological vulnerability inherent to the human condition while simultaneously allowing us to identify context-specific modes of vulnerability. Context-specific vulnerabilities enable us to elucidate responsibilities that are owed to those who, because of their context, are more vulnerable than one would ordinarily be.

Vulnerability arises from at least three different sources (inherent, situational, and pathogenic) and there are at least two different states of vulnerability (dispositional and occurrent).²³ The first source of vulnerability, *inherent vulnerability*, “refers to sources of

²³ Mackenzie, Rogers, and Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy*. P. 7.

vulnerability that are intrinsic to the human condition.”²⁴ In virtue of that fact that we are embodied creatures, we are all vulnerable to things such as fatigue and hunger. Since we do not give birth to ourselves the human condition is necessarily social, making us also vulnerable to things such as emotional hostility, violence, and social isolation.²⁵ Other inherent vulnerabilities vary as they pertain to features of our embodiment such as age, gender, and health. For instance, women are vulnerable to vaginal health risks that men are not²⁶; men are vulnerable to testicular risks that women are not. Also, aging generally, exaggerates the extent to which elderly persons are able or unable to meet their everyday needs.

Another source of vulnerability is *situational*. Situational vulnerability is vulnerability that is mediated by social context and may be short term, enduring, or intermittent. Situational and inherent vulnerability are categorically connected. The extent of the effect of situational vulnerabilities can also be greater or lesser depending on a person’s resilience, which is a product of genetic, social, and environmental influences. Inherent vulnerability on the other hand reflects features of the environments in which a person is born, raised, and lives. If it appears that the divide between situational vulnerability and inherent vulnerability is not very sharp, it is because it isn’t. Each involves reference to the other: someone’s situation wouldn’t be affected their if it were not for their inherent features (need for food, etc.); and someone’s inherent vulnerabilities

²⁴ Ibid.

²⁵ Ibid.

²⁶ Women and girls who are incarcerated are especially vulnerable to vaginal health risks. For example, “The Sexual Abuse to Prison Pipeline: The Girls Story” reports that many justice facilities often fail to meet standards for comprehensive women’s physical reproductive health, including gynecological and obstetric care. (Malika Saada Saar et al., “The Sexual Abuse to Prison Pipeline: The Girls’ Story,” (2015).

include an implicit reference to their situation. Yet the distinction is just sharp enough to index the extent to which one's particular social situation is not inherent to their humanity.

An important feature of situational vulnerability is that it “may be caused or exacerbated by the personal, social, political, economic, or environmental situations of individuals or social groups.”²⁷ In the United States in 2005 for example, Hurricane Katrina resulted in the vast destruction of homes and a shortage of food in the southeast region of the United States.²⁸ While the people directly affected by Katrina were forced to seek shelter and scavenge, even still, the overall effects were mediated by social contexts specific to the affluent United States. In affluent countries, the situational vulnerability that is caused in the wake of a disaster like Katrina is limited by social factors such as infrastructure or homeowners insurance. In contrast, in 2010 Haiti, a far poorer country than the United States, suffered a similarly devastating earthquake that caused an enduring situational vulnerability because of their general lack of support from government and non-nongovernment agencies.²⁹

²⁷ Mackenzie, Rogers, and Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy*.

²⁸ Melissa V Harris-Perry, *Sister Citizen: Shame, Stereotypes, and Black Women in America* (Yale University Press, 2011).

²⁹ I would like to emphasize here that I am by no means making a qualitative evaluation about which disaster was “worse” than the other. Both disasters were devastating and evoked powerful emotional responses—rightfully, so. Additionally, I am not meaning to assert that because the governmental assistance available to those effected by Hurricane Katrina could offer more support to them as citizens of the United States, that the government actually did so. On the contrary, in the introduction to her work *Sister Citizen: Shame, Stereotype and Black Women in America*, Melissa Harris-Perry notes, “In vulnerable neighborhoods there was little warning and no means of escape. Stranded, the people waited for relief and rescue that, for days, did not come. The power went out and the floodwaters rose. Food and water became scarce. The city's shelters became centers of disease, hunger, and death. For three days the victims of the storm were left to manage on their own. As they waited, President George W. Bush shared a birthday cake with Senator John McCain, visited a senior citizens' home, gave a speech on the war in Iraq, and played

There is a subset of situational vulnerability that is particularly troubling—*pathogenic* vulnerabilities. A key feature of pathogenic vulnerability is the way that it undermines autonomy or exacerbates the sense of powerlessness engendered by vulnerability in general. Pathogenic vulnerability may result when social policy interventions aim to ameliorate inherent or situational vulnerability have the opposite effect of increasing vulnerability or of generating new ones.^{30, 31} These may be generated by a variety of sources, including morally dysfunctional or abusive interpersonal and social relationships, sociopolitical oppression, or injustice.

Both situational and inherent vulnerability may be *dispositional* or *occurent*. Rather than referring to *sources* of vulnerability, this distinction references the *potential or actual states* of vulnerability. Occurent vulnerability is a state of vulnerability which requires

the guitar with a popular country singer. Secretary of State Condoleezza Rice shopped for shoes in New York City and took in a Broadway show. FEMA director Michael Brown sent lighthearted interoffice emails about which shirt and tie he should wear during his live television appearances about the disaster. Despite aggressive and continuing coverage of the destruction on cable news, it seemed that federal government officials refused to recognize what was happening in New Orleans.” However, my contrast of the two disasters is only meant to show that in an affluent country like the United States, when support for relief of natural disasters is deployed, the extent to which it can provide support and resources for those affected is generally greater than that in impoverished countries like Haiti.

³⁰ In her paper, *Challenging Indifference to Extreme Poverty: Considering Southern Perspectives on Global Citizenship and Change*, Barbara Heron examined the effects on developing countries of the Canadian government’s commitment to foster “global citizens.” She finds that sending Canadian students for short-term stays in developing countries actually generates a larger cost on behalf of the host country and often times leave those countries more vulnerable than they were before the arrival of Northern students. The vulnerability in this case is pathogenic in that it results from an attempt to protect vulnerability in the molding of global citizens that are “incapable of indifference to the lack of freedom that accompanies extreme poverty.” (Barbara Heron, “Challenging Indifference to Extreme Poverty: Considering Southern Perspectives on Global Citizenship and Change,” (2011).)

³¹ Mackenzie, Rogers, and Dodds, *Vulnerability: New Essays in Ethics and Feminist Philosophy*. P. 9.

immediate action to limit the harm being done. Dispositional vulnerability is a state of vulnerability that indexes a harm that is not yet or not likely to become a source of harm. For example, a person who is not driving but does sometimes drive is vulnerable to having an auto accident. Whether or not a motorist is occurrently vulnerable depends on whether or not they are *presently driving*.

The foregoing taxonomy enables us better explore the notion of civic vulnerability by disambiguating the different senses that vulnerability is used.

Civic Vulnerability

The American society aspires toward justice, but the pursuit of justice in our society does sometimes fail. The wealth gap and antipathetic race relations are evidence of this failure because it shows how our society falls short in fairly dealing with its most vulnerable citizens.³² For example, African-Americans account for a disproportionate number of Americans who are homeless and who are incarcerated. Since the 1970s the U.S. penal population has grown from around 300,000 to more than 2 million. About 840,000 or 40.2 percent of that population is Black.³³ In my own hometown of Los Angeles, California, African American citizens account for 41 percent of the city's homeless population, despite only accounting for 9 percent of the city's total population.³⁴ The truth is that in America, some people are left *civically vulnerable* because they are necessarily less insulated from the effects of bad luck as a result of structural oppression. The fact that civic vulnerability

³² Cornel West, *Race Matters* (Vintage, 1993); *The Rich and the Rest of Us*; Marc Lamont Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond* (Simon and Schuster, 2016).

³³ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

³⁴ Niva Dorell, "Skid Row."

results from structural oppression emphasizes that the vulnerability is of a particularly civic and social nature.

Darren Wilson's tragic execution of Michael Brown in 2014 in Ferguson, Missouri, is one example. To see how, we have to understand that racism exists beyond the level of personal intentions; it has structural dimensions as well. Marc Lamont Hill recounts Michael Brown's death saying:

With regard to Darren Wilson, even if he held no personal racial animus, he nonetheless approached Michael Brown with a particular set of assumptions about the world... Beyond the level of the personal, Wilson, [an officer of the state], obediently and uncritically followed the protocol of a system already engineered to target, exploit, and criminalize the poor, the Black, the Brown, the queer, the trans, the immigrant and the young.³⁵

Hill is alluding to a set of beliefs and conditions that structurally shape situations of oppression for the groups mentioned. In America, these beliefs are widespread and are often assumptions that are generalized and less often true. These assumptions include assumptions that all people of color are violent criminals, aggressive, or criminals; that petty crimes point to more serious crimes; and that poverty, race, and gender nonconformity “are identifiers of moral failings so rich that there is no longer any reason to recognize the rights, the citizenship, or the humanity of those so identified.”³⁶ This structure of beliefs was (and still is) in place prior to Wilson encountering Brown. As a result Brown's, a Black man, position in society was such that an encounter of this kind was far more likely to end in his death than a white counterpart—which it ultimately did.³⁷

³⁵ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 11.

³⁶ Ibid.

³⁷ Insensitive readers may point out that Michael Brown was not “innocent”; after all, Michael Brown was seen on a convenience store surveillance tape taking cigarillo “blunt wraps”—often used for wrapping paper of marijuana cigars after emptying its tobacco

The water crisis in Flint, Michigan unfortunately provides another example of civic vulnerability. At the time of this writing about 40 percent of the residents in Flint live at or below the poverty line and Flint is has the second largest unemployment numbers in Michigan; Flint is second only to Detroit.^{38, 39} The city's water supply used to come from Detroit's water company up until 2014. Because Detroit had been facing its own economic problems for years, Flint had been asked to pay increasing rates for their water between 2004 and 2013.⁴⁰ As a result, the Flint's city council voted to bypass Detroit for their water by way of a Lake Huron water pipeline. Yet, before Flint would be able to make the complete switch to the Lake Huron pipeline, city authorities had arranged to get water from the Flint River.⁴¹

According to Hill, "almost immediately after the switch was made, Flint residents discovered that their drinking water tasted different, looked different, and had a distinct color."⁴² The reason for this, the city would later find out, was high chloride levels and coliform bacteria in the river's water.⁴³ The water in Flint also carried lead and TTHM. Hill

contents—without paying. I don't wish to dispute the footage. But I do wish to mention that making mention of Brown's innocence or guilt obscures the more important fact that one should not have to be innocent to avoid being executed by the state.

³⁸ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

³⁹ "Flint, Mi, Unemployment Rate Report,"

<http://www.homefacts.com/unemployment/Michigan/Genesee-County/Flint.html>.

⁴⁰ *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

⁴¹ Ron Fonger, "Ex-Emergency Manager Says He's Not to Blame for Flint River Water Switch,"

http://www.mlive.com/news/flint/index.ssf/2015/10/ex_emergency_manager_earley_sa.html.

⁴² Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

⁴³ Importantly, Hill's retelling of Flint's narrative illuminates dimensions of civic indifference (chapter 2) as Flint ignored opportunities to take measures to "stop the bleeding". On p. 160 and 161 he says that "Had the authorities actually listened to Flint's

notes that “In January 2015, Flint water showed alarmingly high levels of total trihalomethanes (TTHM), a chlorination by product, in violation of the Clean Water Act” and that “excessive amounts of TTHM over a prolonged period could result in central nervous system problems and increased risk for cancer.”⁴⁴ Additionally, lead poisoning has effects on neurological, psychological, and reproductive health that are irreversible. Residents of Flint were thereby made more vulnerable by the actions and inactions of agents of the state. The extent to which their vulnerability has been increased reflects a set of structural problems that surrounds their situation.

On my account, a person or group is civically vulnerable if *they are susceptible to suffer or commit harm based on their position in society*. The civically vulnerable are so, in large part, because of their social context. This makes the notion of civic vulnerability a situational vulnerability. This characterization of vulnerability differs from traditional analyses of vulnerability because doing harm—engaging in behavior that is not just harmful to oneself but also to others—is not what we typically think about vulnerability as

residents, the crisis could have ended after a few weeks...For example, the water could have been treated with an anticorrosion agent like the one Detroit had long used. It was also possible for the emergency manager to open emergency negotiations to reconnect with Detroit, something that a democratically elected (rather than privately appointed) official would likely have considered essential in her role as the people’s representative... while public officials were focused on measuring Flint’s savings and deflecting complaints from worried residents, the people of Flint continued to drink, bathe, clean, and play in water that carried toxins into their bloodstreams on a daily basis.” In this case, the city’s officials failed to cultivate and sustain an appropriate orientation of concern toward current residents and future generations of Black and Brown people in Flint as they were being poisoned. Further, this failure played an instrumental role in the pursuit of their own ends of fiscal conservatism.

⁴⁴ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

being.⁴⁵ Regularly, we privilege people whose vulnerability is passive or people who are vulnerable to being affected in a certain way, in our moral evaluations.⁴⁶ However, we cannot exclude this other dimension of vulnerability which is engaging in actions. When we ignore the active dimension of vulnerability we blame people who tend to join criminal gangs, for instance, and do not to perceive them as vulnerable. In contrast, we perceive those who are executed or are physically harmed as a result of not joining a gang, as vulnerable. Civic vulnerability gives us a way to understand that sometimes the reason people commit wrong's is because they, often times, are selecting from a squandered set of choices or because of their social or economic positioning. So we can understand how people who become prisoners are vulnerable but part of the reason that they are vulnerable is because they are more likely to become part of a gang or becoming drug or sex traffickers. Still, others are vulnerable because they stand a higher likelihood of coming in to contact with the criminal justice system by being simply by being poor, Black, Brown, or LGBTQIA.⁴⁷

⁴⁵ For instance, David Lishner's work distinguishes empathy from tenderness psychologically. In particular, his results suggest that perceiving someone's vulnerability elicits tenderness. However, Lishner's discussion of vulnerability focuses on the very passive nature of vulnerability that is typical in traditional analyses of vulnerability. See, David A. Lishner, C. Daniel Batson, and Elizabeth Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need," *Personality and Social Psychology Bulletin* 37, no. 5 (2011).

⁴⁶ Jay M Bernstein, "Trust: On the Real but Almost Always Unnoticed, Ever-Changing Foundation of Ethical Life," *Metaphilosophy* 42, no. 4 (2011); Martha Albertson Fineman, "Vulnerable Subject and the Responsive State, The," *Emory LJ* 60 (2010); Goodin, *Protecting the Vulnerable: A Re-Analysis of Our Social Responsibilities*; Susan Dodds et al., "Dependence, Care, and Vulnerability," *Vulnerability: New Essays in Ethics and Feminist Philosophy* (2014); Mary C Ruof, "Vulnerability, Vulnerable Populations, and Policy," *Kennedy Institute of Ethics Journal* 14, no. 4 (2004).

⁴⁷ Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story."; Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*; Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

Importantly civic vulnerability does not rely on notions of dependency. I agree with Susan Dodds that:

Dependence is one form of vulnerability. Dependence is vulnerability that requires the support of a specific person (people)—that is, care... In this way dependence can be contrasted with those vulnerabilities that do not involve immediate reliance on specific individuals, for example those vulnerabilities that can be addressed by generalized public health and safety measures.⁴⁸

One can be vulnerable without being dependent. I am inclined to think of dependency as a kind of vulnerability rather than as a necessary part of vulnerability. Not all situational vulnerabilities involve dependencies. The way that a society is arranged shapes and mitigates what dependencies people will have. Dodds notes, “while some physical disabilities may mean a person is dependent in the *physical* domain on others to secure a wide range of her needs and to foster her capacities, there is considerable variation in the level of dependence experienced by people with physical impairments.”⁴⁹ A person who uses a wheelchair, for example, may be vulnerable in more ways than others that lack similar impairment. However, whether or not they are dependent, depends on whether their needs can be met without relying on the specific assistance of another person.⁵⁰ In other words, whether or not that person is more dependent on others for their care depends upon the social or legal factors mitigating their access to paid employment, home and workplace design, and their access to public services such as public busses that accommodate people who use wheelchairs. Dependency encapsulates instances of vulnerability where a person relies on care. Civic vulnerability is a kind of vulnerability that does not, out of necessity, evoke notions of dependency.

⁴⁸ Dodds et al., "Dependence, Care, and Vulnerability." P. 182-3.

⁴⁹ Ibid. P. 186.

⁵⁰ Ibid.

Building our political theory around a political subject that is *vulnerable* enables us to appreciate differences in power, circumstance, and actual ability.⁵¹ We have already explored the ways that we are inherently vulnerable to things like hunger, thirst, and being effected by our natural environment. We also know that while some human vulnerability is inherent and universal, it is also particular. At times this inherent vulnerability is compounded by social and political factors. If for example, I fall ill or injured, there may be accompanying harm or disruption of existing employment, economic, or family relationships. Martha Fineman states “These harms are not located in the body itself, but in the interruption or destruction of institutional or social relationships.”⁵² Suffice it to say that we are situated within different economic and institutional relationships. To an extent, as members of a society we all rely and depend upon our societies institutions to enable our pursuit of well-being. Our vulnerability can be and is mitigated by our social and political contexts. To the extent to which a society mediates vulnerability then, it is possible that the society can compensate or lessen our vulnerabilities through its programs, institutions, systems and structures.

In many cases, “economic and institutional harm can accumulate in a vulnerable individual’s life, compounding the situation and experience of vulnerability and resulting in greater harm.”⁵³ Yet individuals themselves are not the only subjects vulnerable in this way; individual vulnerability provides a basis for recognizing accumulated harm to social groups. For example these, “economic and institutional harms suffered by individuals also affect their families. Disparities and disruptions and the burdens they generate can be

⁵¹ Fineman, "Vulnerable Subject and the Responsive State, The." P. 27.

⁵² Ibid. P. 29-30.

⁵³ Ibid. P. 30. Additionally for a thorough analysis of what this accumulation looks like in American society, readers should see West, *The Rich and the Rest of Us*.

transferred from one generation to another.”⁵⁴ The threats for harm that a society’s institutions pose may also agglomerate around the members of a social or cultural “grouping who share certain societal positions or have suffered discrimination based on constructed categories used to differentiate classes of persons, such as race, gender, ethnicity, or religious affiliation.”⁵⁵

Civic vulnerability and Democratic Equality

In most democratic societies, the laws that a given society adopts usually reflect, on a larger level, the moral commitments that that society has. In our society, I think that it is uncontroversial to assert that the American commitment to equality is something that many Americans take to be a *good* thing not merely in a political sense, but also in the moral sense. But equality of what? My response to this question follows the tradition of democratic equality articulated by Elizabeth Anderson.⁵⁶

The nature of human vulnerability forms the basis for a claim that the state must be more responsive to that vulnerability. The reality of our individual frailty and the frailty of certain groups within our society has played a role in the design and construction of our societal institutions.⁵⁷ The Code of Federal Regulations for the Department of Health and Human Services, for example, outline specific protections for vulnerable groups as research subjects. It reads:

If an IRB regularly reviews research of a *vulnerable* category of subjects, consideration shall be given to the inclusion of one or more IRB members

⁵⁴ Fineman, "Vulnerable Subject and the Responsive State, The." P. 30. Additionally, readers should see chapter two, "Poverty of Opportunity" in West, *The Rich and the Rest of Us*.

⁵⁵ Fineman, "Vulnerable Subject and the Responsive State, The."

⁵⁶ Elizabeth S Anderson, "What Is the Point of Equality?*" *Ethics* 109, no. 2 (1999).

⁵⁷ Ruof, "Vulnerability, Vulnerable Populations, and Policy."

knowledgeable about and experienced in working with these subjects. Selection of subjects must be equitable and particularly cognizant of the special problems of research involving vulnerable populations. And when subjects are likely to be vulnerable to coercion or under influence, additional safeguards must be included in the study to protect the rights and welfare of these subjects.⁵⁸

Additionally, the United States National Commission for the Protection of Human Subjects of Biomedical research states:

When *vulnerable* populations are involved in research, the appropriateness of involving them should itself be demonstrated. A number of variables go in to such judgments, including the nature and degree of risk, the condition of the particular population involved and the nature and level of the anticipated benefits.⁵⁹

Our society's institutions collectively form systems that provide "resources in the form of advantages or coping mechanisms that cushion us when we are facing misfortune, disaster, and violence."⁶⁰ Since the vulnerability of certain groups within our society has played a role in the design and construction of our societal institutions, it makes sense that vulnerability should play a role in measuring the effectiveness and the justice of operation of our society's institutions.

I understand democratic equality as Elizabeth Anderson has articulated it.⁶¹ What is meant by democracy is "collective self-determination by means of open discussion among equals, in accordance with rules acceptable to all."⁶² The requirement of equality for a democratic society means that "one is entitled to participate, that others recognize an

⁵⁸ The emphasis is my own. US Department of Health and Human Services, "Code of Federal Regulations. Title 45 Public Welfare. Department of Health and Human Services. Part 46: Protection of Human Subjects," Washington,

<http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.html>.

⁵⁹ The emphasis is my own. Education Department of Health, "The Belmont Report. Ethical Principles and Guidelines for the Protection of Human Subjects of Research,"

<http://www.hhs.gov/ohrp/humansubjects/guidance/belmont.html>.

⁶⁰ Fineman, "Vulnerable Subject and the Responsive State, The." P. 32.

⁶¹ Anderson, "What Is the Point of Equality?*"

⁶² Ibid. P. 313.

obligation to listen respectfully and respond to one's arguments, that no one need bow and scrape before others or represent themselves as inferior to others as a condition of having their claim heard."⁶³ Under this theory of equality, equality is certain kind of social relationship.

The aim of democratic equality is put an end to socially created oppression.⁶⁴ Democratic equality thus pays less attention to injustices generated by the natural order and more attention to the social dimension of injustice. As such, democratic equality is not a call for equality of outcome or result. Further, the notion of democratic equality is a *relational* rather than a *distributive* theory of equality. Thus equality is conceived of as a social relationship rather than a pattern of distribution. Democratic egalitarians emphasize the relationship within which goods are distributed and not the distribution of the goods themselves.⁶⁵ These social relationships "are largely seen as instrumental to generating [just] patterns of distribution."⁶⁶ Because of this, democratic equality contains a certain sensitivity to the importance of the demands of equal recognition rather than to those of equal distribution.

The fundamental obligation of a democratic community of citizens committed to equality is to secure the social conditions of everyone's freedom where a free life is understood here as one that stands in relations of equality with others.⁶⁷ As a result, democratic equality disallows oppressive relationships. Anderson marks the conditions of democratic equality as follows:

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

⁶⁷ Ibid.

- Equals are not subject to arbitrary violence or physical coercion by others. Choice unconstrained by arbitrary physical coercion is one of the fundamental conditions of freedom.
- Equals are not marginalized by others. They are therefore free to participate in politics and the major institutions of a civil society.
- Equals are not dominated by others; they do not live at the mercy of others. This means that they govern their own wills, which is freedom.
- Equals are not exploited by others. This means that they are freer to secure the fair value of their labor.
- Equals are not subject to cultural imperialism: they are free to practice their own culture, subject to the constraint of respecting everyone else.⁶⁸

Since “Citizenship involves functioning not only as a political agent—voting, engaging in political speech, petitioning the government, and so forth—but also standing as an equal in a civil society,”⁶⁹ in an equal society, individuals are free from oppression to participate in and enjoy the goods that a society has to offer including participation in democratic self-government.

The egalitarian aim of securing the social conditions of their freedom can be understood in terms of capabilities for functioning.⁷⁰ The well-being of a person can be thought of in terms of the quality of one’s being. Sen says that “living may be seen as

⁶⁸ Ibid. P. 315.

⁶⁹ Ibid.

⁷⁰ Ibid. P. 75. See also, Amartya Sen, *Inequality Reexamined* (Oxford University Press, 1992). P. 39-42.

consisting of a set of interrelated 'functionings', consisting of beings and doings."⁷¹ Some relevant functioning's correspond to needs generated by both inherent and civic vulnerability including such things as being adequately nourished, being in good health, having self-respect, taking part in the life of the community, etc.⁷² In part, functioning's constitute a person's being and so evaluations of well-being have to make an assessment of these constitutive elements.

A notion related to functioning's is a person's *capability* to function.⁷³ Capabilities represent the combination of beings and doings that a person can achieve. Sen says, "Capability is, thus, a set of vectors of functionings, reflecting the person's freedom to lead one type of life or another...the 'capability set' in the functioning space reflects the person's freedom to choose from possible livings."⁷⁴ A helpful analogy for thinking about capability sets is to liken them to a person's budget in relation to purchasing. When a person has allocated a budget it represents that person's freedom to purchase commodities or services. They cannot purchase what their budget will not allow. In a similar way, a person's capability set represents a person's freedom to choose from possible ways of living; a person cannot achieve functioning that they are not capable of achieving.

The relationship between capabilities and well-being is thus:

1. If the achieved functionings constitute a person's well-being, then the capability to achieve functionings (i.e. all the alternative combinations of

⁷¹ *Inequality Reexamined*. P. 39.

⁷² Ibid.

⁷³ Ibid.; Anderson, "What Is the Point of Equality?"; Martha C Nussbaum, *Creating Capabilities* (Harvard University Press, 2011).

⁷⁴ Sen, *Inequality Reexamined*. P. 40.

functionings a person can choose to have) will constitute the person's freedom—the real opportunities—to have well-being.

2. Achieved well-being itself depends on the capability to function. As a result, choosing may itself be a valuable part of living, and a life of genuine choice with serious options may be seen to be—for that reason—richer.⁷⁵

The relevance of (1) to our political analysis is that it shapes our view of what the good democratic state is in a way that emphasizes the freedoms that different people engage to achieve well-being. The second component, (2), makes it clear that some capabilities (i.e. the capability for choice itself) contribute directly to well-being. Further, the notion of capability sets “gives us information of the various functioning vectors that are within reach of a person”.⁷⁶ This last point highlights the relevance of a notion of capability sets no matter how well-being is conceived.

Democratic equality thus aims for equality across a wide range of capabilities. Specifically it aims for equality across those capabilities that enable citizens to function as equals.⁷⁷ Functioning as an equal citizen in a society presupposes functioning as a human being and it involves the ability to participate in the exercise of specific political rights and the ability to participate in the civil society more broadly. So whatever functioning as an equal participant of a democratic state amounts to, it must include securing effective access to the means of sustaining one’s existence (food, shelter, clothing, etc.) and access to the basic condition of human agency (knowledge of one’s circumstances and options, the

⁷⁵ Ibid.

⁷⁶ Ibid. P. 41.

⁷⁷ Anderson, "What Is the Point of Equality?*" P. 317.

ability to deliberate about means and ends, the psychological conditions of autonomy, freedom of thought and movement). Specifically, in order to function as a citizen requires rights to political participation and effective access to the goods and relationships of civil society. These include but are not limited to the right to freedom of speech and assembly and access to public spaces such as parks and public accommodations such as public transit.

There are three advantages of using capabilities as the metric of equality. First, capabilities accounts of justice are “attentive to human diversity, with respect to both individual differences in endowments, personal characteristics, and value and values and to the external circumstances of people’s lives—their natural, social, cultural, and political environment.”⁷⁸ Whatever a person’s functioning’s, and so well-being turn out to be, they will be the result of a conversion from a person’s capability set. Next, the attention to the specificities of context enable an analysis of the different sources of social injustice, inequality, and disadvantage and the impacts these have on a person’s opportunities for functioning.⁷⁹ Mackenzie says, “Specific capability deficits can signal sources of occurent or dispositional vulnerability and vice versa. The notion of vulnerability also signals the actual or potential harm that may result from particular capability deficits and highlights the obligation to address those deficits in order to remediate vulnerability.”⁸⁰ The third upshot of capabilities as the metric for equality is that it weds the importance of choice with attention to the social conditions from which a choice is made. Mackenzie notes that “The

⁷⁸ Catriona Mackenzie, "The Importance of Relational Autonomy and Capabilities for an Ethics of Vulnerability," *Vulnerability: New essays in ethics and feminist philosophy* (2014). P. 49.

⁷⁹ Ibid.

⁸⁰ Ibid.

notion of choice is built into the concept of capabilities, as freedom or opportunity to achieve valuable functionings...[according to the capabilities theorist] the political goal of a just society should be to enhance citizens' (combined) capabilities, in the sense of ensuring equal access to a wide range of opportunities rather than ensuring the achievement of specific functionings."⁸¹

At this point in our discussion, we have defined the notion of civic vulnerability. Additionally, to the extent a society committed to mediating vulnerability, we have explored how a society's commitment to equality generates obligations of social justice to ensure the social conditions of everyone's freedom where a free life is understood here as one that stands in relations of equality with others. We can now turn our attention to the notion of civic indifference and the role that it plays in the prevention of democratic equality.

⁸¹ Ibid. P. 51.

Chapter 2: Civic Indifference

Indifference can take on a variety of forms. Sometimes when we speak of indifference we are talking about a lack of interest or attention. You might be indifferent to the exact number of cracks in the concrete sidewalks of your native city, for example. Other times we speak about indifference and are talking about some things being unimportant or lacking significance. In this case, for example, you might think that the free agency transactions that do not involve a sport's superstar players are a matter of indifference. Indifference is also commonly used to mean neutrality. In this sense, we commonly speak of professional sport officials being indifferent to the outcome of the match they are officiating.

In moral philosophy, there has been relatively little work done that concentrates explicitly on indifference. This fact is interesting because of the role that indifference appears to play in the work of some philosophers.⁸² It should be noted that this problem is

⁸² In "Liberalism and multiculturalism: The politics of indifference", Chandran Kukathas argues that liberalism as a political doctrine or idea is indifferent to the ends of people and indeed the happenings of people but does not substantively lay out what is meant by indifference. (Chandran Kukathas, "Liberalism and Multiculturalism: The Politics of Indifference," *Political theory* 26, no. 5 (1998).)

In *Living With Indifference*, Charles Scott adopts a phenomenological approach to talking about indifference. Scott thinks that indifference is a dimension of our lives that is very much real. Yet on Scott's own account indifference is difficult to articulate in any explicit way because no one articulation would be, or even could be sufficient to capture the dimension. He says that "The problem is that the happening of sheer neutrality is not a thing at all. "It" lacks specific determination, and that makes thinking and speaking of indifference awkward. My guess is that the most appropriate address of indifference is indirect and that directness regarding indifference is at best preparatory for another kind of perceptiveness." (Charles E. Scott, *Living with Indifference* (Indiana University Press, 2007). Notably, in "Indifference, Description, and Difference, John Stuhr offers considerations for Scott's work but generally continues in the tradition of presenting "no argument and no conclusion" about indifference. (John J. Stuhr, "Indifference, Description, Difference," *Epoché: A Journal for the History of Philosophy* 17, no. 1 (2012).

not specific to moral philosophy, but also exists elsewhere (albeit to a lesser degree) throughout the social sciences.⁸³

The aim of the present chapter is to illuminate what civic indifference is. As I conceive of it, civic indifference damages our ability to protect those who are civically vulnerable and our ability to establish emotions that are important for social justice such as civic compassion.⁸⁴ I first provide a scheme for interpreting and analyzing indifference through the work of Hallvard Lillehammer. From there I proceed to an understanding of what civic indifference is and why it is undesirable for societies that strive for justice.

Much like vulnerability, the variation of uses that indifference receives to suggests different responses to the question of “what is *civic indifference*?” In one of the few works of contemporary philosophy to address this issue at length, Hallvard Lillehammer presents a scheme for “the interpretation and analysis of ethically significant states of indifference in terms of how different subjects of indifference are variously related to their objects in different circumstances.”⁸⁵ Looking to his efforts will provide insight that proves helpful for conceptualizing what civic indifference is.

A scheme for understanding indifference

To get clear on what civic indifference is, it is helpful to distinguish between the distinct states of indifference. Once we get clear on what civic indifference is, we will be in a much better position to see why it is undesirable for societies aspiring toward social justice.

⁸³ For example, Stanley Cohen, *States of Denial: Knowing About Atrocities and Suffering* (John Wiley & Sons, 2013); Heron, "Challenging Indifference to Extreme Poverty: Considering Southern Perspectives on Global Citizenship and Change."

⁸⁴ Nussbaum, *Political Emotions*.

⁸⁵ Hallvard Lillehammer, "The Nature and Ethics of Indifference," *The Journal of Ethics* (2016). P. 1.

Lillehammer defines a state of indifference as, “the absence of one or more of a range of possible orientations of concern about some object on the part of some subject in a certain context.”⁸⁶ It follows from this that indifference admits of variation. For example, you might be indifferent to people who are incarcerated or impoverished, by not thinking about them, not worrying about them, or by not doing anything about them. Lillehammer’s use of “orientations” characterizes ways of relating to some object, person, or group. You can have this attitude in a variety of circumstances such as a state of ignorance of the causes of their conditions or through a state of false belief or denial about their conditions, for example. Still, we might wonder how much and what is required to qualify as not indifferent?

Insofar as indifference is an orientation of not being concerned about, not being indifferent requires that we take up an attitude of concern about. The concern needn’t be positive. Lillehammer says, “You can move out of a state of indifference in more than one direction, either by taking up a positive attitude towards it (as by way of affection) or by taking up a negative attitude towards it (as by way of hostility).”⁸⁷ Importantly, indifference is flexible enough to allow for someone to be non-indifferent so long as the state of some other person or group makes a difference to how they think, feel, or act at some point in time.⁸⁸ It is quite possible, however, that moving out of a state of indifference by adopting an attitude of hostility, may increase rather than reduce the distance between others, and ourselves although this claim has not yet been tested empirically.

When we say that someone is indifferent about something we express a relation between a *subject of indifference* (someone or something that is indifferent), an *object of*

⁸⁶ Ibid. P. 11.

⁸⁷ Ibid. P. 10.

⁸⁸ I am indebted to my advisor Warren Herold for both helping me see this point and encouraging me to bring it out explicitly.

indifference (something that they are indifferent about), an *attitude or orientation* of some subject towards the object, and a *context of indifference* (the facts of the situation in which the relevant orientation is embedded).

Lillehammer holds that, "A *subject* of indifference ('subject' being used here in a schematic sense) is a something or somebody capable of having an attitude or orientation towards some aspect of the world (including themselves)."⁸⁹ Subjects of indifference include humans, social groups, institutions, or systems.⁹⁰ A subject of indifference needn't possess an intentional state. This is implied from the fact that an indifferent subject could include social groups, institutions and systems. For example, the commissioner of the National Football League (NFL) might be said to be indifferent to the potential risk of bodily harm to players in the league, more so than NFL fans in general, but less so than the league itself. The first of these uses resonates most with the use of indifference in an ethical sense and for that reason is perhaps more paradigmatic of the ethically interesting uses of indifference. Still, the extension to the latter cases is at least intelligible.

The *object of indifference* is what an indifferent subject is indifferent to.⁹¹ Objects of indifference can include people, groups or collections of people, social entities, facts, events, actual and possible states of affairs. You might be indifferent to the sign-holding homeless person as you exit the highway, prisoners, the civic vulnerability of others, animal pain, philosophical research, the Turkish Coup of 2016, or what happens on your birthday

⁸⁹ Lillehammer, "The Nature and Ethics of Indifference." P. 12.

⁹⁰ I wish to note two things here. First, a subject of indifference may indeed be any ethically relevant locus of agency. Second, my use of system here is of the same sense that is the object of study in the social sciences. This sense of system is also often the target of political protest and critique.

⁹¹ It should be iterated here that both 'subject' and 'object' as I am using them in relation to indifference are being used in a schematic sense.

5 years from now. Further, you might be indifferent across a range of aspects and this range might be partially indeterminate. For example, you might care about the level of police brutality in your native city but not necessarily the amount of cracks in the concrete sidewalk or the year that the city was established.

Paradigmatically, *an orientation of indifference* is an attitudinal relation that connects a subject with the object of indifference.⁹² An indifferent orientation might be characterized by absence of thought belief, judgment, feeling, motive, disposition, a specific form of action, or an extended pattern of behavior. Systems and institutions are potential subjects of indifference and are incapable of having the attitudes associated with an individual's concern or indifference. In this case, Lillehammer says that:

it can be useful to include in the range of possible orientations of concern any kind of responsiveness to the world that is attributable to entities describable as acting for reason, or as having beliefs, purposes or aims whether they are individuals, groups, corporation, institutions, social systems, structures, or entire societies.⁹³

This means that the domain of indifference extends further than the domain of mental states (i.e. thoughts and feelings) that a person can have. Indifference, therefore, is neither essentially human nor essentially individual.

The *context of indifference* is the circumstances where the subject, object, and orientation of indifference are jointly realized. Facts, both internal and external to the subject of indifference, make up the relevant circumstances according to Lillehammer.⁹⁴ You might, for example, be indifferent to the treatment of prisoners in the context that none of your immediate family members or friends is incarcerated. In this case the relevant

⁹² Lillehammer, "The Nature and Ethics of Indifference." P. 15.

⁹³ Ibid. P. 15-6.

⁹⁴ Ibid. P. 16.

circumstances are facts external to you. Contrastingly, you might be indifferent to the treatment of prisoners in the context that you have no beliefs about the treatment of prisoners or in a context where you have family or friends who are incarcerated and think that they are deserving of such treatment. In this case the relevant circumstances are facts internal to you. Some of the features of the context of indifference can partly explain the emergence and persistence of the indifferent aspects of a certain situation.⁹⁵ Take a lack of concern for people in poverty for example. This lack of concern may vary in respect to an explanation for it—it might be because of a personal belief (i.e. you believe that the group of people in poverty are in poverty because they habitually made poor choices); a self-regarding motive (i.e. protecting the monetary resources that you have); a social cause (i.e. in-group/out-group tension); or a historical function (i.e. ensuring social stability).

This scheme uncovers a few more features of indifference. For instance, indifference is juxtaposed with an orientation of being concerned about. Lillehammer says “to be indifferent to something is to display an attitude or orientation towards some aspect of that thing, where that orientation involves the absence of care or concern.”⁹⁶ While to be concerned about something is to be more or less concerned about it, to be indifferent to something towards something is to not be concerned about it at all in some relevant respect.

To say that a person is concerned about something is to say that some state of the concerned person would change in certain ways in response to the state of the thing that

⁹⁵ Ibid. P. 17-8.

⁹⁶ Ibid. P. 22.

the person is concerned about.⁹⁷ To say that a person displays an indifferent orientation towards (or a lack of concern about) something is to say that some state of the indifferent person would not change depending on the state of the thing that is the object of their indifference. As Lillehammer puts it, "you are indifferent to something (in a certain way) just in case it makes no difference to you (in that way) whether it is the case or not."⁹⁸ In other words, if you are indifferent towards people in poverty or people imprisoned, then the impoverished and the imprisoned will make no difference in what you think, feel, or do. This is the case irrespective of whatever significance these matters may have for others.

Civic Indifference

So at this point we may say that a subject of indifference (someone or something) is indifferent to some object (i.e. the civic vulnerability of homeless people) when that subject displays a non caring orientation (i.e. lack of response) toward that object in a certain context (driving past the homeless person on the off ramp as you exit the freeway).⁹⁹ *Civic Indifference* is the lack of an appropriate orientation of concern a society's members, institutions, or systems may have toward a person or group's civic vulnerability (Chapter 1). It is a subset of Lillehammer's indifference that has a fixed subject and object, both pertaining to the civic dimensions of human life. In kind, civic indifference is a composite of *exclusionary indifference* and *negating indifference*. In effect, civic indifference increases moral distance and damages our ability to decrease the moral distance between ourselves

⁹⁷ Readers that are interested in responsive accounts of love or concern should see Niko Kolodny, "Love as Valuing a Relationship," *Philosophical Review* (2003); Justin Leonard Clardy, "Love, Reason, and Romantic Relationships" (University of Arkansas, 2013).

⁹⁸ Lillehammer, "The Nature and Ethics of Indifference." P. 23.

⁹⁹ "Who Is My Neighbour? Understanding Indifference as a Vice," *Philosophy* 89, no. 04 (2014).

and others that creates a social division.

As a kind of indifference, exclusionary indifference is present when a subject fails to either cultivate or sustain an appropriate orientation of concern towards some ethically significant feature of the world; where this failure plays a strategic or otherwise instrumental role in the pursuit of either their own ends, or in the pursuit of the ends of some collective of which they are a natural part; and where the nature of the object excluded plays a significant role in that pursuit.¹⁰⁰ Not all forms of exclusionary indifference are ethically problematic because the distinction itself is sometimes morally important. For example, a Jets fan at a sports bar might intentionally ignore the chants of the supporters of a rival team in order to show support to his own team. However, there are some cases that are ethically problematic because making such a distinction causes disproportionate harm to those who are excluded from the concern. The demonstrations of this orientation vary. You might fail to have compassion for a member of an out-group. This orientation could also be demonstrated through individual failures of recognition or action to systematic practices of discrimination such as using the facial images of Black males as shooting targets in police training or the refusal to offer Blacks Federal Housing Administration (FHA) loans which was a widespread practice in America throughout the 1950s and 1960s.^{101, 102}

¹⁰⁰ Ibid. P. 568.

¹⁰¹ Miami NBC News published an article describing outrage in Miami over a Florida police department using the faces of Black men as the targets in their shooting practice exercises. See, Mc Nelly Torres and Willard Shepard, "Family Outraged after North Miami Beach Police Use Mug Shots as Shooting Targets," NBC Miami, <http://www.nbcmiami.com/news/local/Family-Outraged-After-North-Miami-Beach-Police-Use-Criminal-Photos-as-Shooting-Targets-288739131.html>.

¹⁰² Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

Lillehammer maintains that exclusionary indifference “has both intrapersonal and interpersonal manifestations.”¹⁰³ This means that indifference can occur in a relation *between* persons (interpersonal) or it can manifest within the self or within one’s mind (intrapersonal). On one hand, it’s possible to consciously cultivate a sense of indifference to mark someone as a member of an out-group. For example, professional athletes may consciously cultivate indifference towards the emotions of their opponents; and it is this cultivation that, in part, marks their opponents as opponents. Additionally, this is the case with Danish correctional officers who often, become indifferent to certain dimensions of prisoners—marking their distinction from them—so that they remain attentive and alert to safety protocol involved in their job which some times includes horse back riding and golfing with inmates. Additionally, their indifference to the emotionally difficult aspects of their work enables them to cope with difficult emotional aspects of a job from which they cannot dis-identify completely through cynicism, irony, or humor.¹⁰⁴

On other occasions the exclusionary aspect is hidden from our consciousness “either because the exclusionary purpose is non-conscious, or because it is a function of social forms, the nature and workings of which lie beyond the horizon of subjective awareness.”¹⁰⁵ In this case, a member of some in-group could be indifferent to an ethically relevant feature of a member of an out-group while believing that she has no particular beliefs about the out-group (that is, her indifference to the out-group might be believed to

¹⁰³ Lillehammer, "Who Is My Neighbour? Understanding Indifference as a Vice." P. 569.

¹⁰⁴ See, Jeanette Lemmergaard and Sara Louise Muhr, "Golfing with a Murderer—Professional Indifference and Identity Work in a Danish Prison," *Scandinavian Journal of Management* 28, no. 2 (2012).

¹⁰⁵ Lillehammer, "Who Is My Neighbour? Understanding Indifference as a Vice." P. 570.

be a virtuous expression of her commitment to the in-group).¹⁰⁶ For example, in the 1990s the language of “superpredators” was employed to transform perception around the war on crime to one of “us versus them”. The “them”, in this case, were superficially cast Black youth as radically impulsive and brutally remorseless.¹⁰⁷ Sociologist Marc Lamont Hill notes that “The term “superpredator” was also used under the Democratic Clinton administration—by both President Bill Clinton and then First Lady Hillary Clinton, who also publicly advocated for the policy—to justify the Crime Bill and three strikes legislation, both which led to the expanded incarceration of people of color.”¹⁰⁸ Ultimately, the language of superpredators encourages members of our society to make superfluous distinctions between whether criminals are one of us or one of them. Too often in what we take to be a commitment to “us” we conclude that criminals are “one of them”.

Negating indifference is present when a subject fails to either cultivate or sustain an appropriate orientation of concern towards some ethically significant feature of the world and this failure involves the wrongful denial of some ethically significant status merited by that feature.¹⁰⁹ Unlike exclusionary indifference, negating indifference needn't play a role in a subject's pursuit of his or her own ends.¹¹⁰ Lillehammer asserts that “The subject of

¹⁰⁶ Here it is worth exploring the ways that there may be some connection between states of indifference and states of denial. To provide an in depth analysis of the connections between the two would take us too far a field here. Still it is worth noting that Stanley Cohen's work, *States of Denial: Knowing about Atrocities and Suffering* lays a solid foundation for such analytic exploration. See Cohen, *States of Denial: Knowing About Atrocities and Suffering*.

¹⁰⁷ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

¹⁰⁸ Ibid. P. 142.

¹⁰⁹ Lillehammer, "Who Is My Neighbour? Understanding Indifference as a Vice." P. 571.

¹¹⁰ When it is, it is proper to say that the indifference is both negating and exclusionary. Examples of such an attitude could come about when the loyalties that tie you to your own social group is enhanced if you systematically ignore the suffering you cause to people

negating indifference could be any individual, group, institution or structure describable as having attitudes of as- signing or denying value to things. Its object can be any ethically significant feature of the world, including individuals, groups or states of affairs.”¹¹¹ When the orientation of civic indifference is of the negating kind, it essentially involves the subject’s refusal to accord its object some specific form of moral standing. With this refusal comes a corresponding absence of concern by way of action, motivation, thought or feeling.

Lillehammer says “Negating indifference is an attitude taken towards another person when some strict ethical boundary is drawn and the other is regarded either as falling into a less favoured category of ethical concern, or is denied the status as ethically significant altogether.”¹¹² Historical descriptions of discrimination and oppression are replete with examples of this kind of indifference. For example, in 1971 prisoners staged a rebellion in response to overcrowding and harsh conditions. In a manifesto issued by the prisoners the prisoners pronounced that:

We are MEN! We are not beasts and do not intend to be beaten or driven as such. The entire prison populace has set forth to change forever the ruthless brutalization and disregard for the lives of prisoners here and throughout the United States. What has happened here is but the sound before the fury, of those who are oppressed.¹¹³

More recently, on February 1, 2017 the inmates at Vaughn Correctional Center took over the prison in a similar fashion—taking five officers hostage.¹¹⁴ Just like the inmates at

outside your group and where you justify your ignorance of this suffering by denying the legitimacy of the claims from the people suffering; this is often the case with American Police officers in regard to the victims of police brutality.

¹¹¹ Lillehammer, "Who Is My Neighbour? Understanding Indifference as a Vice." P. 572.

¹¹² Ibid. P. 572.

¹¹³ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 135.

¹¹⁴ Chris Boyette and Darran Simon, "Delaware Officers Held Hostage in Prison Standoff," <http://www.cnn.com/2017/02/01/us/delaware-prison-standoff/>.

Attica over forty years ago, prisoners staged a protest in response to the conditions that they are forced to endure at Vaughn—a prison known for its serious overuse of solitary confinement.¹¹⁵ In a statement released by the leaders of the rebellion the inmates explain the reason for their rebellion:

We're trying to explain the reasons for doing what we're doing. Donald Trump. Everything that he did. Everything that he is doing now. We know that the institution is going to change for the worse. We got demands that you need to pay attention to, that you need to listen to and you need to let them know. Education, we want education first and foremost. We want a rehabilitation program that works for everybody. We want the money to be allocated so we can know exactly what is going on in the prison budget.¹¹⁶

Without quibbling about the feasibility of some of the inmates' demands such as "a rehabilitation program that works for everybody", others like access to education and transparency regarding the prison's budget certainly seems feasible. The history of prison rebellion in America uncovers our indifference towards prisoners; we draw strict ethical boundaries that cast prisoners into a less favored category of ethical concern and we ignore their status as ethically significant altogether.¹¹⁷ Heather Ann Thomson writes:

Today, in prisons across the country, the conditions that sparked the Attica uprising are even worse. Prisons are more overcrowded. Food rations are meager and, since meal services are often contracted out to for-profit companies that food is sometimes spoiled and rotten. Medical care is substandard and, again thanks to privatization, is often legally negligent. Prisoners are kept for long periods of time in solitary confinement and face serious physical abuse—often accompanied by racial epithets and threats—from officers who retain utter control over them.¹¹⁸

The negating element of indifference is present in the fact that we ignore prison conditions across the country are far worse now than the conditions that sparked the

¹¹⁵ Heather Ann Thompson, "What Happened at Vaughn Prison?,"

<https://www.jacobinmag.com/2017/02/vaughn-prison-hostage-attica-uprising/>.

¹¹⁶ Ibid.

¹¹⁷ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. See particularly chapter 5.

¹¹⁸ Thompson, "What Happened at Vaughn Prison?".

uprising in Attica forty-six years ago, for instance.

In effect, civic indifference increases psychological and moral distance and it damages our ability to decrease the distance between ourselves and others which creates a social division. Moral distance is a sense of difference and separateness—or otherwise, ‘otherness’—between others and ourselves.¹¹⁹ Civic indifference intensifies a sense of social division, difference and separateness between you and the civically vulnerable. As a result we often fail to experience a sense of commonality of a shared civic fate, or of common humanity. Further, because it increases moral distance and damages our ability to decrease the it, civic indifference reduces our perception of similarity to others. Insofar as emotions like compassion, empathy, and sympathy involve thoughts of similar possibility and perspective-taking, we must break the barricades of civic indifference if we are to fully harness these emotions.

An orientation of civic indifference is sustained by three kinds of mechanisms—psychological, political, and social—that underlie intergroup interaction. These mechanisms interact with one another and affect us in ways that sustain civic indifference and in some cases reproduce civic vulnerability.

On a psychological level, attribution biases and implicit biases are widespread. The fundamental attribution error for example, is a tendency to overstate the role played by

¹¹⁹ My usage of the concept of moral distance is my best interpretation of what Lawrence Blum means by the term in “Stereotypes and Stereotyping: A Moral Analysis”. However, Blum does little to develop this concept within the framework of the paper. On page 276 he says that, “ To see a group through a stereotype is to intensify one’s sense of its and its members’ ‘otherness’. It is to experience a sense of moral distance from them,” and “any stereotyping intensifies a sense of difference and separateness between the stereotype and the stereotyped.” Beyond this, Blum does little to elaborate what the concept of moral distance involves. See, Lawrence Blum, “Stereotypes and Stereotyping: A Moral Analysis,” *Philosophical papers* 33, no. 3 (2004).

personal characteristics, and understate the role played by environmental factors. Corresponding with this error is often the indifference to the effects of other mechanisms as causes to poverty such as the effects of class segregation of people who are in poverty. The result is misunderstanding the experience of an impoverished Black woman, for instance, who has had her opportunities diminished by class segregation and instead regard her as a 'Welfare Queen'.¹²⁰ Further, implicit association tests (IAT) have been showing that a great many people including those who genuinely profess themselves to be impartial and explicitly disavow any form of prejudice, display subtle signs of bias toward both people and groups.¹²¹ These biases are just two examples where psychological science shows our cognitive capacities to be impaired even in cases where we have little to no introspective access to our own impairment. This cognitive impairment increases the

¹²⁰ The irony of this error has been recorded in *The Sympathetic State* (Michele Landis Dauber, *The Sympathetic State: Disaster Relief and the Origins of the American Welfare State* (University of Chicago Press, 2012). In this work, Landis Dauber traces the historical origins of the American welfare state. New Dealers recognized the early power of photography to construct sympathetic icons of the Depression's ravaging effects. Over the course of the Great Depression legislators were careful in how they depicted its victims when crafting the narrative. Because early legislators did not suspect images of Black bodies to be able to elicit sympathy from the nation, the most iconic image of the push for social welfare relief was "The Madonna of the Flood" taken in 1937. The image is of a helpless white woman breastfeeding her child at a refugee camp.

¹²¹ Daniel Kelly and Erica Roedder, "Racial Cognition and the Ethics of Implicit Bias," *Philosophy Compass* 3, no. 3 (2008); Anthony G Greenwald, Debbie E McGhee, and Jordan LK Schwartz, "Measuring Individual Differences in Implicit Cognition: The Implicit Association Test," *Journal of personality and social psychology* 74, no. 6 (1998); Jerry Kang et al., "Implicit Bias in the Courtroom," *UCLA Law Review* 59, no. 5 (2012); Tamar Szabó Gendler, "On the Epistemic Costs of Implicit Bias," *Philosophical Studies* 156, no. 1 (2011); Laurie A Rudman and Stephen E Kilianski, "Implicit and Explicit Attitudes toward Female Authority," *Personality and social psychology bulletin* 26, no. 11 (2000); Alexander R Green et al., "Implicit Bias among Physicians and Its Prediction of Thrombolysis Decisions for Black and White Patients," *Journal of general internal medicine* 22, no. 9 (2007); B Keith Payne, "Weapon Bias Split-Second Decisions and Unintended Stereotyping," *Current Directions in Psychological Science* 15, no. 6 (2006); "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon," *Journal of personality and social psychology* 81, no. 2 (2001).

likelihood that we misrelate to our fellows by failing to accord them proper respect or acknowledgement.¹²²

There are also political mechanisms. Through its legal and political institutions the state has been responsible for expanding and sustaining indifference by sustaining spatial segregation, for example.¹²³ The historical importance of state action in sustaining civic indifference should not be ignored nor underestimated.¹²⁴ For example, in August of 2015 the Mayor of San Francisco said he would enact 10 day edicts that order the homeless of the city off its streets during the week of the 2016 NFL Super Bowl because being homeless is both “illegal” and “dangerous”.¹²⁵ For another example in our society prisoners are spatially segregated from the rest of society (I guess correctional facilities don’t complement the architecture of fashion malls). Rather than a coincidence, this reflects a commitment that the state has made endorsing such spatial segregation.

The story of St. Louis’ “White flight” throughout the late 1940s and 1950s also illuminates the way civic indifference is sustained by political mechanisms. White flight is the term used to describe “the movement of White Families (and necessary resources) out

¹²² Blum, "Stereotypes and Stereotyping: A Moral Analysis." P. 262.

¹²³ Anderson, *The Imperative of Integration*.

¹²⁴ A compelling example can be found in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, Michelle Alexander carefully outlines the state’s role in crafting legislation—such as the Violent Crime Control and Law Enforcement Act—that is civically indifferent to the civic vulnerabilities that populations of Black and Brown people in America face. Former United States President Bill Clinton who signed the act into law, has admitted that this legislation has made the vulnerability of Black people worse in relation to the justice system in America. See, Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Dan Murica, "Bill Clinton Says He Made Mass Incarceration Issue Worse," CNN, <http://www.cnn.com/2015/07/15/politics/bill-clinton-1994-crime-bill/>.

¹²⁵ Heather Knight, "Nothing Like a Super Bowl to Fix S.F.'S Homeless Problem," *San Francisco Chronicle*, August 28, 2015 2015.

of the cities and in to the suburbs.”¹²⁶ To decrease the likelihood that Black families could follow White ones in to the suburbs, “many of these suburban communities adopted strict zoning regulations” that eliminated the kinds of resources that Blacks would need and desire.¹²⁷ By the mid 1940s there was a growing concern that downtown St. Louis was losing its residential character.¹²⁸ In fact, Hill mentions that “A 1948 study raised the issue of the unsightliness of the city’s slums—not so much out of concern for those who lived in them as for those who had to witness this blight on their daily commutes to downtown attractions.”¹²⁹ Officials attempted to clear the city’s slums by designing and building public housing developments and relocating residents from segregated relocation offices.¹³⁰ The establishment of these developments faced both economic and social limitations. The social limitations included attitudes that public housing should be situated downtown while simultaneously leaving the commercial core of the city intact. Economic limitations came by way of strict construction-cost guidelines and policies that the buildings “be maintained on rent monies alone.”¹³¹ The construction-cost restrictions placed on the project’s architects constrained their choices of usable materials and ultimately opted for the cheapest materials that did not hold up very well. Hill reports, “Doorknobs came off on first

¹²⁶ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. This narrative, in particular is about the Pruitt-Igoe housing projects in St. Louis. In its early days, Pruitt-Igoe was praised by urban planners “as a demonstration of how design could survive social change. Ultimately, the project failed due to social and economic factors.

¹²⁷ *Ibid.* P. 7.

¹²⁸ *Ibid.*

¹²⁹ *Ibid.* It is worth noting that while the authors of the report regarded the concerns of the commuters, they remained indifferent to the very residents themselves who has to live in the very conditions the commuters judged to be an eyesore.

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

use; locks were quickly broken and windows shattered. Pipes froze and burst.”¹³² To solve the problems likely generated by the use of cheap materials, officials attempted to raise the residents’ rent. Ultimately, the public housing developments were a failed government project that failed due to political and economic factors.

Third, there are social mechanisms such as norms of civil inattention and individual attitudes. Civil inattention is the attention we are encouraged not to pay to one another when sharing civic spaces. In a concentration on civil inattention Erving Goffman characterizes civil inattention as “a courtesy that tends to treat those present merely as participants in the gathering and not in terms of other social characteristics”.¹³³ Performed through interpersonal rituals, such as meeting with the eyes of another person passing on the street and casually casting your eyes down as you pass them (as if to “dim the lights”), civil inattention “constantly regulates the social intercourse of persons in our society.”¹³⁴ We are conditioned to pay little attention to strangers in spaces that we share with them— “Don’t be rude!” we tell our children. Goffman himself admits that “In performing this courtesy the eyes of the looker may pass over the eyes of the other, but no “recognition” is typically allowed.”¹³⁵ As a mechanism sustaining civic indifference, it is likely that the normalization of civic inattention dissuades us from *recognizing* one another, passing over other’s situations entirely.

Additionally, individual perceptions, memory, and political attitudes are fed stigmatizing images of vulnerable groups. For instance, media portrayals of Blacks as ‘lazy’,

¹³² Ibid. Hill also notes that “Because occupancy levels were less than capacity, the rent monies were not sufficient to fix these and other problems.”

¹³³ Erving Goffman, *Behavior in Public Places* (Simon and Schuster, 2008). P.86.

¹³⁴ Ibid. P. 84.

¹³⁵ Ibid.

'thugs', 'violent', etc., relentlessly propagate stigmatizing images of Blacks. In addition to being false and unwarranted, these images present the larger society with overgeneralizations about groups through a narrow and rigid lens of group-based images, rather than being sensitive to the range of characteristics constituting each member as a distinct individual. Additionally, these kinds of images homogenize groups, as they are indifferent to the internal variety of the group. Again, civic indifference is sustained in this case through the failure of recognition that is directed toward the group, and to individuals insofar as they are members of that' group.

The need for civic tenderness

Civic indifference towards civic vulnerability prevents us from confronting important issues of justice in a candid and critical way. If civic compassion is to be fully harnessed then these attitudes of indifference should be targeted and eliminated. The cultivation of *civic tenderness*—the appropriate orientation of concern a societies members, institutions, or systems should have toward a person or group's civic vulnerability—can target this indifference by responding to civic vulnerability. Civic indifference can be effectively addressed by means of the very psychological, political, and social, mechanisms that sustain it. We can move out of a state of civic indifference by being made more aware and thus attuning our orientation to one of concern as it pertains to the ways our fellows are civically vulnerable.

Chapter 3: Civic Tenderness

Civic indifference creates difficulties for the outward extension of civic compassion because it increases distance and damages our ability to decrease this distance between others and ourselves. If we are concerned with cultivating compassion in our society, we will need to find ways to alter this indifference. The emotion of tenderness has not been the object of much study in the philosophy of love nor has it been the object of any study in political philosophy. Yet because we are seeking a response to vulnerability, it would seem that no emotion is more important than tenderness. Tenderness functions as a response to perceived vulnerability that enables us to experience emotions that require that we take the perspective of others and see things from their shoes. Consequently, it may well be the case that tenderness is associated with other empathic emotions such as fear, anger, pity, and joy. Elaborating the relation between tenderness and these emotions, however, take us too far afield and so shall be left for another time.

The main goals of this chapter are to address important questions about the nature of civic tenderness and its role in achieving justice. What is civic tenderness? What is its relationship to empathic concern? I argue that Civic tenderness is an orientation of concern, brought about in response to civic vulnerability that provides an impulse toward caregiving behavior. If tenderness can be collapsed in to empathy, it might seem that our time and energy is better spent on trying to perfect the mechanism of empathy instead of tenderness. Distinguishing tenderness from empathy is necessary if we are to demonstrate that tenderness is important on its own. I also argue for the outward extension of civic tenderness through a process I call *tenderization*.

I begin with a characterization of empathic concern and remark on its relation to tenderness. My analysis then transitions in to a positive characterization of civic tenderness before describing the process of tenderization.

Empathic Concern

The empathy-altruism hypothesis states that:

feeling other-oriented emotion elicited by and congruent with the perceived welfare of another person in need (i.e., empathic concern) produces a motivational state with the goal of increasing that person's welfare by having the empathy-inducing need removed (i.e., altruistic motivation). The more empathy felt for the person in need, the more motivation to have the need removed.¹³⁶

I follow Charles Batson in characterizing empathic *emotions* as "other-oriented emotions elicited by and congruent with the perceived welfare of someone else" and empathic *concern* as "other-oriented emotion elicited by and congruent with the perceived welfare of someone in need."¹³⁷ Further, empathic concern produces altruistic¹³⁸ motivation only when it is felt as a result of perceiving others to be in need.¹³⁹ Understood in this way, empathic concern is a collection of emotions. Batson says that empathic concern "includes feelings of sympathy, compassion, softheartedness, tenderness, sorrow, sadness, upset, distress, concern, and grief."¹⁴⁰ An important feature of empathic concern is that it is other-oriented. Its orientation emphasizes that this concern involves feeling for others. While some emotions like compassion and sympathy are inherently other-oriented,

¹³⁶ Charles Daniel Batson, *Altruism in Humans* (Oxford University Press, USA, 2011). P. 29.

¹³⁷ Ibid. P. 11. Batson explains that in this context, congruent refers not to the specific content of the emotion but rather to the valence of the emotion—that is, positive when the perceived welfare of the other is positive; negative when the perceived welfare is negative.

¹³⁸ My usage of altruism is broad in that I am using it to mean "a motivational state with the ultimate goal of increasing another's welfare." Ibid. P. 20.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

others such as concern or distress can sometimes be oriented toward ourselves. These latter emotions belong to the class of empathic concern when experiencing them involves an orientation directed toward others who are in need.

Historically, empathy has not referred to a single phenomenon. This has contributed to an already immense, and steadily growing body of research and researchers still mean different things when they use the term 'empathy'. Beyond conflation of empathy and sympathy, empathy has been associated with projection, perspective taking, and knowledge of another's internal state. Empirically, a reason to prefer one of these usages to others has not yet emerged. As a result, thinking about empathy can become very confusing rather quickly. My intention is to stipulate my usage of empathic concern and distinguish it from these other usages in order to minimize the confusion that we might otherwise encounter. The stipulation will also help clarify how each usage relates to empathic concern. Some are cognitive and perceptual precursors of empathy concern and others are potential facilitators of empathic concern.

Empathic concern is distinct from knowing another person's internal states including their thoughts and feelings. While it may appear that knowledge of another person's thought and feelings is a necessary condition for empathic concern, it is not.¹⁴¹ Batson says that it only requires that "one *think* one knows the other's state because it is based on a perception of the other as in need" not that this perception be accurate nor that it match the other's perception of their internal state.¹⁴² Empathic concern can thus be experienced based on a false perception of another person's internal state. It's this feature that, in part, makes empathic concern particularly tricky. As Batson notes, "action prompted by concern

¹⁴¹ Ibid. P. 13.

¹⁴² Ibid.

based on a false perception, even altruistically motivated action, is apt to be misguided."¹⁴³ Although empathic concern can be authentically experienced based on a false perception, the likelihood that it prompts misguided action increases. In this case, I might, instead of actually helping my fellow who is in need, fail to come to the aide of my fellow; and, in some cases, I may worsen their situation. We do better if we can gain an accurate perception of the need others might be in. Further, if we can identify a mechanism that attunes our perceptions of the need others are in, we can get closer to gaining this accurate perception and place ourselves in a position to more likely be of benefit.

There is also distinction between empathic concern and adopting the posture or matching the neural response of others that we perceive to be in need. Preston and de Waal have suggested that experiencing empathic concern is partly based on the ability of perceivers to take over or mirror others' suffering, in response to certain expressive signs of distress or sadness.¹⁴⁴ However, the suggestion that mirror neurons are responsible for enabling all of our experiences of empathic feelings seems a bit far reaching and overestimates the role these neurological processes play in humans. Batson maintains that these neurons do not automatically nor do they always, lead to feelings.¹⁴⁵ For example, "To find oneself twisting and turning when watching someone balance on a tightrope is a familiar experience; Yet we can watch someone file papers with little inclination to mimic the action."¹⁴⁶ Further, our emotional reactions to the state of another do not always

¹⁴³ Ibid.

¹⁴⁴ Stephanie D Preston and Frans BM De Waal, "Empathy: Its Ultimate and Proximate Bases," *Behavioral and brain sciences* 25, no. 1 (2002); Karsten R Stueber, *Rediscovering Empathy: Agency, Folk Psychology, and the Human Sciences*, vol. 1 (Cambridge Univ Press, 2006).

¹⁴⁵ Batson, *Altruism in Humans*. P. 14.

¹⁴⁶ Ibid.

require perceptual cues or shared response. We sometimes, experience empathic emotions without observing another person's behavior altogether as when I am reading a news story about the plight of vulnerable groups.¹⁴⁷ This is not to say that mirror neurons are never responsible for facilitating feeling empathic concern; but rather, that it is neither a necessary nor sufficient condition for doing so.¹⁴⁸

Empathic concern is also different from coming to feel the same or similar emotion as another person feels. Notably, both David Hume¹⁴⁹ and Adam Smith¹⁵⁰ rely on this characterization and more recently, Stephen Darwall.¹⁵¹ However, there are some forms of empathy, such as contagion, that if it leads to focusing on our own state, prevents us from experiencing fuller, more robust forms of empathy. Batson provides the following example, "Sensing the nervousness of other passengers on an airplane in rough weather, I too may become nervous. If I then focus on my own nervousness, I am not likely to feel for them."¹⁵² In other cases, it is sufficient for empathic concern to know that others are in need or hurt. We feel *sorry* for a friend who is has lost their job, even if they feel *hurt* by it.

This concern is also distinct from understanding empathy as projection of oneself into the other's situation. When empathy was first translated in to English from its German origin *Einfühlung*, it was associated with a process of aesthetic pleasure that is derived from a projection of feelings on to a work of art particularly, and other objects in the

¹⁴⁷ Aaron Simmons, "In Defense of the Moral Significance of Empathy," *Ethical Theory and Moral Practice* 17, no. 1 (2014); Dauber, *The Sympathetic State: Disaster Relief and the Origins of the American Welfare State*; Knight, "Nothing Like a Super Bowl to Fix S.F.'S Homeless Problem."

¹⁴⁸ Anton JM Dijker, "A Theory of Vulnerability-Based Morality," *Emotion Review* 6, no. 2 (2014).

¹⁴⁹ David Hume, *A Treatise of Human Nature* (Courier Corporation, 2012).

¹⁵⁰ Adam Smith, *The Theory of Moral Sentiments* (Penguin, 2010).

¹⁵¹ Stephen Darwall, "Empathy, Sympathy, Care," *Philosophical Studies* 89, no. 2 (1998).

¹⁵² Batson, *Altruism in Humans*. P. 17.

natural world generally.¹⁵³ This understanding of empathy laid the foundation for an expansion of the notion in to the language of social feeling.¹⁵⁴ Over time, the term began to be associated with a process of inner imitation whereby an expressive act by another elicits a feeling in ourselves and that we project into the other by being attached to the perceived gesture. In some cases, projecting ourselves into the other's situation can give us a sense of what the other is feeling and so projection can facilitate empathic concern. But there are some situations where projection is not needed precisely because the situation of the other's need is obvious to us. When you see your fellow homeless on the street, you do not always have to project into her situation what you would feel. Sometimes you immediately are drawn to a light sadness or pity in response to her situation. There are other times where your homeless fellow's situation is not obvious however as in the case of someone who is "transient homeless".^{155, 156} In these situations, we might increase the likelihood that we impose an inaccurate interpretation of her situation on to her.¹⁵⁷

We should also be careful to distinguish empathic concern from a form of perspective taking that involves imagining how the other is feeling or thinking. Batson characterizes empathic concern as that which is evoked, in some cases, by perspective taking.¹⁵⁸ In 1978,

¹⁵³ Gillian Swanson, "The Tender Instinct Is the Hope of the World': Human Feeling and Social Change before Empathy," *new formations: a journal of culture/theory/politics* 79, no. 79 (2013).

¹⁵⁴ Ibid.

¹⁵⁵ SAMHSA SOAR TA Center, "Definitions of Homelessness," <https://soarworks.prainc.com/article/definitions-homelessness>.

¹⁵⁶ Christine Schanes, "Homeless Myth #7: "Oh No! A Transient," http://www.huffingtonpost.com/christine-schanes/homelessness-myth-7-oh-no_b_480127.html.

¹⁵⁷ Franz J Neyer, Rainer Banse, and Jens B Asendorpf, "The Role of Projection and Empathic Accuracy in Dyadic Perception between Older Twins," *Journal of Social and Personal Relationships* 16, no. 4 (1999).

¹⁵⁸ Batson, *Altruism in Humans*. P. 18.

Batson and his colleagues found that

empathic emotion mediates the effect of perspective taking on helping. Taking the victim's perspective, by itself, was not sufficient to motivate helping. Subjects who took the victim's perspective, but were led to misattribute the vicarious arousal resulting from doing so, did not offer more help.¹⁵⁹

This suggests that insofar as empathic concern motivates us to remove need, perspective taking is not sufficient to motivate this behavior and is instead, itself mediated by empathic emotion. Importantly, there is at least one other form of perspective taking that involves imagining how we would feel. This form of perspective taking differs from the conception of projection discussed above in that this form of perspective taking is more narrowly focused on how one actually feels rather than how or what one would feel if they were the other.¹⁶⁰ Perspective taking that is other-oriented increases the likelihood of experiencing feelings of fear or distress.¹⁶¹ This form of perspective taking, though it can be a basis for understanding another's situation when their situation is unclear, can still be inhibitive. For instance, if the other's situation is unclear and the other differs from you, your own thoughts or feelings might mislead your potential helping behavior or inhibit your feeling empathic concern.

As described, empathic concern is a source of altruistic motivation. By no means is the

¹⁵⁹ Jay S Coke, C Daniel Batson, and Katherine McDavis, "Empathic Mediation of Helping: A Two-Stage Model," *Journal of personality and social psychology* 36, no. 7 (1978). P.73.

¹⁶⁰ Batson, *Altruism in Humans*. P. 18. Batson also notes that in the literature on perspective taking, many conflate the two forms of perspective taking (imagine-self orientation and imagine-other orientation). On the same page, He says, "The imagine-self and imagine-other forms of perspective taking have often been confused or treated as equivalent, despite research evidence suggesting that they should not be. When attending to someone in distress, imagining how that person is thinking and feeling can stimulate empathic concern. Imagining how you would think and feel in that situation can too. However, in addition to stimulating empathic concern, an imagine-self perspective is likely to elicit self-oriented feelings of distress, whereas an imagine-other perspective is not."

¹⁶¹ Ibid.; Peter A Bertocci, "Primary Emotions: Anger, Fear, and Tenderness," in *The Person and Primary Emotions* (Springer, 1988).

claim that empathic concern is the only source of altruistic motivation. Still, this description lacks an explanation of why this is the case. In other words, it fails to mention a mechanism that would explain why perceivers who normally experience fear or distress at the sight of need, would care about alleviating or removing the other's need. A gap in our explanation of pro-social behavior remains without specifying the mechanism associated with a disposition to care for others instead of resisting or remaining indifferent to them in their situation of need.

Civic Tenderness

At a basic level, civic tenderness is the expansion of tenderness among a society's members, institutions, or systems. Civic tenderness is an orientation of concern, brought about in response to civic vulnerability that provides an impulse toward caregiving behavior. Importantly, since civic tenderness is an expansion of the emotion of tenderness, its features reflect the features of tenderness. Tenderness is both cognitive and affective and there are two important features that we should note: First, tenderness is a distinct emotion that is responsive to vulnerability.¹⁶² Next, tenderness is responsible for

¹⁶² Batson, *Altruism in Humans*; Bertocci, "Primary Emotions: Anger, Fear, and Tenderness."; Anton J Dijker, "The Influence of Perceived Suffering and Vulnerability on the Experience of Pity," *European Journal of Social Psychology* 31, no. 6 (2001); Anton JM Dijker, "Perceived Vulnerability as a Common Basis of Moral Emotions," *British Journal of Social Psychology* 49, no. 2 (2010); Antonius Johannes Maria Dijker and Willem Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance," (2007); Juan Pablo Kalawski, "On the Subjective Distinction between Tenderness and Joy" (University of North Texas, 2006); "Is Tenderness a Basic Emotion?," *Motivation and Emotion* 34, no. 2 (2010); Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need."; William McDougall, *An Introduction to Social Psychology* (Psychology Press, 2015); Lidewij W Niezink et al., "Empathic Concern: Distinguishing between Tenderness and Sympathy," *Motivation and emotion* 36, no. 4 (2012); Gary D. Sherman, Jonathan Haidt, and James A. Coan, "Viewing Cute Images Increases Behavioral Carefulness," *Emotion* 9, no. 2 (2009).

motivating protection and a variation of pro-social behaviors such as care.¹⁶³ The course for this section is to first present some general remarks about tenderness. Beyond this, I detail my analysis through an analysis of the work of Peter Bertocci¹⁶⁴ and Anton Dijker¹⁶⁵ respectively.

There is considerable consensus surrounding the idea that tenderness necessarily involves an appraisal of vulnerability.¹⁶⁶ In other words, we experience tenderness when we perceive a target as vulnerable.¹⁶⁷ Vulnerability, then, is a perceptual or cognitive antecedent of tenderness.¹⁶⁸ Tenderness is sometimes thought to belong to the class of empathic emotions.¹⁶⁹ Here, however, it serves us well to be mindful of the distinction between emotions and emotional dispositions.¹⁷⁰ Emotions differ from emotional dispositions in that the former have a shorter duration than the latter. Disposition, as I

¹⁶³ Dijker, "A Theory of Vulnerability-Based Morality." P. 176; Kalawski, "On the Subjective Distinction between Tenderness and Joy."; "Is Tenderness a Basic Emotion?."

¹⁶⁴ Bertocci, "Primary Emotions: Anger, Fear, and Tenderness."

¹⁶⁵ Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance."

¹⁶⁶ Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need."; Dijker, "The Influence of Perceived Suffering and Vulnerability on the Experience of Pity."; Dijker, "A Theory of Vulnerability-Based Morality."; Niezink et al., "Empathic Concern: Distinguishing between Tenderness and Sympathy."; Sherman, Haidt, and Coan, "Viewing Cute Images Increases Behavioral Carefulness."; David A Lishner et al., "The Effect of Infant-Like Characteristics on Empathic Concern for Adults in Need," *Motivation and Emotion* 32, no. 4 (2008); Kalawski, "On the Subjective Distinction between Tenderness and Joy."; "Is Tenderness a Basic Emotion?"; Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance."

¹⁶⁷ Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need."; Lishner et al., "The Effect of Infant-Like Characteristics on Empathic Concern for Adults in Need."; Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance."

¹⁶⁸ Dijker, "A Theory of Vulnerability-Based Morality." P.176.

¹⁶⁹ Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need."

¹⁷⁰ Kalawski, "On the Subjective Distinction between Tenderness and Joy." P. 24.

understand it here is expressive of *tendencies toward*. To say that one has a tender disposition toward some object is to be oriented toward that object in a way that you tend to be sensitive and responsive to it in situations of vulnerability. We properly speak of a tender disposition in love. To some degree, when we are in love, it is not uncommon to be tenderly disposed toward our beloved. We are particularly apt to experience the empathic emotions such as fear or anxiety when they are in danger or joy when they succeed.

Tenderness, as an emotion may well belong to a class of empathic emotions.¹⁷¹ However, civic tenderness is a kind of emotional disposition. As an emotional disposition, tenderness is the mechanism that underlies the class of empathic emotions and can help us explain why people who normally experience fear or distress upon perceiving other's vulnerability, are motivated to alleviate or remove their suffering instead of turning away or reducing attention to the other, for instance.¹⁷² The fact that tenderness is activated by vulnerability helps to distinguish it from other empathic emotions.

In "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need," David Lishner et al., characterize two different forms of need.¹⁷³ While vulnerability can be thought of as a kind of need, still, it is a need that is distinct from *current need*.¹⁷⁴ Vulnerability is a dispositional need. Following Charles Batson, Lishner

¹⁷¹ In "Tenderness and Empathic Concern" (Forthcoming) I elaborate in detail the relationship between the emotion of tenderness and empathic concern.

¹⁷² Dijker, "A Theory of Vulnerability-Based Morality."; Kalawski, "Is Tenderness a Basic Emotion?." William McDougall also makes note of this on p. 99 of *An Introduction to Social Psychology* where he says "A tender mother will sometimes turn away from a vomiting child with an irresistible impulse of repulsion."

¹⁷³ Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need."

¹⁷⁴ Batson, *Altruism in Humans*. P. 35. Batson says, "Even when there is no specific immediate discrepancy between what is and what is desirable, another may be perceived to be vulnerable to such discrepancies which is itself a form of need."

says, "Perception of need involves perception of a negative discrepancy between a person's current state and what one desires for that person on one or more dimensions of well-being."¹⁷⁵ We can be said to perceive need when we perceive that someone's state of well-being is deficient in some respect. Lishner informs us that "Dimensions of well-being include the absence of physical pain, negative affect, stress, danger, and disease, as well as the presence of physical pleasure, positive affect, satisfaction, and security."¹⁷⁶ Our description of the perception of need thus takes on a more detailed explanation. Perception of diminished or diminishing well-being may vary across dimension. Among these dimensions it is further possible to distinguish between two functionally different forms of need—current need and vulnerability. Current need "involves perception of an existing discrepancy on one or more dimensions of well-being."¹⁷⁷ When we see rows of tents, populated with our fellows, lined up along the streets of Downtown Los Angeles, Detroit, or Downtown Palo Alto, what we are seeing is *existing* discrepancies across the dimensions of security, danger, physical pleasure, and potentially disease, for instance.

In contrast to current need, vulnerability constitutes a different kind of need such that "Even when no discrepancy exists between what is and what is desirable, a person may be seen as vulnerable to future discrepancies."¹⁷⁸ Current need as a form of need implies vulnerability. That is, "one must be vulnerable to a given need to experience it, current need is evidence of vulnerability."¹⁷⁹ Thus, current need indicates that the target is vulnerable because if they were not vulnerable to experiencing the situation of current

¹⁷⁵ Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different Forms of Need." P. 615.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

need in which they now find themselves, then they would not be experiencing the situation of current need in which they now find themselves. Since you must be vulnerable to a current need before you experience the need, current need is evidence of vulnerability. If I perceive someone (or a creature) as vulnerable, although they might not be in a situation of current need, to perceive them as vulnerable is to perceive their situation as one that might soon change.

Tenderness is more than just cognitive appraisals of vulnerability leading to the experience of a warm, fuzzy, tender emotion. In part, tenderness is a potent source of motivation to help relieve the empathy-inducing need.¹⁸⁰ That is, tenderness is responsible for motivating protection and a variation of pro-social emotions such as sympathy and compassion. Researchers across disciplines noted the motivational force of tenderness. Kalawaski calls tenderness “the emotion ‘surge,’ that corresponds to love as caregiving;¹⁸¹ Nico Frijida says that “tenderness can be regarded as the impulse toward tender—that is, caregiving—behavior;”¹⁸² Sherman et al. found that tenderness “is more than just a positive feeling state-- it can literally make people more physically tender in their motor behavior;”¹⁸³ Peter Bertocci holds that tenderness involves an “impulse to protect”;¹⁸⁴ For Aton Dijker, tenderness is present when “a desire to protect another individual is activated”;¹⁸⁵ In another place he says “tenderness essentially is a pleasant emotional state

¹⁸⁰ Kalawaski, "Is Tenderness a Basic Emotion?."

¹⁸¹ Ibid.

¹⁸² Nico H. Frijida, "The Emotions: Studies in Emotion and Social Interaction," *Paris: Maison de Sciences de l'Homme* (1986). P. 83.

¹⁸³ Sherman, Haidt, and Coan, "Viewing Cute Images Increases Behavioral Carefulness." P. 285.

¹⁸⁴ Bertocci, "Primary Emotions: Anger, Fear, and Tenderness." P. 263.

¹⁸⁵ Dijker, "The Influence of Perceived Suffering and Vulnerability on the Experience of Pity." P. 660.

with the primary goal of preventing other individuals from suffering by offering them protection – behavior that is, of course, much more adaptive than starting to help and nurture individuals once they are physically harmed and can be empathized with”;¹⁸⁶ Batson et al. include tenderness in a class of empathic emotions that are a "potent source of motivation to help relieve empathy-inducing need";¹⁸⁷ Social Psychologist William McDougall speaks of tenderness in constant conjunction with its "protective impulse" throughout his *An Introduction to Social Psychology* first published in 1908.¹⁸⁸ When we perceive others as vulnerable and experience tenderness, we are motivated to act on behalf of the vulnerable in a way that attempts to increase the others' welfare by protecting them.

McDougall's *An Introduction to Social Psychology* is one of the most frequently cited studies of the developmental origins of tenderness. McDougall's work is an inquiry in to the role that principal instincts and primary tendencies of the human mind play in human societies. McDougall believed that attention to the characters of the individual mind is of prime importance for the social life of man. In this conviction he aimed to describe how the natural tendencies of our human make up and our social environment, in part, influence the arrangement of these tendencies.¹⁸⁹

McDougall characterizes tenderness as instinctual because he thinks that we see traces of tender behavior in animals most like ourselves in tending to their young. Primarily, this

¹⁸⁶ Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance." P. 52.

¹⁸⁷ C Daniel Batson et al., "Similarity and Nurturance: Two Possible Sources of Empathy for Strangers," *Basic and applied social psychology* 27, no. 1 (2005). P. 15.

¹⁸⁸ McDougall, *An Introduction to Social Psychology*. Take for example what he says on page 78. McDougall says that the purposes of tenderness's impulse is "primarily to afford protection to the child, especially by throwing arms about it; and that fundamental impulse persists in spite of the immense extension of the range of application of the impulse and its incorporation in many ideal sentiments."

¹⁸⁹ Ibid. p. 17.

tender instinct traces back to “The maternal instinct, which impels the mother to protect and cherish her young, [which] is common to almost all the higher species of animal.”¹⁹⁰ He says, “Like other species, the human species is dependent upon this instinct for its continued existence and welfare.”¹⁹¹ At the time of McDougall’s writing, the association of tenderness with parenting seems to have been fairly widespread.¹⁹²

In *Stigmatization, Tolerance, and Repair* one of Aton Dijker’s aims is to describe the motivational systems that enable individuals to generate adaptive responses when confronted with deviance.¹⁹³ One difficulty in describing this mechanism is that “some deviant conditions activate psychological response mechanisms that causes people to experience fear and hence motivates them to protect themselves against the deviant individual” while others “may activate in people a mechanism for feeling tenderness and a tendency to protect and care for the deviant individual.”¹⁹⁴ Aware of potential criticism about the broad usage of deviance from social psychologists and sociologists (and now perhaps philosophers), Dijker’s own definition of deviance is rather broad and a little bit unclear. Introducing the book, the first words of the first chapter are, “People are regularly confronted with a wide variety of features and behaviors in other that they may find undesirable or deviant, such as a bleeding wound, a missing leg, a harelip, depression, bullying, leprosy, cowardice, theft, unwillingness to work, low intelligence, or some threatening feature of racial or ethnic minority or out group, to name only a few

¹⁹⁰ Ibid. P. 69.

¹⁹¹ Ibid. P. 70.

¹⁹² Ibid. P. 72.

¹⁹³ I should note that Dijker is listed as the first author of the co-authored work where Willem Koomen is listed as an author as well. For simplicity, I will be referring to the claims made in the work as that of Dijker’s.

¹⁹⁴ Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance." P. 2.

examples.”¹⁹⁵ On page 3, Dijker provides a somewhat brief explanation of his commitment to the term “deviance”:

Scholars from such diverse research disciplines as sociology, anthropology, history, evolutionary biology, and social psychology have used a wide variety of terms to describe and explain social responses to deviance, often without clearly defining them and distinguishing them from one another. To anticipate an important conceptual disagreement in this field of inquiry, some disciplines such as social psychology and sociology vigorously deny the usefulness of the term deviance — a term that we find essential as our book title suggests — and would like to replace it by terms such as stigma or label. These disciplines similarly advocate analyzing responding to deviance entirely in terms of stigmatization or labeling, rather than, for example, social control. In contrast, in other disciplines that have shown interest in describing how small communities respond to deviance, such as anthropology, we rarely encounter the terms stigma or stigmatization.¹⁹⁶

Dijker is more concerned with societal response to whatever conditions people take to be deviant and so thinks that concern is more appropriately placed on how we characterize social control. Responses to deviant behavior, for Dijker, include repair, stigmatization and tolerance. I maintain that Dijker’s characterization of deviance indexes situations of need that necessarily emerge from sources of vulnerability characterized in chapter 1 (inherent, situational, and pathogenic). Since vulnerability is conceptually prior to need, it is also prior to deviance. I maintain then that our analysis of the mechanism that responds to vulnerability is relevant to the mechanism needed to respond to deviance in a particular kind of way—*tenderly*. Further, I will use Dijker’s notion of ‘deviance’ interchangeably with ‘vulnerability.’ Activating this mechanism can be difficult because some conditions of deviance fail to generate experiences of tenderness and instead generate experiences of fear, motivating them to close themselves off and protect themselves against the vulnerable individual or group. In some, more extreme cases, exposure of the deviant individual as

¹⁹⁵ Ibid. P. 1.

¹⁹⁶ Ibid. P. 3.

vulnerable engages harshness, which can be thought to be the opposite of tenderness.¹⁹⁷

Tenderness is generated and sustained by engaging certain psychological mechanisms.¹⁹⁸ If we can engage the mechanisms that sustain tenderness then we can gain a more accurate perception and recognition of the vulnerable situations others are in and increase the range of and frequency of experiencing empathic emotions toward them.¹⁹⁹ I suggest that tenderness does this by decreasing the distance between others and ourselves. McDougall commented long ago that tenderness “draw us near to the suffering...seeking to alleviate their distress.”²⁰⁰ In addition to its impulse toward protective behavior, tenderness pushes us closer to the situation of need or suffering. Positioned closer to the

¹⁹⁷ Philip G Zimbardo and Anarchist Black Cross, *Stanford Prison Experiment* (Stanford University, 1971). In 1971 psychologist assigned citizens to simulated roles of prisoners and prison guards in an effort to study the effects that prisons can have on human behavior. The study, originally intended to last for a duration of two weeks, had to be cut short because of the traumatic toll brought to bear on the participants. In a matter of just six days the study had to be brought to an end. They came to find that the people that were assigned the role of prison guard came to treat the prisoners in inhumane and rather sadistic ways.

¹⁹⁸ Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance." P. 35.

¹⁹⁹ Ibid. Dijker provides good evidence for thinking that the motivational component of tenderness is compatible with mechanisms which enable individuals to realize their goals by quickly adapting their current behavior to properties of the environment. (For example, on page 56, he says “The neurophysiological aspects of the motivational system responsible for parental care, associated by us with a more general care system, are also increasingly well documented. The system is anatomically located in what MacLean has termed the limbic system or paleomammalian brain.”) The mechanisms that Dijker has in mind enable individuals to: (a) Accurately perceive, recognize, and differentiate between certain objective features of deviance (e.g., a threatening move forward, taking away food, a bodily injury, a cry for help); (b) Get into the right motivational state or emotion at the right moment (e.g., fear, anger or tenderness), urging them to do the right thing (e.g., to flee, aggress, or protect) once these features occur; and (c) Adapt their responses to the particular behavior of the deviant individual (while learning from past failures and successes) and persevere in responding until the harmful consequences are reduced (e.g., run until a safe distance has been reached, punish until the other changes his or her behavior or begs for forgiveness, nurture and heal until the other is cured and less dependent).

²⁰⁰ Ibid. P. 81.

situation of vulnerability that the other is in allows us to make for the good of the other—to give them the benefit of the doubt in other words. As a result, the likelihood that we are motivated to appropriately intervene in a situation of need is also increased.²⁰¹

We are motivated to protect and care more often when we perceive vulnerability to be passive.²⁰² When we perceive vulnerability active and intentionally brought about by the other or as controllable, it is more likely to arouse angry, fearful and punishing behavior and not tenderness.²⁰³ This is the case whether or not the other really brought about the vulnerability in question. Further, even when we perceive vulnerability to be passive, yet controllable, it might arouse protective feelings mixed with anger or frustration.

Tenderness is most likely to be engaged when vulnerability is perceived as both passive and uncontrollable.²⁰⁴ In addition to perceiving vulnerability to be active or passive, it appears that a perception of the controllability of vulnerability bears on the experience of tenderness. Dijker reasons that when we perceive vulnerability to be both passive and uncontrollable, our capacity for care is more easily activated and its threshold is lowered. Because the threshold has been lowered, it is more likely that the care system will be fully activated when the triggering situation is a concrete sign of passive vulnerability.²⁰⁵ One strategy for transforming the perception of vulnerability that is perceived to be active and brought about on one's own accord is to supply information that highlights the lack of responsibility that is associated with civic vulnerability. Vulnerability that is perceived to be an active state for which our fellows are responsible for bringing about themselves,

²⁰¹ Ibid.

²⁰² Ibid. P. 32

²⁰³ Ibid.

²⁰⁴ Ibid. P. 65.

²⁰⁵ Ibid. P. 138,176.

often involves mistaken assumptions about choice from a fixed range of alternatives (otherwise, control) and thus often leads to mistaken attributions of responsibility.

Peter Bertocci speaks of tenderness conjoined with its protective impulse, as “tenderness-protection.” He says, “Tenderness-protection is the primary emotion experienced when a person interprets a being’s situation as helpless and requiring aid. The objective is to protect that being from impending harm.”²⁰⁶ Bertocci’s belief that tenderness is a response to a situation of helplessness is consistent with tenderness being a response to vulnerability insofar as helplessness is a kind of vulnerability. A person who is helpless had to have been vulnerable to becoming helpless, yet a person who is vulnerable needn’t be helpless. All this means is that the class of situations that may be described as vulnerable include situations that can be described as involving someone who is helpless. Bertocci indicates that there seems to be an evaluative component to tenderness having to do with deservedness. He mentions that “Protection may not be attempted if the agent believes that the helplessness and suffering *is* deserved, in accordance with his value-outlook.”²⁰⁷ So far, no one else identifies this feature of tenderness and it has not been supported by empirical literature. Yet, I also have not come across literature that examines whether or not tenderness is evaluative. Compassion, on the other hand is more often thought to contain this evaluative component.²⁰⁸ This might suggest that Bertocci is conflating the empathic emotion of compassion with tenderness. Tenderness, which underlies empathic emotions, can sometimes co-occur with the empathic emotions that it gives rise to.²⁰⁹ It is entirely

²⁰⁶ Bertocci, "Primary Emotions: Anger, Fear, and Tenderness." P. 271.

²⁰⁷ Ibid. P. 263.

²⁰⁸ Nussbaum, *Political Emotions*.

²⁰⁹ Kalawski, "On the Subjective Distinction between Tenderness and Joy."; Lishner, Batson, and Huss, "Tenderness and Sympathy: Distinct Empathic Emotions Elicited by Different

possible then, that Bertocci conflates tenderness, the precondition of compassion, with compassion itself.

Bertocci continues by saying tenderness, when elicited involves “a unique want-to-help, even if it turns out that help is not finally offered.”²¹⁰ This brief passage is particularly enlightening as it informs us that tenderness can be experienced without aid actually being given. Tenderness is consistent with not offering help insofar as it is experienced with a *desire* to help. In some cases, the desire to help does motivate us to act, especially when it is paired with emotions such as sympathy and compassion. Tenderness is still important in its own right. If we can cultivate a tender disposition, we can increase the likelihood that we experience these other empathic emotions and the likelihood that we actually be motivated all the way to helping behavior.²¹¹

Bertocci is sensitive to the challenges at the periphery of agency that trying to protect vulnerable others presents. In describing a tender mother, he says “if she also believes her child must come to rely on his own ability to solve situations in which he regards himself as relatively helpless. This does not mean that she does not experience (I almost said, an even deeper quality of) tenderness, as she steels herself against offering help.”²¹² The insight contained here is that sometimes when we experience tenderness, even though we experience a desire to help, we resist giving it when we think it is important for them to solve it on their own. Bertocci continues on to say that “It is all the more understandable

Forms of Need.”; Dijker and Koomen, “Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance.”; McDougall, *An Introduction to Social Psychology*.

²¹⁰ Bertocci, “Primary Emotions: Anger, Fear, and Tenderness.” P. 264.

²¹¹ Dijker and Koomen, “Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance.”

²¹² Bertocci, “Primary Emotions: Anger, Fear, and Tenderness.” P. 267. The parentheses are as they appear in the original text.

that any societal code and evaluations would face, for similar reasons, some uncertainty in sorting out situations of helplessness and what ought to be done about them.”²¹³ I would not be surprised to find that the enchantment with individualistic conceptions of liberty and independent conceptions of self sometimes found in capitalistic societies like our own, feed our mistaken perceptions of which situations *are* important for vulnerable members to solve on their own. In attempting to protect the vulnerable we have to be careful and creative in our solutions to their situations as to not undermine their capacity for autonomy and to somehow strengthen it.

With this understanding of tenderness in place, I now provide a description of the ways that it can be expanded among a society’s members, institutions, or systems. I call this process *tenderization*.

Tenderization

By virtue of their status, the civically vulnerable are members of our community that are in need of protection on this basis. What we should expect from a just society is that its social and political structures are responsive to and seek to mitigate the effects of civic vulnerability, so as to aid in lifting the burden the civically vulnerable bear. Remember that civic vulnerability is contingent upon social positioning (Chapter 1). A socially just state therefore has an obligation to develop social, political, and legal institutions that foster civic tenderness—a protective response to situations of people and groups who are civically vulnerable. While the just society cannot ensure that the relations among its members always involve civic tenderness, it must do all it can to foster it and to ensure that social

²¹³ Ibid.

and political institutions support the kinds of social relationships that promote tenderness.

Our society's institutions can serve to either ameliorate or complicate our situation of vulnerability. Imperfect in their own right, our society's institutions cannot eliminate civic vulnerability altogether and they often exacerbate the vulnerability that the civically vulnerable experience. They may fail in the wake of institutional and political compromises or human prejudice for instance. Social and political institutions that serve to protect the civically vulnerable or engage measures to reduce civic vulnerability across the society may also decrease dependency frequently experienced by the civically vulnerable.

At the outset, we said that civic tenderness involves the expansion of the emotion of tenderness among a society's members, institutions, and systems. Civic tenderness is an orientation of concern, brought about in response to civic vulnerability, that provides an impulse toward caregiving behavior. So much of civic tenderness depends on whether we can extend this emotion throughout our society. There is evidence that such extension is possible. Bertocci says:

The experience of tenderness, with its impulse to protect, is by no means limited to one's own offspring. To be sure, the reasons for being especially sensitive to the helplessness of one's own children, and especially on the part of the mother, are easy to understand. What I do urge is that the root emotive experience and objective is to help or protect a being (or beings) conceived of as "helpless and needing protection" (whether or not the protection can be given).²¹⁴

Dijker says:

The motivational system, originally evolved to secure the fitness and health of vulnerable and needy offspring by the means of protection and tenderness (which we referred to as the care or C system), allows individuals to adaptively respond to objective signs of passive deviance; also when associated with unrelated or

²¹⁴ Ibid. P. 263.

unfamiliar individuals of increasingly larger social groups.²¹⁵

McDougall says that tenderness:

may be evoked by the sight of any very young animal, especially if in distress;²¹⁶

Batson remarks:

Tender emotion and the protective impulse are, no doubt, evoked more readily and intensely by one's own offspring, because about them a strongly organized and complex sentiment grows up. But the distress of any child will evoke this response in a very intense degree in those in whom the instinct is strong.²¹⁷

These writer's remarks suggests that we are capable of experiencing heightened sensitivity and responsiveness towards people who are unrelated and unfamiliar to us. The disposition of civic tenderness can be brought about by strengthening the capacity to respond in sensitive and protective ways to situations of civic vulnerability that people or groups may find themselves in. As a process, tenderization initiates and sustains the expansion of tenderness. Tenderness is both cognitive and affective and is engaged when vulnerability is perceived. Tenderization, then, is initiated when we perceive or interpret situations of civic vulnerability. The process is sustained by continual engagement of our capacity for experiencing tenderness for people and groups that are civically vulnerable.

Insofar as the state has obligations to extend the emotion of tenderness, it may seem that the state would only be so motivated once civic tenderness, as an appropriate orientation of concern, has been achieved. This is due to the fact that the state is made up of people—congresswomen and men, senators, presidents and various other administrative aides—who are responsible for getting things done; they are the pulse of the state. How

²¹⁵ Dijker and Koomen, "Stigmatization, Tolerance and Repair. An Integrative Psychological Analysis of Responses to Deviance." P. 65.

²¹⁶ McDougall, *An Introduction to Social Psychology*. P. 76.

²¹⁷ Batson, *Altruism in Humans*. P. 47.

then can tenderizing reform be passed if the state's pulse is indifferent? This challenge may lead us to quickly consider whether tenderizing reforms—legislation, programs, and the like— must precede the formation of a tender pulse of the state. If this were the case, we'd be left with a practical mess given that this is an exercise in non-ideal theory—the state's pulse is already indifferent—and we would need tenderizing reforms already in place to motivate the state's pulse to pass tenderizing legislation. Ultimately, this is a question about the direction of causation between the disposition of civic tenderness and the process of tenderization. A plain and more traditional way of stating the question is whether the disposition of civic tenderness is brought about by the process of tenderization? Or is the process of tenderization brought about by people who are already tender? Call this a tender dilemma.

To explicate the causal relations in the process of tenderization, it will be important for me to make some distinctions through shorthand: First, we have to remember that civic tenderness is an orientation of concern brought about in response to civic vulnerability, that provides an impulse toward caregiving behavior. I will refer to the disposition of civic tenderness as CT. Next, tenderization is the process of increasing the society's awareness of civic vulnerability in the hopes of cultivating the disposition of CT, I will refer to this process as TZ. Last, the behaviors, legislation, social programs, etc. that the tenderization process might produce will be referred to as TO (short hand for tender outcomes).

One view we may take holds that CT and TZ are independent entities that combine to produce a TO. It appears that each horn of the tender dilemma maintains that these are independent entities and looks to uncover a unilateral relation between them. But on my view, CT and TZ do not function as independent determinants; they determine each other

(CT determines TZ and TZ determines CT). The issue with the tender dilemma, then, is in its framing—it assumes that there must be a unidirectional relationship of causation between CT and TZ.

On a slightly different view, we may posit that CT and TZ are interdependent causes of TO. But, on this view, TZ is treated as though it is only a byproduct that does not figure in to the causal story itself. On my view, TO are themselves interacting determinants and not merely outputs of TZ that have no effects. The weakness of this view is that it does not treat TO as an interdependent factor, but rather only as a dependent one.

My view is that CT, TZ, and TO all operate at interlocking determinants of each other. The process involves a triadic reciprocal interaction rather than a dyadic conjoint or a dyadic bidirectional one. I have already noted that CT and TZ function as reciprocally interacting determinants. CT and TO also operate as reciprocal determinants of each other. For example, CT influences TO and the TO created by CT, in turn, through TZ cultivates CT.

Now, the relative influence exerted by CT, TZ, or TO will vary in different societies and under different circumstances. In some cases, TZ constrains what TOs will be, and so TZ emerges as an overriding determinant in this context. If, for example, over the tenderization process the civically vulnerable are depicted as vulnerable to becoming homeless, then we might expect many to think that the tender outcome should involve welfare programming aimed at housing the potentially homeless and the now homeless.

In some cases the TO is the central factor in the interlocking and TZ and CT are not much involved in the process. The TO is self-regulated over time by the effect it produces. For example, take the TO of Affirmative Action—programs that are meant to break down barriers, both subtle and overt, and try to ensure that all people get a fair break;

Affirmative Action programs are not meant to guarantee equal results, but rather to buttress the notion that if equality of opportunity were a real thing, then Black Americans, women, people with disabilities and other groups facing discrimination would be fairly represented in the nation's work force and educational institutions—might sustain TZ²¹⁸ by mitigating the effects of racial and gender biases in hiring and college admission practices, for instance.

In other cases, one's default disposition is highly influential in the process. Indifferent dispositions can prevent the generation of TOs by insulating one's orientation from the influence of prevailing corrective TZ mechanisms, thus creating a strong reciprocal interaction between CT and TO. In extreme cases, the possibility of generating a TO is so controlled by one's default disposition that neither their disposition nor the actions proceeding from them are much affected by even the most intense or aggressive forms of TZ. On the other extreme, it also seems true that for someone who's disposition is already very tender, TO's might be constrained in a way as to not lead to outward helping behavior, but rather being overcome with warm, fuzzy feelings in our selves.²¹⁹

Still more, sometimes CT, TZ, and TO are all highly interdependent. Here each factor reciprocally affects each other. The New Deal is a good example. Michele Landis Dauber outlines the origin of New Deal Social Welfare legislation to the tradition of disaster relief appropriations made by congress. The United States Constitution grants Congress the discretionary authority to appropriate funds for the general welfare of citizens. As early as the late 1700s, the United States had appropriated funds to the victims of disasters that had

²¹⁸ This will be explained in subsequent paragraphs.

²¹⁹ This point was pointed out to me by the audience at the APA Central Division Meeting in 2015.

undergone sudden and unforeseeable loss. These disasters included famine, floods, crickets, hurricanes, droughts, and sugar industry bailouts, among other things. By the time of the Great Depression in 1930, there existed a long-standing precedent for the appropriation of funds to the victims of disasters. The recipients of these funds, by this time, included domestic and foreign citizens. Landis Dauber articulates the challenge that New Deal lawyers faced was to construct the circumstances of old age, unemployment, and famine as a disaster. She draws on various media outlets including newspapers, legal briefings, law school curriculum of the time, political speeches, letters from American citizens, and the art (photographs mostly) and literature of the time, to show how the Great Depression was crafted as a disaster afflicting citizens through no fault of their own and thereby shaping public opinion. As a result President Franklin D. Roosevelt's administration was able to pass the series of social programs that came to be known as the New Deal which included the Fair Labor Standards Act (which established a federal hourly minimum wage), the Social Security Administration (SSA), and the Federal Housing Administration (FHA). In this case, TZ (increased awareness of those afflicted by the Great Depression) shapes CT (how citizens were oriented toward, and thereby perceived those afflicted by the Great Depression). Also, CT (how citizens were oriented toward, and thereby perceived those afflicted by the Great Depression) shapes TO (the passing of the New Deal social programs). TO (the passing of the New Deal social programs) also shapes TZ (increased awareness of those afflicted by the Great Depression). CT (how citizens were oriented toward, and thereby perceived those afflicted by the Great Depression) shapes TZ (increased awareness of those afflicted by the Great Depression) too. All the factors, in other words, reciprocally affect each other.

Searching for a unidirectional causal relation is therefore an idle exercise because in an interactional process, one and the same event can be a cause, effect, or reinforcement, depending on at what point in time the process begins. The status of same events can change from TZ to TO at different entry points in the flow of interaction, for example. We can reasonably expect that The New Deal's status may shift from TO to TZ depending on the point in time from which we are asking the question of which of the two it is (TO or TZ). When it was introduced, the New Deal was a TO. As the programs remain in place over time, the New Deal also has the subsequent effect of perpetually tenderizing (TZ) citizens who enter the society beyond the point the New Deal programs became normalized. They are tangible objects for us to engage in the process of offering and receiving reasons for its support or removal. These reasons cannot escape references to the vulnerability of the groups that they set out to help. Ultimately, one cannot speak of TO and TZ as if the two were fundamentally different events. People are constantly engaged in the process of appraising the progression of events. Their thoughts about the probable effects of prospective TOs partly determine how TO are effected by TZ. To increase the predictive power of the theory, it is necessary to broaden the analysis to include what default dispositions a person may be bringing with them. If they are already tenderly disposed, it may be that it is more likely to have the effect of producing a TO; if they are indifferent, it may be that the production of a TO is not very likely.

Depending on one's default dispositions, people may attribute different meaning to TOs and they may develop different expectations for TOs— this explains why, for instance, there seems to be a polarization of attitudes surrounding Affirmative Action, for instance. This enlarges the fact that tender dispositions are not developed and shaped in a vacuum.

Our dispositions are shaped by what we believe about the effects we observe from other's behavior that we believe to be tender. If we see them harmed, it may decrease our willingness to cultivate a tender disposition. Dispositions are also developed and shaped by what judgments voiced by others. Even more, dispositions are developed and shaped by external influences including TO and TZ. External influences also activate the disposition as well. Different inputs (sight, sound, smell, etc.) will elicit quite different responses. Therefore, while CT influences TO, CT, is fashioned from or mediated by transactions with TZ.

The cognition of the perception of vulnerability can perhaps be cultivated by raising awareness of the civic vulnerability that the victims of systematic injustices face as a result of being less insulated from the consequences of bad luck within a society. While no empirical work has been done on this, it is plausible that over time, doing so would fine-tune our capacities for perceiving situations of civic vulnerability. As a result our orientation toward the civically vulnerably becomes attuned in a way that increases the likelihood that we will experience other empathic emotions toward the civically vulnerable such as compassion and sympathy. Specifically, tenderness provides an impulse toward protective behavior. More generally, tenderness provides an impulse toward experiencing empathic behavior and other empathic emotions beyond tenderness. This means that tenderness is a potent source of motivation in the direction of reducing empathy-inducing need. Providing the surge toward the situation of the others, civic tenderness closes the distance between you and me (Chapter 2), bringing us nearer to one another. This is important to understand in attempting to mobilize people's political sentiments in order to get them to see what the real problems are and to do something about these problems.

In order to initiate tenderization in our society, we should adopt legislation that calls

attention to the historic, systemic, and institutionally caused vulnerability of a particular group. One example of this that already exists is Affirmative Action. However, even tender legislation such as Affirmative Action has not tenderized everyone. As contemporary charges from conservatives of “reverse-racism” show, some people just don’t get it. Rather than becoming more tender they have become more hostile toward the vulnerable. I believe that, in large part, this is the result of telling American history from a linear perspective.²²⁰ For example, African, African American, and African Diaspora studies have long demonstrated the dangers of linear historical narratives.²²¹ If we are going to be successful in designing effective strategies going forward it will be imperative that our strategy incorporate a variation of voices and perspectives that have long gone underrepresented and suppressed throughout history and American literary cannon. Doing so can possibly illuminate the extent to which vulnerable people and groups are vulnerable as a result of being less insulated from the results of bad luck because of structural oppression. In chapters 4 and 5, I make targeted prescriptions for tender legislation aimed at the American Criminal Justice System and American poverty.

We will have to work to ensure that tenderization will engage citizens in the right ways—ways that promote human values and not destroy them. As a process of increasing awareness of civic vulnerability, tenderization might not always bring about the desired effect. Because some issues do not result from our material circumstances but instead from the attitudes that we have, there is a reintegration process where persons outside of these

²²⁰ Chimamanda Adichie, "The Danger of a Single Story," *TED Ideas worth spreading* (2009).

²²¹ Tiffany Ruby Patterson and Robin DG Kelley, "Unfinished Migrations: Reflections on the African Diaspora and the Making of the Modern World," *African Studies Review* 43, no. 01 (2000).

vulnerable groups need to respond to them in more tender ways. For example, ex-convicts and welfare recipients whose lives are socially stigmatized are viewed and treated as parasites. To view the recipients of these safety nets as parasites is to bear the indifference to their circumstances that we set out to eliminate. The state should tenderize the rest of its citizens in order to reintegrate vulnerable citizens into society.

Our society can cultivate civic tenderness by doing things like preserving and or memorializing its buildings that when they reach a delicate state. McDougall mentions that:

Let us imagine ourselves standing before a great Gothic cathedral whose delicate and beautiful stonework is crumbling to dust. We shall probably feel admiration for it, and the spectacle of its decay, or of its delicate and perishable nature, awakens directly our tender emotion and protective impulse.²²²

These memorials and preserves can awaken our tender emotions and thus cultivate a disposition of tenderness by engaging our admiration for them.²²³ Additionally the state could provide for spaces and times where citizens can be vulnerable with one another such free music festivals celebrating (and perhaps raising funds on behalf of) vulnerable people and groups. To avoid attracting homogeneous groups, officials can issue community based surveys to take inventory of the musical interests of their particular communities in the service of providing entertainment that reflect the diversity of these interests. Schools could integrate mixed reality technology that engages students' tender emotions, bringing them nearer to the perspective of vulnerable groups.^{224, 225} Communities could host

²²² McDougall, *An Introduction to Social Psychology*. P. 138.

²²³ Ibid.

²²⁴ Giuseppe Riva et al., "Affective Interactions Using Virtual Reality: The Link between Presence and Emotions," *CyberPsychology & Behavior* 10, no. 1 (2007).

²²⁵ By providing students with a curriculum that involves MR in our classrooms, we can present the next generation of students with fully immersive and engaging learning experiences that place them in the perspective of vulnerable groups in our society. White students could inhabit the circumstances of Black students in series of MR lessons, and

viewings of films that bring awareness to vulnerable groups such as 13th²²⁶ or Orange is the New Black²²⁷; or book clubs for communities to come together to discuss works that perspectivizes vulnerable people and groups such as *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* or *Between the World and Me*. These tools enable the revision of our initial attitudes, and thus orientation of civic indifference by informing the basis of our initial judgments about the civically vulnerable through reinterpretation.²²⁸ To this point, social psychologists Thomas Mann and Melissa Ferguson have examined the conditions under which durable revisions of implicit evaluations are possible and identified reinterpretation as a mechanism through which this is possible. What is important about their study is that it shows people's initial negative implicit evaluations as going beyond neutrality or ambivalence²²⁹; instead they show "negative-to-positive change in implicit

learn about the various forms of oppression that Black students face. Men could inhabit the circumstances of women to feel more fully the forces of patriarchy that permeate throughout our society. Cisgendered students could inhabit the circumstances of transgendered people and could come to grasps with what it feels like to be an object of harsh attitudes and violent treatment that often result in death. By using MR as a perspective taking mechanism in this way, perhaps we can orient students toward tenderness.

²²⁶ 13th is a Netflix Documentary that explores the American Prison System and the Prison Industrial Complex.

²²⁷ Orange is the New Black is a Netflix original series that focuses on the lives of inmates in an all women's correctional facility. Throughout the series, the show provides backstories of the inmates prior to their life in the prison. In many cases, viewers can see just how the choices of these inmates were squandered prior to making choices that landed them in prison. As a result, viewers come to experience empathic emotions for some of the characters throughout the course of the series.

²²⁸ Thomas C Mann and Melissa J Ferguson, "Can We Undo Our First Impressions? The Role of Reinterpretation in Reversing Implicit Evaluations," (2015).

²²⁹ Kathryn L Boucher and Robert J Rydell, "Impact of Negation Salience and Cognitive Resources on Negation During Attitude Formation," *Personality and Social Psychology Bulletin* 38, no. 10 (2012); Richard E Petty et al., "Implicit Ambivalence from Attitude Change: An Exploration of the Past Model," *Journal of personality and social psychology* 90, no. 1 (2006); Kurt R Peters and Bertram Gawronski, "Are We Puppets on a String?"

evaluations and identifies a powerful mechanism driving it: not only must new information imply the opposite evaluation of the target, but the initial information must also be reframed."²³⁰

Not all of the work in this regard is the state's. You have work to do too and the biases to be overcome are yours. If we are cognizant of civic vulnerability, we can change the dispositions we direct towards vulnerable groups and change our behavior towards them. Emerging psychological literature on implicit biases have shown that people can be trained to "say no" to associating their negative stereotypical attitudes with certain vulnerabilities. Working on yourself in this way decreases the likelihood of automatically making these stereotypical associations when later confronted with individuals and groups with particular vulnerabilities.²³¹ Monteith et al. found that when instructed not to display racism and sexism, individuals in fact showed a decrease in biased responses in tests for implicit attitudes.²³²

There are challenges to be overcome for the extension of tenderness. Sometimes when people become aware of another's vulnerability they prey upon it or become hostile. Sick

Comparing the Impact of Contingency and Validity on Implicit and Explicit Evaluations," *Personality and Social Psychology Bulletin* 37, no. 4 (2011).

²³⁰ Mann and Ferguson, "Can We Undo Our First Impressions? The Role of Reinterpretation in Reversing Implicit Evaluations." P. 36.

²³¹ Jules Holroyd, "Responsibility for Implicit Bias," *Journal of Social Philosophy* 43, no. 3 (2012); Mann and Ferguson, "Can We Undo Our First Impressions? The Role of Reinterpretation in Reversing Implicit Evaluations."; Margo J Monteith, Jeffrey W Sherman, and Patricia G Devine, "Suppression as a Stereotype Control Strategy," *Personality and Social Psychology Review* 2, no. 1 (1998).

²³² "Suppression as a Stereotype Control Strategy." I should note that the effectiveness of suppression as a mechanism is at best limited. For example, increased attention to the stereotyped feature may direct your attention towards the stereotypical behaviors of social targets. However, their results show, at least, that stereotype suppression will not be equally overwhelming for all people in all situations.

and elderly people have had this need exploited by money hungry capitalists.²³³ Men jeer invasive catcalls to women walking on city streets. The well-known Stanford Prison Experiment has show us that evil can triumph in "good people" when they are given the power to exploit the vulnerability of others.

One challenge toward the extension of tenderness is that, to the extent that the situation of the vulnerable might be perceived as active (a situation for which the vulnerable themselves deserve) or threatening or harmful to you, your capacity for experiencing tenderness for them is limited. Former prisoners provide us with a good example. In our society, the situation former prisoners find themselves in are sometimes perceived as just. Additionally, this is sometimes accompanied by a belief that they are dangerous—especially when they are Black. In these cases you expect your vulnerable fellow to merely exercise more self-control, to submit to social norms, and to stop behaving dangerously. But "Whether or not it is unjust that a person has certain vulnerabilities or has such a high degree of those vulnerabilities will depend on whether the source of those vulnerabilities is an injustice."²³⁴ This highlights the importance of supplying information that highlights the lack of responsibility that is associated with the situation of the vulnerable.

Sometimes contact with people who are civically vulnerable can be perceived to involve harmful consequences for you. For example, you might resist contact with people who are homeless because of your belief that mental health disorders are widespread among them, rendering their behavior less predictable and more prone to harming you. This too might limit your capacity for experiencing tenderness for the civically vulnerable. Over the

²³³ Andrew Pollack, "Drug Goes from \$13.50 a Tablet to \$750, Overnight," *New York Times* 2015.

²³⁴ Dodds et al., "Dependence, Care, and Vulnerability." P. 90.

process of tenderization, then, we have to be careful when presenting the narratives of those who are civically vulnerable. In raising awareness about their situations, we have to emphasize the ways that contact with these vulnerable groups needn't involve harmful consequences for you.²³⁵ Further, if we believe that people who fall in to vulnerable situations are more harmful or threatening when they occupy those positions of vulnerability, we have more reason for adopting preventative measures aimed as offsetting or preventing this kind of vulnerability from occurring.

McDougall notes, "It is true that reason, working in the service of the egoistic impulses and sentiments, often circumvents the ends of this instinct and sets up habits which are incompatible with it. When that occurs on a large scale in any society, that society is doomed to rapid decay."²³⁶ McDougall thinks that the extent to which we are oriented toward concern for ourselves rather than others, works against the experience of tenderness. Additionally, he sees that cultivating habits incompatible with tenderness make no small difference. Further, he draws attention to the vulnerability of society itself. When this egoistic orientation pervades a society, society's fabric unravels. This means that the awareness that tenderization raises must highlight the ways that we are connected to one another as members of the same society.

Conclusion

This chapter introduced the emotion of civic tenderness. At a basic level, civic tenderness is the expansion of the emotion of tenderness among a society's members, institutions, or systems. Civic tenderness is an orientation of concern, brought about in

²³⁵ Anderson, *The Imperative of Integration*.

²³⁶ McDougall, *An Introduction to Social Psychology*. P. 139.

response to civic vulnerability that provides an impulse toward caregiving behavior. An analysis of the emotion of tenderness showed us that (i) tenderness is both cognitive and affective; (ii) tenderness necessarily involves an appraisal of vulnerability; (iii) tenderness enables the capacity for experiencing other empathic emotions; (iv) tenderness characteristically involves a response to perceived vulnerability; (v) tenderness characteristically involves an impulse toward caregiving behavior; (vi) Tenderness is generated an sustained engaging certain psychological mechanisms; (vii) experiencing tenderness is not limited to people who are familiar to us. From (vii), I argued that civic tenderness can be cultivated throughout a society's members, institutions, and systems. The process of tenderization describes ways that our society can engage its member's tender emotion toward the goal of cultivating the disposition of civic tenderness.

This chapter concludes our conceptual discussion of the civic tenderness. Ultimately, civic tenderness combats civic indifference by pushing us nearer to others and closing the distance between others and ourselves. In the next part of this dissertation, I apply civic tenderness to the situations of poverty and the American Criminal Justice System and American Poverty.

Chapter 4:

Tenderization and the American Criminal Justice System

The United States incarcerates more of its people than any other country in the world.²³⁷ Since World War II, the capacity of the United States to surveil and imprison its citizenry has undergone tremendous expansion.²³⁸ Legal scholar Michelle Alexander mentions that “In less than 30 years the United States penal population exploded from around 300,000 to more than 2 million”.²³⁹ Nearly, “one in every twenty-eight American children has a parent in prison” and forty-six percent of these children are Black.²⁴⁰ Six million Americans cannot vote because they have been convicted of a felony.²⁴¹ One in three African American men are under the control of the criminal justice system.²⁴² The number of girls and especially girls of color in the juvenile justice system is increasing.²⁴³ Roughly around 16 percent of transgender adults have been incarcerated for any reason.²⁴⁴ Further, transgender inmates in many facilities are housed strictly based on their genital anatomy.²⁴⁵ In many ways, the expansion of the carceral state has been central to the

²³⁷ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Jody Marksamer and Harper Jean Tobin, "Standing with LGBT Prisoners: An Advocate's Guide to Ending Abuse," (2013).

²³⁸ Amy E Lerman and Vesla M Weaver, "The Carceral State and American Political Development," in *The Oxford Handbook of American Political Development* (2014); Christopher Slobogin, "American Criminal Justice Exposed," *Criminal Justice Ethics* 31, no. 1 (2012).

²³⁹ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

²⁴⁰ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

²⁴¹ "The Sentencing Project," <http://www.sentencingproject.org/issues/felony-disenfranchisement/>.

²⁴² Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

²⁴³ Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story."

²⁴⁴ Marksamer and Tobin, "Standing with LGBT Prisoners: An Advocate's Guide to Ending Abuse."

²⁴⁵ Ibid.

building of state capacity—the ability of a government to administer its territory effectively. Criminal justice has been a major site of activity over the past 50 years.²⁴⁶ Mass incarceration and the growing reach of an expansive criminal justice system has disproportionately targeted Black and Brown women and men, the poor, lesbian, gay, bisexual, transgender people, and anyone who is gender nonconforming (GNC).²⁴⁷ These circumstances are the results of systematic injustice to which many Americans are indifferent.

Who are the civically vulnerable in relation to the American criminal justice system? What does civic indifference look like in the case of the American Criminal justice system? How might civic tenderness be of use in reforming the American criminal justice system? I begin by providing a picture of those who are vulnerable to the American Criminal justice system. Once this picture is in place, I explain how the American criminal justice system and mass incarceration are sustained by civic indifference. I then transition to a discussion of how we might chart a direction forward that is consistent with civic tenderness.

The Civically Vulnerable and the American Criminal Justice System

Race, alone, does not fully explain the ongoing legitimacy of imprisonment. While it plays a central role in the development of the current carceral state, the impact of our

²⁴⁶ Lerman and Weaver, "The Carceral State and American Political Development."

²⁴⁷ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*; Lerman and Weaver, "The Carceral State and American Political Development."; Marksme and Tobin, "Standing with Lgbt Prisoners: An Advocate's Guide to Ending Abuse."; Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story."; Matthew Desmond and Nicol Valdez, "Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women," *American Sociological Review* 78, no. 1 (2013); Becky Pettit and Bruce Western, "Mass Imprisonment and the Life Course: Race and Class Inequality in Us Incarceration," *American sociological review* 69, no. 2 (2004).

criminal justice system has extends beyond race.²⁴⁸ When class and gender intersect with race peculiar vulnerabilities are generated. So, our portrait should also recognize the impact of gender and poverty on the American criminal justice system.

The disproportionate target for the American criminal justice system has been Black and Brown bodies. Even more deplorable, America profits from targeting these bodies in the form of fines, court fees, and the cost of incarceration. Many local police departments in the United States rely on fines and fees to generate revenue for the department. In the city of Ferguson, Missouri for example, a city that is approximately 67% Black, former President Barack Obama has observed that the Ferguson police department “used its justice system as a cash register, imposing steep fines for a range of minor offenses, including \$302 for jaywalking and \$531 for untended lawns.”²⁴⁹ The extent of this reliance has led scholars like Mary Bosworth to consider whether the U.S. could “sustain its current criminal justice system, if one out of four African-American men of a certain age were not under some form of incarceration or surveillance?”²⁵⁰ Michelle Alexander and Marc Lamont Hill have both recently published works on the American criminal justice system that illuminate the extent to which Black and Brown people are targeted and affected by it. In many ways, Alexander’s *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* is the endoskeletal framework to Hill’s melanated flesh presented in *Nobody: Casualties of*

²⁴⁸ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*; Lerman and Weaver, "The Carceral State and American Political Development."; Brady Thomas Heiner, "From the Prison of Slavery to the Slavery of Prison," *Radical Philosophy Today* 5 (2007).

²⁴⁹ Barack Obama, "The President's Role in Advancing Criminal Justice Reform," *Harvard Law Review* 130, no. 3 (2017).

²⁵⁰ Mary Bosworth, "Theorizing Race and Imprisonment: Towards a New Penalty," *Critical Criminology* 12, no. 2 (2004). P. 225.

America's War on the Vulnerable from Ferguson to Flint and Beyond. I will focus on these two works in painting our portrait.

Criminalizing Blackness

Beyond the increased likelihood of incarceration, harassment from racial profiling and from stop and frisks, Black men stand constant risk to having their lives taken by officers of the state whether they are armed or unarmed.²⁵¹ In 2014 both Michael Brown and Eric Garner, both unarmed Black men, had their lives taken at the hands of state officers—*literally*.²⁵² Fresher to our public memory might be the public executions of Alton Sterling and Philando Castile.²⁵³ An attempt to tell the stories of each of these men would demand more space than this project allows. I would like to, however, focus on Philando Castile in order to *show* how the State's violence enacted upon him reflects a deeper problem in America—a system designed to criminalize Blackness.

Philando Castile, a fourteen year employee of the St. Paul Public school district, had already been stopped fifty-two times in Minnesota before his fatal encounter with police aired live on Facebook on July 16th, 2016.²⁵⁴ Castile was sitting in the passenger seat of his girlfriend's vehicle when officer Jeronimo Yanez approached the vehicle and asked Castile

²⁵¹ Payne, "Prejudice and Perception: The Role of Automatic and Controlled Processes in Misperceiving a Weapon."

²⁵² Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond.*

²⁵³ David A. Graham, "The Second Amendment's Second-Class Citizens," <https://www.theatlantic.com/politics/archive/2016/07/alton-sterling-philando-castile-2nd-amendment-guns/490301/>.

²⁵⁴ Larry McShane, "Philando Castile Stopped by Cops in Minnesota 52 Times in the Past 14 Years for a Slew of Misdemeanors," <http://www.nydailynews.com/news/national/philando-castile-stopped-cops-52-times-14-years-article-1.2705348>.

for his license and registration. Yanez is said to have believed that “Mr. Castile matched the description of a suspect in a nearby armed robbery from a few days earlier.”²⁵⁵ Yanez formed this belief on the basis of Castile’s “wide-set nose”.²⁵⁶ Oddly, in the short conversation that Yanez had with Castile, he failed to mention the robbery (or the marijuana that he would later mention to investigators that he smelled). Shortly after Yanez approached the vehicle, Castile—legally permitted to carry and conceal a weapon— informed Yanez that he had a gun.²⁵⁷ According to Castile’s girlfriend Lavish Reynolds, Yanez then instructed Castile not to move. In an act of compliance with the officers command, Castile tried to put his hands up—an act of surrender—and within seconds was filled with bullets from Yanez’s gun.^{258,259} *The Atlantic* columnist David A. Graham says that, “Castile was attempting to comply with contradictory imperatives: first, the precautionary step of declaring the weapon to the officer; second, the officer’s request for his license and

²⁵⁵ Christina Capecchi and Mitch Smith, "Officer Who Shot Philando Castile Is Charged with Manslaughter," <https://www.nytimes.com/2016/11/17/us/philando-castile-shooting-minnesota.html>.

²⁵⁶ Ibid.

²⁵⁷ Ibid. Castile’s girlfriend recounts Castile as saying “Sir, I have to tell you that I do have a firearm on me.”

²⁵⁸ Graham, "The Second Amendment's Second-Class Citizens". A New York Time’s article on the case states that shots were fired just 62 seconds after the encounter began. See, Smith, "Officer Who Shot Philando Castile Is Charged with Manslaughter".

²⁵⁹ An insensitive reader might point out that to the extent that Castile was raising his hands in surrender, he was not acting in compliance with the officer. Avoiding a petty debate over minutia, I’d like to point out that raising this point largely overstates the extent to which a person should have to comply with an officer of the state in order to avoid execution. Additionally and anecdotally, Castile’s actions were in alignment with life lessons taught privately in the homes of several Black families. Black boys are often taught from a young age to be “courteous and compliant” when pulled over by police officers. Some, to a further extent, are taught to place their hands outside of the window immediately after coming to a stop and to keep them there until the officer approaches your vehicle in order to reduce the risk that these kinds of encounters, often between White officers and Black civilians, result in death.

registration; third, the officer's command to freeze."²⁶⁰ Castile was put in to a position where the assurance that he'd keep his life was impossible. Castile's death is not the result of isolated incidents that occur at different places at different points of time, but rather representative of a system of deadly encounters between Black bodies and state power.²⁶¹ Castile's death was preceded by the deaths of Trayvon Martin, Jordan Davis, Tamir Rice, Ray Tensing, Eric Garner, and Alton Sterling (who was executed by a Louisiana police officer just one day before Castile). Overwhelmingly, to be Black in America is a criminalized—to be treated as if you have committed a crime. As legal scholar Paul Butler mentions, Blacks and Black men in particular "are the prototypical criminal in the eyes of the law."²⁶² Even worse than this is that some white people who actually commit crimes, such as American mass murder and white supremacist Dylan Roof, are often treated better than Black people who do not.²⁶³

The United States criminalizes race.²⁶⁴ Police departments nationwide stand accused of targeting, injuring, harassing, and killing women and men of color. Law enforcement agencies have been shown to routinely target Black drivers for stop and

²⁶⁰ Graham, "The Second Amendment's Second-Class Citizens".

²⁶¹ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

²⁶² Paul Butler, "The System Is Working the Way It Is Supposed To: The Limits of Criminal Justice Reform," *Geo. LJ* 104 (2015). P. 1426.

²⁶³ See Jason Silverstein, "Cops Bought Dylann Roof Burger King after His Calm Arrest: Report," <http://www.nydailynews.com/news/national/dylann-roof-burger-king-cops-meal-article-1.2267615>. On June 17th, 2015, hoping to incite a race war between Black Americans and white American, Roof murdered nine Black people at a church who were assembled for Bible study. When Roof was subdued by law enforcement he was given a bulletproof vest for his protection and then taken by Shelby, North Carolina police officers to Burger King for a warm meal shortly after being subdued.

²⁶⁴ Bosworth, "Theorizing Race and Imprisonment: Towards a New Penalty." P. 235.

searches.²⁶⁵ Black teens that commit few crimes are as likely to go to jail as often as White teens that commit dozens.²⁶⁶ Additionally, public nuisance laws have disproportionately targeted and harassed people of color. Black residents of St. Louis County have been cited for things such as “loud music, unkempt, property, disruptive behavior and even “saggy pants””.²⁶⁷ A study of the NYPD found that “from 2001 to 2013, 7.3 million citations were issued for everything from public urination and littering to possession of small amounts of marijuana and consuming alcohol on the streets, and that ‘roughly 81 percent’ of these so-called offenders were either Black or Latino.”²⁶⁸ In fifteen states across the country Blacks are admitted to prison on drug charges at rates ranging from twenty to fifty-seven times higher than their White counterparts despite the fact that Blacks and Whites use drugs at similar rates.²⁶⁹ These facts reflect the extent that it is a crime to be Black in America.

For many Black Americans, the carceral state has become central in defining citizenship for themselves and for future generations of Black youth. Amy Lerman and Vesla Weaver tell us that:

Given that criminal justice expansion has significantly altered the types of contact that citizens are likely to have with political authority, criminal justice has important consequences for the attitudes and behaviors that individuals develop in the political world.²⁷⁰

²⁶⁵ Jerome Miller, "Search and Destroy," *The New Internationalist (TNI)*, no. 282 (1996).

²⁶⁶ Max Ehrenfreund, "Blacks Teens Who Commit Few Crimes Go to Jail as Often as White Teens Who Commit Dozens,"

<https://www.washingtonpost.com/news/wonk/wp/2015/01/30/black-teens-who-commit-a-few-crimes-go-to-jail-as-often-as-white-teens-who-commit-dozens/>.

²⁶⁷ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P.22.

²⁶⁸ Ibid. P. 55. For the original presentation of the study's findings see, Brent Staples, "The Human Cost of 'Zero Tolerance',"

<http://www.nytimes.com/2012/04/29/opinion/sunday/the-cost-of-zero-tolerance.html>.

²⁶⁹ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

²⁷⁰ Lerman and Weaver, "The Carceral State and American Political Development."

The effects of this expansion has disproportionately affected low-income and minority citizens. For example, “a young urban Black male is far more likely than his suburban White peers to report having been stopped and frisked by the police.”²⁷¹ Marc Lamont Hill reports the same phenomenon in New York City:

In 2002, there were roughly 100,000 *Terry*²⁷² stops in the city; in 2011, there were 685,724. A little more than half of the 4.4 million stops conducted between 2004 and 2012 included a frisk for weapons, but, of those frisks, weapons were discovered in only 1.5 percent. Only 6 percent of the stops in this same period resulted in an arrest and 6 percent more in a summons. And of those stopped, more than half were Black; another 30 percent were Latino.²⁷³

Black men and boys are not the only one's affected. Incarceration disrupts families and destroys communities. Further, more than their White and Black male counterparts, Black women and girls are targeted and arrested for petty crimes in disproportionate numbers.²⁷⁴ Roughly, fifty-seven percent of all women in U.S. prisons have been minorities over the past two decades.²⁷⁵ It is to these women that we now turn to continue painting our portrait of who the civically vulnerable to the criminal justice system in America are.

Women and Girls

²⁷¹ Ibid. P.12.

²⁷² In 1968, the United States Supreme Court ruled on the case *Terry v. Ohio*. This case is widely recognized as the original “stop and frisk” case or at least the legal precedent for it. In their ruling, the Court gave police the power to stop people when there is a *reasonable suspicion* of criminal activity, and to frisk people who they reasonably believe are in possession of a weapon. As a result, it has become commonplace to refer to stop and frisk contact with the criminal justice system as *Terry stops*.

²⁷³ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 58.

²⁷⁴ Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story."; Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

²⁷⁵ Biko Agozino, "Theorizing Otherness, the War on Drugs and Incarceration," *Theoretical Criminology* 4, no. 3 (2000).

Hill explains how the mysterious death of Sandra Bland in 2015 is tied to an American criminal justice system that criminalizes Black womanhood. On July 10th, 2015, Bland was pulled over and approached by a state trooper for “not signaling a lane change” although she had not been “otherwise driving recklessly.”²⁷⁶ Understandably irritated after being pulled over on a hot Texas summer day, Bland and Texas state trooper Brian Encinia had a somewhat heated exchange over Encinia’s command to put out her cigarette; a command that Hill emphasizes has “no basis in the law”.²⁷⁷ Frustrated by Bland’s resistance, Encinia opened Bland’s car door and attempted to yank her from her vehicle while informing her that she was under arrest. Bland was arrested forcefully and taken to Waller County Jail. Hill notes “this is not an uncommon expectation of Black women and girls who are disproportionately arrested (compared to their White and Black male counterparts) for minor crimes because their behavior is deemed by law enforcement to have “violated conventional norms and stereotypes of feminine behavior.””²⁷⁸ Despite the insistence by Bland’s family that she had never shown signs of attempting suicide, Bland was found dead in her jail cell after being held in police custody for three days—her death was declared a suicide. That same month, Kindra Chapman, Joyce Curnell, Ralkina Jones, Alexis McGovern, and Raynette Turner all died in police custody.

²⁷⁶ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 61. Regarding the lane change, it is important to not Bland’s own words explaining it: “I was getting out of your way. You were speeding up, tailing me, so I move over and you stop me. So, yeah, I am a little irritated, but that doesn’t stop you from giving me a ticket, so write your ticket.”

²⁷⁷ Ibid.

²⁷⁸ Ibid. P.64. Hill continues that “For Black women and girls, these oppressive norms are compounded by longstanding social narratives that also depict them as immoral, angry, violent, and emasculating.”

In America, the rate of women and girls involvement in the criminal justice system is growing. In the American juvenile justice system, “African American girls constitute 14 percent of the general population nationally but 33.2 percent of girls detained and committed” and Native American girls make up 1 percent of the population nationally but 3.5 percent of the girls committed and detained.²⁷⁹ In addition to criminalizing women of color, we also criminalize women who have been sexually and physically abused.²⁸⁰ Saar et al. report that “many girls who experience sexual abuse are routed into the criminal justice system because of their victimization.”²⁸¹ For example, one 1998 study revealed that 81 percent of girls detained had experienced one or more instances of physical or sexual abuse.²⁸² Further, the most common symptoms of abuse turn out to be the things girls are most commonly arrested for—running away, substance abuse, and truancy.

Once inside jail and prison walls, the vulnerability of women and girls is exacerbated by a system that is unprepared to identify and treat the violence and trauma that lie at the root of their arrest. For example, “only approximately half the youth in the juvenile justice system are placed in a facility that provides mental health evaluations of all residents”.²⁸³ As a result, these women are put into environments that may trigger trauma or be subjected to new incidents. On top of this, many facilities nationwide are ill-equipped to meet women’s reproductive health needs. For all of the exploitation that women and girls face on the inside, the women’s story of and the effects of the American criminal justice system is not told entirely by what goes on at prison facilities.

²⁷⁹ Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story." P.7.

²⁸⁰ Ibid.

²⁸¹ Ibid. P. 5.

²⁸² Leslie Acoca, "Outside/Inside: The Violation of American Girls at Home, on the Streets, and in the Juvenile Justice System," *NCCD news* 44, no. 4 (1998).

²⁸³ Saar et al., "The Sexual Abuse to Prison Pipeline: The Girls' Story." P. 14.

Michelle Alexander, legal scholar and Black mother of three, brings out the ways that mass incarceration's impact extend beyond the prison walls. She reports that in 2002, for example, there were "3 million more adult Black women than Black men in Black communities across the United States, a gender gap of 26 percent."²⁸⁴ According to Alexander, facts like these frustrate women in their efforts to find life partners. She observes, "The public discourse regarding "missing Black fathers" closely parallels the debate about the lack of eligible Black men for marriage."²⁸⁵ What she means here is that in some cases the expansion of the carceral state, and not factors like laziness and immaturity, has been responsible for fatherless Black children and for the removal of lovers (and potential lovers) from their partners. Alexander doesn't mean to imply that Black men who go to prison are prima facie ineligible for marriage. Yet, given the increased likelihood of recidivism of people who have been convicted of felony or the increased likelihood of coming in to contact with the criminal justice system themselves, it is at least reasonable for Black women who want to marry or start a family with a Black man not to consider people who have been convicted of a felony. For example, women who are involved in some romantic relationship with men who have been accused of drug crimes are among the most frequent claimants in forfeiture cases. Courts often conclude that the circumstances of a romantic relationship may give rise to inferential knowledge of the seized assets.²⁸⁶ As a result, women risk losing their own assets even though they are not convicted of a crime.

²⁸⁴ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

So far, we have seen how being a Black or Brown person, a woman, or a girl places people in precarious positions in relation to the American criminal justice system. People who identify as lesbian, bisexual, gay, transgender, GNC, queer, intersex or asexual also have peculiar vulnerabilities that emerge from their sexual or gendered identities. A look at the ways that people who identify as LBGTQIA will wrap up our discussion, albeit incomplete, of who the civically vulnerable are.²⁸⁷

*LBGTQIA*²⁸⁸

Orange Is the New Black is a Netflix original series that is set in a privately owned federal prison facility. Amongst the show's diverse ensemble of characters is transgender inmate Sophia Burset played by Laverne Cox—a Black transgender woman. Burset was admitted in to Litchfield federal prison after being convicted for credit-card fraud that she used to finance her sex reassignment surgery. Throughout the series, Burset experiences particular vulnerabilities such as physical, emotional, and verbal abuse both at the hands of fellow inmates and prison staff and administrators, an unexplained reduction in her

²⁸⁷ My aim in this section was not to paint a complete portion of the civically vulnerable. I do not have the space for such a complete portrait. Other people, and groups are also civically vulnerable such as elderly and disabled persons, and children. Further, I also imagine that this vulnerability is exacerbated when we take in to account their racial, gendered, and sexual identities. In future work, I hope to explore the ways and the causes of civic vulnerability of various groups across the world that are in precarious social and political positions.

²⁸⁸ Many Americans are more familiar with acronym LBGTQ. The “I” and the “A” represent the identities of *intersex* and *asexual* respectively. Intersex refers to a range of developmental variations where individuals are born with a reproductive or sexual anatomy or chromosomal pattern that do not fit the traditional definition of male or female. Like transgender people, most intersex individuals identify as male or female, and some may transition from their birth-assigned gender to another gender. People who identify as asexual report that they do not experience sexual attraction to anyone or low or absent interest in desire for sexual activity.

hormone dosage, and inordinate amounts of time in solitary confinement. Unfortunately, Burset's experiences accurately reflect the experience of many transgender prisoners in America's prison system.

Like people who are Black in America, people who identify as LGBTQIA are more likely to come in to contact with the American criminal justice system than their sex and gender conforming peers. For example, The National Center for Transgender Equality reports that "Transgender people, especially poor people and people of color, report facing disrespect, harassment, discriminatory arrests, and physical and sexual assault by police at very high rates."²⁸⁹ LGBTQIA people are particularly vulnerable to abuse and mistreatment once admitted into prison. Prisoners who identify as non-heterosexual have been reported to be 3 times more likely to report sexual abuse.²⁹⁰ Transgender women in men's prisons are as much as 13 times more likely to be sexually abused than other prisoners.²⁹¹ Strip searches on transgender prisoners are sometimes performed by opposite gender officers or officers with corresponding genitalia while effectively disregarding the gendered identity of transgender inmates. Last, prisons and jails respond to the vulnerability of LGBTQIA inmates by putting them in to solitary confinement under the guise of "solitary protective custody."²⁹² The extent to which people who identify as LGBTQIA are civically vulnerable can be drastically reduced if we can reduce profiling, criminalization, police and prison violence against them.

²⁸⁹ Marksame and Tobin, "Standing with Lgbt Prisoners: An Advocate's Guide to Ending Abuse." P. 3.

²⁹⁰ Ibid.

²⁹¹ Ibid.

²⁹² Ibid. P. 11.

Civic Indifference and the American Criminal Justice System

The portrait above uncovers a set of problems that, through indifference, go unaddressed by people in positions of authority, resulting in sustaining a broken system. *Civic Indifference* is the lack of an appropriate orientation of concern a society's members, institutions, or systems may have toward a person or group's civic vulnerability. There are many things that we are indifferent to; there is less that we can afford to be. The myriad of ways that the American criminal justice system disproportionately targets, surveils, harasses, arrests, incarcerates and kills America's most vulnerable citizens is well documented. Yet, the situation of these vulnerable people is something that you are persistently indifferent toward. We consistently blame the vulnerable for their failures while ignoring how they have had the proverbial deck stacked against them. This is not true of all of us. Some of us have called congressmen and women or jail and prison administrators. Thousands of others have marched and protested for the rights and lives of Black and Brown people, women, and people who identify as lesbian, bisexual, gay, transgender, queer, intersex, and asexual. Still, by and large the injustices of the American criminal justice system are an afterthought in American consciousness. As Hill notes "Despite the fact that police brutality has become a popular grievance of a large segment of our society—particularly Black, Brown and poor folk—many Americans remain unaware of this reality."²⁹³ It is worth noting that we might vary with respect to which dimension of civic vulnerability we are indifferent to. In this particular quote, Hill is speaking to one particular dimension of the indifference we direct toward the civically vulnerable—the

²⁹³ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 83.

likelihood of facing police brutality. Still, there are various other dimensions of our criminal justice system that are deserving of our immediate attention.

Civic indifference reveals the distance between citizens themselves, as well as between the vulnerable and those in positions of authority. As argued in chapter two, civic indifference is generated and sustained by social, political, and psychological mechanisms. If this indifference is to be effectively combatted, then we will need to engage these mechanisms both on the ground amongst ourselves and with those in positions of power so that we might alter the systematic forces that squander the capabilities and life prospects of the civically vulnerable. On a ground level, these mechanisms can be illustrated through the use of excessive force against the civically vulnerable, as well as the connection between public attitudes and the consistent increase of American incarceration rates.

A 1983 Supreme Court case challenged the application of chokehold against Black citizens. Hill notes, "From 1975 to 1983, the maneuver had resulted in the deaths of sixteen people in Los Angeles; twelve of those sixteen were African-American."²⁹⁴ In a 5-4 decision, the court ruled that the victim of the officer's choke hold—Adolph Lyons—had standing to sue only for the injuries he had already suffered, not prospective injuries to himself or others due to a particular policy of the LAPD. Lyons had been choked unconscious and made to pee and poop himself in an encounter with LAPD officers after being pulled over for a broken taillight. In addition to his own injunctive relief, Lyons wished to have the Los Angeles Police department end its policy of chokeholds. In its ruling, the court denied standing for future use on the basis that Lyon's position,

cannot be distinguished from that of any other person who may at some future date have a confrontation with the Los Angeles police. This is the kind of injury we have

²⁹⁴ Ibid. P.35.

previously characterized as "abstract" and, therefore, insufficient to create the personal stake required by Art. III. *Id.*, at 494, 94S.Ct. At 675. We could not conclude that [the] respondent has standing to press his claims for equitable relief without re-examining our holdings in *O'Shea* and *Rizzo* on the limits of the case-or-controversy requirement of Art. III.²⁹⁵

It appears that the court denied standing for future use of the hold because one needs to show that one has actually been harmed in order to have standing. While Lyons was in fact harmed by what happened to him (having the chokehold applied, resulting in damaging his larynx), the courts view is that he was not harmed by the existence of the policy. The court's rationale was that the exposure to illegal conduct in the past does not, itself show a present case or controversy nor does it constitute a real and immediate threat of repeated injury.²⁹⁶ But the policy did in fact constitute real and immediate threat of repeated injury because it cannot be evaluated aside from the contemporary and historical social and political situation that American finds itself in. So long as it is true that Blacks are systematically and disproportionately choked and restrained through this method, then the policy is harmful in both a concrete (people like Lyon's are actually physically injured as a result) and an expressive sense (it is offensive to Black people to continue deem permissible a policy that is used disproportionately and systematically on bodies that look like their own).

The court's ruling shows us how some forms of state violence may stem not from police misconduct, but from legal police conduct. Further this conduct is often enacted on vulnerable people and groups by adopting policies that extend the legitimacy of power that officers purport themselves to have. American civilians justify and reinforce this power, engaging the social mechanisms responsible for perpetuating the oppression of the

²⁹⁵ *City of Los Angeles V. Lyons*, (1980).

²⁹⁶ *Ibid.*

vulnerable. Hill remarks on choke holds saying that, “excessive force of this nature is, in fact, often justified by law enforcement, media, and everyday citizens. Absent clear video footage numerous Americans continue to give the “benefit of the doubt” to police officers, despite growing evidence against them.”²⁹⁷ An insight from Alexander builds on Hill’s claim:

We may think we know how the criminal justice system works. Television is overloaded with fictional dramas about police, crime, and prosecutors—shows such as *Law & Order*. These fictional dramas, like the evening news, tend to focus on individual stories of crime, victimization, and punishment, and the stories are typically told from the point of view of law enforcement. A charismatic police officer, investigator, or prosecutor struggles with his own demons while heroically trying to solve a horrible crime. He ultimately achieves a personal and moral victory by finding the bad guy and throwing him in jail. That is the made-for-TV version of the criminal justice system. It perpetuates the myth that the primary function of the system is to keep our streets safe and our homes secure by rooting out dangerous criminals and punishing them...These television shows [are] the fictional gloss placed on a brutal system of racialized oppression and control.²⁹⁸

The justification of excessive force feeds irrational fears of Black and Brown bodies as criminals. That is, the current system of control depends on a certain kind of civic indifference to racial vulnerabilities.

As we saw in the section in the chapter on the civically vulnerable, race plays a major role in American criminal justice. The relationship between indifference and a racist system has not gone unnoticed. Alexander states, quite explicitly that mass incarceration “has been supported by racial indifference—a lack of caring and compassion for people of other races.”²⁹⁹ As a result, in this regard the foundation for the disproportionate representation of Black and Brown citizens is formed by civic indifference. As Hill and

²⁹⁷ *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 51

²⁹⁸ Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

²⁹⁹ *Ibid.*

Alexander note, we are constantly fed stigmatizing images of Black and Brown bodies as criminals and as threats to the public good. This input effectively creates a social underclass that we perpetually and persistently ignore. This input is divisive because it unduly stigmatizes these Black and Brown Bodies and maintains a distance between “us” and “them”.

As the effects pervade our society more generally they become more dangerous. A constant bombardment of this content influences our attitudes about crime and can create a public demand to “get tougher on crime.” In America, the rise in incarceration rate reflects a response to an increasingly punitive public. Electorally motivated politicians consider their constituents’ interests. Further, Policy makers respond to the public’s policy preferences. It has been shown that in this democracy, politicians have been more likely to respond to public opinion by following it rather than leading it.³⁰⁰ Ronald Regan, for example, “referenced “public concern” about crime, predicting this would be an important issue in the upcoming presidential election.”³⁰¹ The assumption that politicians discount or ignore the public’s opinion is a horrific signal of a broken democracy. Political Scientist Peter Enns frames this insight in the form of a question: “Why would politicians and interest group leaders, who depend on the public for their political survival, help produce the highest incarceration rate in the world if the public were unsupportive or uninterested in this outcome?” Public attitudes directly influence the incarceration rate through various pathways such as ballot initiatives and indirectly through the behavior of legislators. Policy makers rely on public attitudes about crime to pass bills and legislation for greater

³⁰⁰ Peter K Enns, "The Public's Increasing Punitiveness and Its Influence on Mass Incarceration in the United States," *American Journal of Political Science* 58, no. 4 (2014).

³⁰¹ Ibid.

punishments, more advanced weaponry, or increased surveillance often without public recognition.³⁰²

Enns' research shows that public attitudes about crime and punishment influence incarceration.³⁰³ State and federal legislators (who have electoral incentives) influence the capacity to investigate, prosecute, and incarcerate by appropriating budgets that respond to public attitudes about crime and punishment. These same legislators have a major influence on incarceration rates by defining what is a crime and imposing sentencing requirements.³⁰⁴ There are also direct pathways of citizen influence. For example, in some states, "Citizens have enacted "three strikes laws," which impose mandatory minimum sentences on repeat offenders."³⁰⁵

The association with criminality can mollify the move toward the exclusionary kind of civic indifference directed at people who are, ultimately, civically vulnerable which makes their social and political situation easy to negate.

Tenderization and the American Criminal Justice System

I want to be clear in my aims for the following discussion. I intend for the discussion offered here to serve as a prognosis for tenderly reforming the criminal justice system.

³⁰² Many Americans are unaware of the fact that there are more than 4,500 offenses in the federal criminal code and 300,000 more regulatory offences that carry criminal consequences. The majority of Americans are also unaware of the fact that the equipment of American police departments have been supplied by the United State Pentagon—including helicopters, night vision goggles, grenade launchers, and of course bazookas—as Michelle Alexander discusses in *The New Jim Crow*.

³⁰³ Enns, "The Public's Increasing Punitiveness and Its Influence on Mass Incarceration in the United States." Enns also suggests that racial attitudes might have influenced the public's rising punitiveness, racial bias or stereotypes may have influenced not only the rate of incarceration but also the racial composition of those behind bars.

³⁰⁴ Ibid. P. 859.

³⁰⁵ Ibid.

That is to say that I do not intend for what is provided here to be definitive by any means. The intrusions of the American Criminal Justice System are pervasive in our society. We should expect, then, that the process of tenderization would have to engage multiple mechanisms—social, political, and psychological. From our portrait above we are able to see that the issues extend beyond people’s attitudes, but also that some of America’s institutions perpetuate the violence of the criminal justice system. Given this, we should have questions about how effective our reform efforts can be if they rely on “conventional criminal regulatory approaches to a wide array of social concerns, with all of their associated violence: on criminalization, policing, arrest, prosecution, incarceration, probation, and parole.”³⁰⁶ We have to avoid reformist projects that rely fundamentally on maintaining a primary and central role for existing policing prosecution, or incarceration-focused mechanisms of social order and maintenance.

The alternatives that I offer invite feedback and input from persons subject to criminal enforcement. Additionally, the set of reforms that I offer is unfinished, partial and in process. Allegra McLeod argues that “this unfinished quality ought not to be denied as a source of critical strength and possibility.”³⁰⁷ Unfinished alternatives “seek to confront criminal law’s violence by substituting *alternative mechanisms* of social order maintenance and by enlisting in the project of reform other social entities and persons subject to enforcement regimes themselves.”³⁰⁸ Unfinished alternatives provide a “sketch,” a beginning, an attempt to change the existing state of affairs through an intervention that is

³⁰⁶ Allegra M McLeod, "Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives," *Harvard Unbound*, no. 8 (2013). P. 113

³⁰⁷ Ibid.

³⁰⁸ Ibid. P. 119.

partial, incomplete, and in process.”³⁰⁹ As our proposed reforms are cautious of relying on the mechanism that maintain a primary and central role for existing policing prosecution, or incarceration-focused, they must simultaneously be able to be articulated in terms that are recognizable and conceivable to those who are embedded in the existing state of affairs. Our reforms then should be both unlike existing arrangements and also legible within them because our public imagination is constrained by the status quo and existing social arrangements.

Doubtless, it can be challenging to maintain a sketch as a sketch in political life. People want to know “how do we get there from here?” Given the reciprocally determined causal nature of civic tenderness, we should resist discounting the ‘pioneering stages’ as life itself; viewing it only as a beginning. Ultimately, even if readers come to reject what I have to say here, I hope, at least they might find what I have to say here to be useful in thinking about how we might bring about a society that is more tender and concerned about protecting its most vulnerable citizens. Taking this task seriously we must be wary of being prematurely prescriptive in the precise direction that we need to go and so dialogue is welcomed and revision should not be resisted. It is also more likely that creative solutions to these issues require *collective* rather than individual effort and so readers should not rely on my own words as a godsend. However, I will do my best to get us started down what seems to me to be a promising path.

As we have seen, public attitudes about crime and punishment have a considerable influence on the American Criminal Justice System. In order to cultivate civic tenderness, we need to get people to understand the injustice of the system—the circumstances of

³⁰⁹ Ibid. P. 120.

those who are victimized by it and the ways that they are victimized. We have to get people to pay attention so that they can come to care about those who are placed in positions of civic vulnerability and taken advantage of. In chapter three, I outlined some forms of media that can be engaged as means for intervention and alteration the attitudes of our society. These suggestions included state funding of and community viewings of films that bring people to awareness of those vulnerable in the face of our justice system such as 13th and Orange is the New Black.

Recently the publicly funded and the well-known children's show *Sesame Street* introduced a new character named Alex, who's father is incarcerated as a part of their "Little Children, Big Challenges" campaign.³¹⁰ The show also has an online tool-kit for children, parents, and providers who may be coping with the incarceration of a loved one. While the tool kit and video resources provided are a step in the right direction, they can be improved to be more tender. For example, in the tool kit's video the puppet characters ask their human friend "What is carcerated? And why was your dad *in* it?" Their human friend responds, "Incarcerated is when someone breaks the law, 'a grown up rule,' and then they have to go to jail or prison." We should applaud *Sesame Street's* efforts as they go some way toward altering the indifference we have toward those impacted by the criminal justice system. Still, the human friend's language is problematic in that it perpetuates the trope that people who are incarcerated are people who break laws. The portrait of the civically vulnerable in this chapter tells a different story—that sometimes people are incarcerated when they are not in fact guilty of a crime; and that sometimes people who commit crimes are not incarcerated. A more tender approach to programming would take a more nuanced

³¹⁰ "Incarceration Tool Kit," <http://www.sesamestreet.org/toolkits/incarceration>.

approach in educating children about incarceration that highlights the *circumstances* of those who are victimized by injustices of the criminal justice system and the ways that they are victimized. Further, the introduction of Alex as a character brings with it possibilities of collaboration with software developers developing media (such as virtual and mixed reality software) able to induce specific emotions—*affective media*—that serves to produce interactive children’s education mechanisms.

The frontiers of affective media can also be helpful changing public attitudes about how prisoners are treated and about the conditions that shape the choices people who wind up as prisoners face. Software developers can develop software that immerses users in the experiences of people who are incarcerated, including their subjugation to methods of punishment such as solitary confinement. They might also be able to develop software aimed at altering people’s attitudes about public health issues and publicly stigmatized forms of medication such as marijuana use.

Technological resources are not the extent of things that we can do to reshape public attitudes. Human resources are important too. Contemporary collective action has also been effective. Groups like Black Lives Matter and the Movement for Black Lives have reshaped public discourse and attitudes about policing and vulnerability of Black bodies before the criminal justice system. Additionally, in 2014-15, in the wake of the deaths of Mike Brown and Eric Garner, protests and other collective action events swept the nation. Political Scientist LaGina Gause documents that:

the year began, with a continuation of marches, petitions, and rallies calling for accountability of police officers and the valuation of black lives. Other events marking the year included Confederate Flag rallies in South Carolina and Mississippi and nationwide demonstrations against food companies. By year’s end, collective action was erupting across the nation at universities and colleges with students

exposing racism and calling for more inclusive community.³¹¹

These collective action events play a role in bringing about the reauthorization of the Death in Custody Reporting Act and the authorization of funds to improve police training and the issuing of body cameras.³¹² The power of protest and other forms of collective action contain even more potential for the vulnerable as Gause finds that “Legislators are generally more likely to represent the interests of lower resource groups than their higher resource counterparts.”³¹³ Even on an individual level, human resources are important, as we should never underestimate the power of conversation. In our own lives, whether with our families, friends, or strangers, we are influenced by the conversations that we have with others. Engaging others in political dialogue and directing them to informational resources is valuable, in part, because it may increase other’s awareness of civic vulnerability by making more intimate connections that might create tender outcomes.

Altering our indifferent orientation towards the civically vulnerable would enable us to consider alternative approaches to punishment. A shift from a retributivist focus to restorative one would be useful for the process of tenderization. Approaching punishment restoratively can create a space where it can be just for vulnerable offenders to believe that they are amongst the victims in their situations. John Braithwaite discusses the role of the notion of *active responsibility*—the virtue of taking responsibility for repairing the harm that has been done and the relationships that have been damaged—in restorative justice schemes. Braithwaite says that “restorative justice is about creating spaces where not only offenders but other concerned citizens as well, will find it safe to take active responsibility

³¹¹ LaGina Gause, "The Advantage of Disadvantage: Legislative Responsiveness to Collective Action by the Politically Marginalized" (University of Michigan, 2016). P. 113.

³¹² Ibid.

³¹³ Ibid. P. 114.

for righting the wrong.”³¹⁴ This is important because, in many cases, people who are incarcerated have been victims of oppression or have been civically vulnerable in their past. For example, as mentioned above many women who are incarcerated have been sexually abused. Braithwaite thinks that “by accepting a jurisprudence of active responsibility, it may be that can respond more compassionately to the injustices offenders have suffered while increasing community safety”.³¹⁵ The reason that this kind of jurisprudence could give rise to compassion is that creates the space for offenders to own and present the ways that they are vulnerable which can alter our orientation and response towards them.

Under a restorative approach, equal punishment for equal wrongs is a misguided. Restorative justice theorists opt for contextualization rather than consistency. Braithwaite mentions that “With restorative justice, it is the collective wisdom of the stakeholders in the circle that decides what is the agreement in the view of any one person in the circle, but one that all in the circle can sign off on as contextually just.”³¹⁶ What results is unequal punishment in response to unequal offenses and the stakeholders to the offense determine this punishment. Restorativists are careful to avoid so radical an approach that any result the victims want, they get. One way this can be done is to impose upper limits on punishment. This way, the law can ensure that citizens will never be punished beyond these limits. So, under restorative justice, “while victims cannot be guaranteed their wishes, the law should assure them of a right to put their views in their own voice.”³¹⁷

³¹⁴ Michael H. Tonry, *Why Punish? How Much?: A Reader on Punishment* (Oxford University Press on Demand, 2011). P. 342.

³¹⁵ Ibid. P. 343.

³¹⁶ Ibid. P. 344.

³¹⁷ Ibid.

Ultimately, a tender society should seek to eliminate the practice of imprisoning citizens altogether. In other words, a tender society has the ultimate aim of removing prison from our social landscape. This will require that we repudiate usual ways of thinking about punishments as an inevitable consequence of crime. As Angela Davis urges, “We could recognize that ‘punishment’ does not follow from crime in the neat and logical sequence offered by discourses that insist on the justice of imprisonment”.³¹⁸ The way forward might thus involve a myriad of alternatives that require American society to undergo several radical changes that address racism, sexism, homophobia, and class biases, for example. What ever the case, our solutions going forward, if they are to be tender, will have to bring attention to and increase the awareness of the ways that people who end up incarcerated are civically vulnerable. The proposed reforms I introduce and develop build on an abolitionist tradition and have been inspired by legal scholar Alegra McLeod. I also turn to former President Barack Obama’s administration and #Blacklivesmatter activists to highlight recent work toward criminal justice reform that is consisted with CT.

Towards criminal law reform

The direction toward a more tender society would involve confronting the violence of the criminal law. One way forward would be the decriminalization narcotics and narcotics related conduct. Decriminalization may serve to substantially reduce the criminal law’s violence and shift resources and attention to other institutions as sites for managing addiction and other forms of social disorder. McLeod proposes that “gradual decriminalization reform will reduce the human and economic costs of late scale arrests

³¹⁸ Angela Y Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2011). P. 112.

and incarceration of persons for marijuana related offenses.”³¹⁹ Many U.S. Jurisdictions have decriminalized marijuana possession both partially and entirely, “including Alaska, California, Colorado, Connecticut, Massachusetts, Minnesota, Oregon, and Washington, among other states” in response to public sentiment that the criminalization of marijuana is misguided.”³²⁰ There is also some precedent for places who have decriminalized a wider range of controlled substances and have shift to a public health model for addressing the problems of addiction. As recent as 2009, in Portugal for instance, following decriminalization the number of people seeking treatment more than doubled and they began to have lower rates of drug use than other European countries and substantially lower than the United States.³²¹ Further, instead of incarcerating individuals who are found to possess small amounts of these narcotics can be set to panels composed of psychologists, social workers, and legal counselors organized to decide rulings of appropriate treatment. Such a shift toward decriminalization is tenderizing in that those who are vulnerable to using or becoming addicted to narcotics would stop being treated and viewed as criminals but rather as people who are in need of treatment to restore and maintain their health. The rationale bolstering decriminalization, in this sense, should emphasize the ways that, for instance, a person’s likelihood of using criminalized narcotics may be increased by things such as the presence of said narcotics in their immediate living environment. I am not suggesting that this is the only circumstance that contributes to the situation of the civically vulnerable, but rather sketching one of the things that tender decriminalization reform should consider.

³¹⁹ McLeod, "Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives." P. 124.

³²⁰ Ibid.

³²¹ Ibid.

Complimenting our decriminalization efforts, another alternative we might consider is alternative development assistance for narco-cultivators. Alternative development in the criminal law context involves providing subsidies to narco-cultivators to introduce non-narcotic crops—such as oil palm, which can be used as bio fuel or to make other consumer products—and technical assistance with accessing international markets until the licit alternative becomes self-sustaining. This project of alternative development has increased the wealth of farmers through transitions to crops that are more lucrative and secure than narco-cultivation.³²² McLeod says that

Studies of the effects of alternative development programming show that on a local scale many narco-cultivators elect to switch entirely to the licit alternative if it allows them to better provide for their families, enabling an improved quality of life. Areas that transition from narco-cultivation to other crops may also experience a significant reduction in the violence associated with narco-trafficking.³²³

These alternatives, in some cases, are also kinder environmentally insofar as they respond to the vulnerability of our planet. In one instance, in Peru a coca-producing region of the Huallaga Valley shifted to producing palm oil. Palm oil is derived from the fruit of small tropical palm trees and can be used to produce vegetable oil, soap, and as an ingredient in bio-fuels.³²⁴

Continued work on criminal sentencing and decarceration is also useful to the tenderization process. As a part of his administration, President Barack Obama launched the Smart on Crime initiative. In 2012, Obama passed the Fair Sentencing Act (FSA), which reduced the disparity in the amounts of powder cocaine and crack cocaine required for the imposition of mandatory minimum sentences for simple possession of crack cocaine.

³²² Ibid. P. 125.

³²³ Ibid.

³²⁴ Ibid.

Importantly, “the FSA reduced a disparity between crack cocaine and powder cocaine that had resulted in excessive and unwarranted punishments that fell disproportionately on defendants of color.”³²⁵ Additionally, Obama took advantage of the presidential clemency power as he commuted more federal prison sentences than the ten presidents that preceded him, combined.³²⁶ Also, in 2010 the Department of Justice (DOJ) overturned a policy that required prosecutors to bring the most severe sentences forth with prosecuting a case. Obama writes that “The new policy instead instructed that cases should be charged on the individual circumstances of the defendant, stressing that “[p]ersons who commit similar crimes and similar culpability should, to the extent possible, be treated similarly,” and that “equal justice depends on individualized justice, and smart law enforcement demands it.”³²⁷ The new policy has explicit connections with restorative justice given its emphasis of contextualization. Former Attorney General Eric Holder revised the DOJ’s charging policies “to avoid triggering excessive mandatory, minimums for low-level, nonviolent drug offenders.”³²⁸ As a result, the leverage that state prosecutors take with them in plea bargaining scenarios was reduced and disallowed the waiving the right to appeal based on ineffective counsel to be included as a part of the plea bargaining process.

Toward Prison Abolition

During his eight-year tenure as president, Obama observed, “with just 5% of the world’s Population, the United States incarcerated nearly 25% of the world’s prisoners.”³²⁹ A

³²⁵ Obama, “The President’s Role in Advancing Criminal Justice Reform.” P. 827.

³²⁶ Ibid. P. 813.

³²⁷ Ibid. P.825.

³²⁸ Ibid.

³²⁹ Ibid. P. 816.

majority of American prisoners are incarcerated for the use of illegal narcotics and illegal narcotics conduct. Every dollar that the DOJ spends on excessive sentences for nonviolent drug offenses represents a dollar that we do not have for investing in social health programs that can more adequately address these issues. As Obama puts the point,

If one includes the cost of jail and prison at the state and local levels, the total U.S. Budget for incarceration rises to a staggering \$81 billion, enough to fund transformative initiatives like universal preschool for every three- and four-year-old in America—initiatives like that change the odds for so many kids by keeping them out of the juvenile and criminal justice systems in the first place.³³⁰

In order to free up these funds and reallocate them toward public health initiatives we will have to drastically reduce the prison population through decarceration.

For this process, the state could develop a separate court system that is not aimed at punishment akin to traditional sentencing, but rather at reducing the sentences of prisoners based on their participation in certain beneficial programming while incarcerated. This court system should be facilitated by social work experts. This court might also be responsible for reducing the sentences of drug offenders in relation to evolving drug policy—especially in the case of marijuana. Alternatively, we can also staff prisons with health professionals that are trained to provide gender and age appropriate health care. The decarceration process can also be complimented by turning to organizations such as *The Vera Institute of Justice* whose common justice initiative is working to transform American incarceration based on restorative justice principles.³³¹ Working with young people between the ages sixteen to twenty-four, they build practical strategies to hold people accountable for harm that do not rely on incarceration. In 2012, this initiative was recognized by the DOJ for their work serving victims especially young

³³⁰ Ibid. P. 818.

³³¹ Danielle Sered, <https://www.vera.org/centers/common-justice>.

people of color, who are unlikely to address their material, emotional, and social needs after serious crimes have been committed.³³²

Decarceration will not happen overnight and until U.S. Prisons are fully abolished, we have to also improve the ways people who are currently incarcerated are treated. One thing that we could offer credits to inmates for participating in certain beneficial restorative programming while incarcerated, which could count toward the remaining time on their sentences. It has been observed that “inmates who participate in correctional education programs have significantly lower odds of returning to prison than those who do not, and that every dollar spent on prison education save four to five dollars on the cost of recarceration.”³³³ Restoring those in our prisons by providing restorative programming in prisons not only improves lives but also promotes public safety.

Further, we should reconsider the use of solitary confinement. Obama says that “It is estimated that as many as 100,000 inmates in U.S. Are currently held in solitary confinement—a figure that includes juveniles and people with mental illness. Of these, as many as 25,000 are in long-term solitary confinement which involves months if not years with almost no human contact.”³³⁴ Solitary confinement can have profound negative consequences that exacerbate mental illness and undermine the goals of restorative justice. Some work has already been done toward this end. In 2016, Obama directed the DOJ to execute a series of important reforms including banning solitary confinement for juveniles, prohibiting its use as a response to low-level infractions, expanding treatment of those with mental illness, increasing the amount of time inmates spend out of their cells and ensuring

³³² Allegra M McLeod, "Confronting the Carceral State," *Geo. LJ* 104 (2015). P. 1417.

³³³ Obama, "The President's Role in Advancing Criminal Justice Reform." P. 832.

³³⁴ *Ibid.* P. 830.

inmates are not released in to communities directly from solitary confinement. Early in 2017, a Los Angeles board of supervisors approved restrictions on the use of solitary confinement using language from the DOJ.³³⁵ Going a bit further, we can reform prisons themselves over the decarceration process to more accurately reflect the conditions to which they might return upon being reintegrated into our society. McLeod notes that at Bastoy prison, inmates are housed in bungalows complete with a deck and a personal outdoor dining table.³³⁶ The idea of reforming prisons to more accurately reflect the outside world is consistent with providing beneficial restorative programming such as education and work skill training.

Toward Re-entry and Spatial Reform

Many Americans who have served their time still face considerable challenges trying to get their lives back on track. The obstacles that the formerly incarcerated face include finding gainful employment, obtaining public benefits, pursuing higher education, voting, and reintegrating in to the workforce. A few small steps could go a long way to offset these challenges. For example, we could “Ban the Box” on job and education admission applications. As it currently stands, some jobs and college applications ask applicants to check a box that discloses whether or not they have gone to jail or prison. The United States department of education has already emphasized the importance of banning the box because “unnecessarily broad questions about criminal history can often deter and

³³⁵ Ibid. P. 831.

³³⁶ McLeod, "Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives." P. 122.

discourage qualified students from pursuing a college degree.”³³⁷ Banning the box would prevent jobs and schools from asking questions about an applicant’s criminal history, at least until a conditional offer has been made.

As a society, we could also cover the cost of state issued identification cards for prisoners upon reentry. Many prisoners are released from prison with little money and possessions. State issued id’s are needed to apply for most jobs in our society and most state’s charge to issue them. To address this barrier in reentering the society, we should absorb the cost of issuing these id’s to the formerly incarcerated.

Perhaps the most important right in any democracy is the right to vote and participate in self-governance. For people who were formerly incarcerated this is sadly not the case. Twelve states in the U.S. restrict voting rights to those who have completed their sentences and are no longer under supervision by the criminal justice system.³³⁸ It is imperative that we restore the formerly incarcerated with their right to vote. Obama states, “More than six million American—disproportionately people of color—cannot vote because of a felony condition that disenfranchise them.”³³⁹ How might this population have affected the 2016 Presidential Election of Donald Trump? Citizens who have paid their debts to society should have some say in how they are governed and they by subject to the very laws and leaders that, in some cases, contribute to their civic vulnerability.

Reforming how we organize our public spaces can go a considerable distance toward reducing crime and violence. McLeod says that “The degree to which design—design of physical spaces, cars, windows and the like—could inhibit theft and other interpersonal

³³⁷ Obama, "The President's Role in Advancing Criminal Justice Reform." P. 834.

³³⁸ Ibid. P. 864.

³³⁹ Ibid.

harm is uncertain, but it is a mode of thinking about social order maintenance and crime prevention that moves toward a focus on space and opportunities to offer rather than on conventional policing, prosecution and punishments.”³⁴⁰ In other words, we can take advantage of things like emerging auto prevention technologies to prevent things like car theft and taking such an approach attempts to fix the issue of car theft without relying on traditional forms of punishment. Additionally, we can reform our social infrastructure to improve things like street lighting and store designs. As a result, American criminal justice would aim to address the situational problems that can sometimes give rise to crime. Going this direction might also involve building more public parks, city fountains, public memorials, and open spaces for members of a community to come together and socialize with one another in ways that can promote joy, safety, and trust.³⁴¹ It has been showing that “where abandoned urban spaces are converted to more constructive public uses, as was the case for thousands of Acres in Philadelphia and Detroit, these projects create jobs and usable space, and in so doing are often associated with reduced gun violence.”³⁴²

Groups like #Blacklivesmatter have made clear and public demands for things like swift and transparent legal investigation of all police shootings of Black people, official governmental tracing of the number of citizens killed by police, disaggregated by race, the demilitarization of local police forces. Toward this end, we can advocate that more police jurisdictions report to the National Incident-based Reporting System which “significantly improves the quality of our crime data by providing much richer details including the date, time, location, and circumstance of the crime as well as characteristics about the victim and

³⁴⁰ McLeod, "Confronting Criminal Law's Violence: The Possibilities of Unfinished Alternatives." P. 128.

³⁴¹ Nussbaum, *Political Emotions*.

³⁴² McLeod, "Confronting the Carceral State." P. 1416.

offender and any relationship with them.”³⁴³ A shift to the use of this technology could go far in holding police departments and officers accountable for the systematic over-surveillance, harassment, and violence take out disproportionately on Black bodies and other people of color.

Conclusion

This chapter addresses the role of tenderization in relation to the American Criminal Justice system. We saw a portrait of the civically vulnerable that include Black people, women and girls, and people who identify as LBGTQIA. Additionally, we explored the orientation of the civic indifference that we direct toward the civically vulnerable. Various social and political mechanisms work to generate and sustain this orientation and our public attitudes about the civically vulnerable. We saw that, for instance, that our public and private attitudes about crime and punishment influence incarceration. Civic Tenderness is an orientation of concern that is brought about in response to civic vulnerability that provides an impulse toward caregiving behavior. I said that civic tenderness requires that our society shift towards restorative justice through alternatives that does not rely on traditional forms of punishment. Restorative justice approaches allow us to better engage with the vulnerability of those afflicted by the violence of the criminal justice system. Each of the alternatives provided here is legible within and existing state of affairs in that each one intervenes in a practical manner with our current, non-ideal, state of affairs. More importantly, some of these alternatives and initiative place the civically vulnerable in positions of equal societal relationship, enabling them to depart from some of the violence of the criminal justice system.

³⁴³ Obama, "The President's Role in Advancing Criminal Justice Reform." P. 862.

Chapter 5:

Tenderization and American Poverty

Since the Recession of 2008, poverty in America has begun to look different and the subject of inequality has become prominent in American political discourse. Before 2008, Americans were able to think that people who were poor were so because they were unemployable, recently incarcerated, or who in general had made poor choices of their own accord and are deserving of their precarious positioning. Still today, too many Americans falsely believe that a bad character or habits or lifestyle causes poverty. However, after the Great Recession a class of working poor, many of whom were formerly *middle class* Americans emerged; People whom, "once possessed relatively predictable and reasonably comfortable lives [were] inexplicably cast into a maelstrom of economic dispossession".³⁴⁴ For many Americans, the possibility of living in poverty was close to becoming a permanent reality. Over the past 25 years the income of the richest 1 percent of Americans have seen a steady increase while the incomes of around 90 percent of Americans have been stagnant. In 2012 there were roughly 600,000 homeless Americans sleeping on our streets, in abandoned cars or homes, or in homeless shelters if they were "lucky".³⁴⁵ At the time of this writing, around 13.5 percent of Americans live in poverty and about 7.9 million are unemployed.^{346, 347} Fortunately, some Americans are beginning to

³⁴⁴ West, *The Rich and the Rest of Us*. P.14.

³⁴⁵ David R. Jones, "Homelessness in America--a Racial Issue," *New York Amsterdam News* 2012.

³⁴⁶ "Income, Poverty and Health Insurance Coverage in the United States: 2015," <https://www.census.gov/newsroom/press-releases/2016/cb16-158.html>.

³⁴⁷ Joana Ferreira, "United States Unemployment Rate," <http://www.tradingeconomics.com/united-states/unemployment-rate>.

accept the harsh reality that the wealthiest 1 percent of Americans disproportionately controls our economy.³⁴⁸

In addition to formerly middle class individuals falling into poverty, the landscape of American poverty has also been changing on other fronts. For example, the thought that poverty is only an inner-city problem is false. It is true that in some of our nation's largest urban areas, nearly one in four poor residents lives in high poverty.³⁴⁹ Yet, in the past decade poverty has become regional as "the majority of poor American suburbs are home to 16.5 million poor people, as compared to the 13.5 million who reside in inner-city neighborhoods."³⁵⁰ In 2011 more than 2.9 million American homeowners had foreclosure cases filed against them. In 2016, 549,928 people were homeless and about 40 percent (217,268) of these were women.³⁵¹ The stability and security of our society is threatened by pervasiveness of poverty and plunder amongst our nation's most vulnerable citizens.³⁵²

³⁴⁸ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*.

³⁴⁹ Anna Maria Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor," *Social Problems* 62, no. 1 (2015). P. 6.

³⁵⁰ Ibid. Speculatively, it would be interesting to explore whether the relatively recent explosion of poverty in suburban areas is caused by gentrification—the replacement of existing urban populations by a gentry. For a thorough discussion of gentrification see, Loretta Lees, Tom Slater, and Elvin Wyly, *Gentrification* (Routledge, 2013). My speculation is that the increase in the number of poor people residing in suburban areas are not merely the result of the existing suburban population losing jobs, income, and access to other means that enable economic flourishing. Instead, this explosion might be linked to cost of living increases brought about by "urban renewal" projects, which often results in the displacement of existing urban populations and their subsequent resettlement in suburban areas.

³⁵¹ Rian Watt Meghan Henry, Lily Rosenthal, and Azim Shivji, "The 2016 Annual Homeless Assessment Report (Ahar) to Congress," (2016).

³⁵² West, *The Rich and the Rest of Us*; Ta-Nehisi Coates, "The Case for Reparations," *The Atlantic*, <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>.

But even today, our attitudes toward the civically vulnerable remain highly judgmental. Justice requires that this be remedied.

Who are the most vulnerable to being affected by poverty in American society? What does indifference toward those who are poor or in poverty look like in our society? How might civic tenderness be useful in fighting poverty and working toward the goal of ending American homelessness? I proceed by painting a portrait of American poverty. Once this picture is in place, I explain what civic indifference looks like toward people who are poor or in poverty. Finally, I discuss what the process of tenderization in the case of American poverty involves.

A Portrait of American Poverty: The Civically Vulnerable

We have to come to understand poverty, not simply as the result of low incomes, but as the hardships and maladies too often experienced as correlated adversity linked across multiple dimensions and institutions. The United States has long enjoyed a position amongst the most affluent nations in the world. What often goes unnoticed, however, are the economic problems that we have here at home. For example, 13.5 percent of Americans are living in poverty and the United States has the second highest child poverty rate among the world's most affluent countries.³⁵³ In some states, such as California, where the rate for children in poverty is 23.1% compared to the 18.7% of their adult counterparts, there are more children than there are adults in poverty.³⁵⁴ Our public discourse about American poverty often lacks nuance. Our failure to highlight subtleties in poverty discussions is one

³⁵³ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 6.

³⁵⁴ Sarah Bohn and Caroline Danielson, "Poverty in California," *Public Policy Institute of California* (2017).

of the reasons that poverty persists today.³⁵⁵ When people who are poor are brought up, what often results is a repetition of scripts and tropes that make superfluous distinctions between poor people as deserving and undeserving, emphasizing individual behavioral failures while simultaneously ignoring global changes in our economy and the ways many of our social institutions come up short in protecting citizens against the risks of poverty. Not all people who are poor are lazy, have accrued large gambling debts, or have blown their fortunes on getting high on heroine or cocaine. Some people are poor because our institutions have failed at preparing them to compete for living wage jobs or because employers are biased against their racial identities. For one example, who gets seen as deserving and undeserving in our society is racialized. In his paper "Working Twice as Hard to Get Half as Far: Race, Work Ethic and America's Deserving Poor", Christopher DeSante finds that whites are found to be more "deserving" than their Black counterparts despite identical levels in perceived work ethic and perceived laziness.³⁵⁶

In the next section we will explore how this contrast between those who are deserving of government help and those who are presumably culpable for their own disadvantaged circumstances, is one of the primary weapons used against the poor. First I illustrate the portrait of the civically vulnerable by focusing on children, the working poor, people of color, and the elderly.

Children

Childhood poverty is a problem in America. For many American children, this is a bad

³⁵⁵ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 6.

³⁵⁶ Christopher D DeSante, "Working Twice as Hard to Get Half as Far: Race, Work Ethic, and America's Deserving Poor," *American Journal of Political Science* 57, no. 2 (2013).

situation because poverty means inadequate nutrition, fewer learning opportunities, poor schools, and the exposure to toxins, family violence and homelessness. I would like to also point out that childhood poverty rates have a dampening effect on our gross domestic product (GDP)—a primary indicator of a nation’s economic health. Our society’s children are indispensable assets to its future. Gone unchecked, childhood poverty can have harmful consequences for the larger society by depleting its economy productivity and output.³⁵⁷ In other words, high rates of childhood poverty can make it difficult to produce the skilled workers we need in sufficient quantities, which “(1) affects our short- and long-term ability to compete internationally; and (2) diminishes our capacity to address the needs of an aging population.”³⁵⁸ Political Scientist Anna Maria Santiago notes, that poor children “are also more likely to experience violent behavior and gang activity; are more likely to be incarcerated; have limited access to fresh produce and healthy foods; have fewer supporters and services; attend inferior schools; and have few, if any, safe places to play.”³⁵⁹

In America, 23% of children live in poverty—that’s nearly one in every four children. Santiago observes that “There are considerable racial and ethnic differences in children’s exposure to poverty: 13 percent of all Anglo and Asian children are poor as compared to 34 percent of Latino children and 39 percent African American children.”³⁶⁰ African American and Latino children are also twice as likely to grow up in a low-income household than their white counterparts.³⁶¹ Sadly, many of our children are living “in families that

³⁵⁷ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 9.

³⁵⁸ Ibid.

³⁵⁹ Ibid. P. 8.

³⁶⁰ Ibid. P. 3.

³⁶¹ Ibid.

experience deep poverty, who are poor during early childhood, are more likely to have lower levels of academic achievement; drop out of school; have poorer employment outcomes; and experience more health, behavioral, and emotional problems.”³⁶²

Poor children’s health is also at risk. Poor children are more likely to be exposed to environmental toxins.³⁶³ The connection between structural and economic barriers and poor children’s futures was on prime display in the Flint water crisis. Flint’s narrative surrounding the crisis highlights how civic vulnerability of children (in particular, Black children) is sometimes perpetuated and sustained by civic indifference. Nearly half of Flint’s residents live near or below the poverty line and roughly 10 percent of its residents are unemployed.³⁶⁴ Flint’s economy once thrived during the boom of the automobile industry. Over time, the automobile industry in America waned due to the development of modern, global, and postindustrial technologies; this economic decline devastated cities like Flint in particular because of a large dependency on the success of the automobile industry. According to Marc Lamont Hill, between 2002 and 2011 Flint fell into a state of financial emergency, running up a \$7.3 million dollar deficit. The city “went into receivership, a state of financial emergency in which a manager is appointed to oversee operations.”³⁶⁵ In 2014, the city of Detroit (along with Pontiac and Highland Park) went in to receivership status as well.³⁶⁶ Detroit’s receivership status had a deleterious impact on Flint because Flint relied on the Detroit Water department for its water to supply the city.

³⁶² Ibid. P. 9.

³⁶³ Ibid. P. 8.

³⁶⁴ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 158.

³⁶⁵ Ibid. P. 159.

³⁶⁶ Interestingly, Hill notes that nearly half of the Black population of Michigan was governed by city managers rather than it’s elected leaders.

As a result of Detroit's financial situation, Flint was increasingly being asked to pay higher rates for their water, waging a "water war" between Detroit and Flint.³⁶⁷ The battle over water servicing was motivated by an attempt to save money. Hill mentions that "Encouraged by its city manager, who claimed that the move would save Flint four million dollars a year, the city decided to join other municipalities in a new pipeline venture that would bypass Detroit and bring water directly from Lake Huron."³⁶⁸ In April of 2015, Flint began receiving its water from the Flint River—a river with a history of being a depository for industrial waste. Shortly after the switch, "Flint residents discovered that their drinking water tasted different, looked different, and had a distinct color."³⁶⁹ City authorities ignored the complaints of the city's residents and insisted that the water was safe for drinking, ultimately stalling the expediency of corrective measures. Flint's children were forced to use contaminated water for drinking, bathing, and playing; water that ultimately was carrying toxins into their bloodstreams everyday.³⁷⁰

Early in 2015 the water in Flint was reported to have high levels of coliform bacteria, trihalomethanes, and lead.³⁷¹ Lead exposure "can result in severe and lifelong neurological complications"³⁷² and lead poisoning is irreversible. Detroit Free Press Journalist Kristi

³⁶⁷ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 159.

³⁶⁸ Ibid. P. 160. Hill also records that "Detroit, now looking at a loss of revenue, responded with bitterness;... It announced that it would end its existing arrangement with Flint, forcing the emergency manager to find another source for water until the proposed pipeline was finished."

³⁶⁹ Ibid.

³⁷⁰ Ibid. P.161.

³⁷¹ Ibid.

³⁷² Ibid.

Tanner has noted that all children under 6 years of age have likely been exposed to lead.³⁷³ The impact will be borne by Flint for decades to come and now must prepare for the aftermath that will include, “children with learning disabilities, difficulty in fine motor skills, problems with memory and speech articulation, and who develop a greater tendency toward violence.”³⁷⁴ Perhaps the most heart-breaking part about the Flint crisis is that many of these problems, often persist into adulthood; this position of deprivation results in “poor children, particularly children of color, [being] less likely to meet developmental milestones and face numerous barriers to opportunities.”³⁷⁵ Our future competitiveness globally, and community vitality are inextricably linked to our children’s ability to succeed.

The story of Flint highlights how children are made civically vulnerable as a result of systemic and structural indifference. If people in power in Flint actually took the claims of its citizens more seriously, the crisis could have been brought to an end quickly. Intermediate steps could have been taken to assuage the blow Flint was hit with. Flint could have used anticorrosion treatments in the water or looked to partner with other neighboring cities for instance. Instead, they were indifferent to the complaints and insisted that the water was safe for drinking, prolonging the search for a solution.³⁷⁶

The working poor

The evidence that many Americans are playing by the rules but unable to escape

³⁷³ Kristi Tanner, "All Flint's Children Must Be Treated as Exposed to Lead," <http://www.freep.com/story/opinion/contributors/raw-data/2016/01/16/map-8657-flints-youngest-children-exposed-lead/78818888/>.

³⁷⁴ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P.162-3.

³⁷⁵ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor."

³⁷⁶ Hill, *Nobody: Casualties of America's War on the Vulnerable, from Ferguson to Flint and Beyond*. P. 161.

poverty should generate important questions about why it is so easy for us to ignore those whom we consider as undeserving of our assistance let alone our attention. Too often we think that if a person is poor then they must have made the wrong choices or have bad habits and lifestyle. People who are poor or who are in poverty are often stigmatized and stereotyped as lazy, and thereby undeserving. How we craft our public policies go some way toward this end. Some of our public policies are based on the assumption that poverty can incentivize citizens to work more, including Temporary Assistance for Needy Families (TANF), food stamp work requirements, and the Earned Income Tax Credit (EITC).³⁷⁷ Yet this assumption is mistaken because in America there are the working poor who cannot avoid poverty despite occupying a position in the workforce. Ultimately the working poor are those who whose earnings from formal employment are insufficient to avoid poverty. One of the things that should surprise us about the working poor is that presumably they “play by the rules” and still cannot escape living in poverty. This outcome stands in the face of the reasonable expectation that work should be rewarded with a standard of living above the poverty threshold.³⁷⁸ Between 9.3 and 11.0 % of working family heads are poor. In some states, such as California, most poor families are working. One study found that “78.9 of poor Californians lived in families with at least one working adult.”³⁷⁹ Also in California, “For 55.1% of those in poverty, at least one family member reported working full-time.”³⁸⁰ So the suggestion that the promise to work generates legitimate opportunities to establish a decent life above the poverty standard of living is not true for nearly one in

³⁷⁷ Brian C Thiede, Daniel T Lichter, and Scott R Sanders, "America's Working Poor: Conceptualization, Measurement, and New Estimates," *Work and Occupations* 42, no. 3 (2015). P. 268.

³⁷⁸ Ibid. P. 270.

³⁷⁹ Bohn and Danielson, "Poverty in California."

³⁸⁰ Ibid.

ten working family heads and their dependents.³⁸¹ Since 2007, there has been a downturn in earning among full-time workers employed year-around—both men and women.³⁸²

Brian Thiede et al. observed “Approximately 6.4 and 8.0 million working family heads were poor in 2012, and between 20 and 24 million persons lived in poor families with a working head.”³⁸³

The existence of a class of working poor in America disrupts narratives that assume that working provides a standard of living above the poverty threshold. We have to reconsider these assumptions about poverty, work, and unemployment. Doing so can push us toward progressive solutions for those who are civically vulnerable before our economy including things like an increase in the federal minimum wage to that of a living wage. This change, in particular, can enlarge opportunities to flourish in American for many Americans. People who stand in opposition to increasing the minimum wage sometimes rely on a rationale that points to teenagers as the primary beneficiaries of the increase. But the evidence shows that there are many working adults who fail to bring home incomes at a living wage; this is in spite of their willingness to work full- or part-time jobs or year-around. This should be of bipartisan interest and ignite bipartisan action.

Blacks in America

In American there exists a tremendous wealth gap that disproportionately affects people of color. In 2013, the median wealth for a white family was \$134,000 whereas the median for Black families was \$11,000; the median for Latino families was \$13,900; and

³⁸¹ Thiede, Lichter, and Sanders, "America's Working Poor: Conceptualization, Measurement, and New Estimates." P. 298.

³⁸² Ibid. P. 268.

³⁸³ Ibid. P. 299.

the median for Native American families was \$5,700.³⁸⁴ In 2014, Ta-Nehisi Coates writes:

Black families, regardless of income, are significantly less wealthy than white families. The Pew Research Center estimates that white households are worth roughly 20 times as much as black households, and that whereas only 15 percent of whites have zero or negative wealth, more than a third of Blacks do. Effectively, the black family in America is working without a safety net.³⁸⁵

The situation of Blacks in the American economy deserves particular attention because of the role Blacks played in establishing the American economy.

The American economy was built on the backs of Black slaves. Coates writes, rather ironically, “America [began] in Black plunder and white democracy.”³⁸⁶ Even more, the White House and the Capitol building were built by slaves.³⁸⁷ The roots of American wealth and democracy then are found in slavery and are they not incidental to America’s rise to power as a nation, but rather it facilitated that rise. It was “by erecting a slave society, [that] America created the economic foundation for its great experiment in democracy.”³⁸⁸

This marks the great irony of the American economy—one the one hand it was built on black labor, and on the other hand blacks now systematically face barriers participating in it. Coates mentions that in antebellum south, “Nearly one-fourth of all White Southerners owned slaves, and upon their backs the economic basis of America—and much of the Atlantic world—was erected.”³⁸⁹ More than just their labor, Black slaves themselves were the single largest financial assets in the American economy.³⁹⁰ The wealth gap that this

³⁸⁴ Steve Phillips, *Brown Is the New White: How the Demographic Revolution Has Created a New American Majority* (The New Press, 2016). P. 117.

³⁸⁵ Coates, "The Case for Reparations".

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ Ibid.

³⁸⁹ Ibid.

³⁹⁰ Ibid.

market generated has not been rectified.³⁹¹ Today, the decedents of slaves do not have much better luck in the economy that their ancestors built. As Coates puts the point, "The concentration of poverty has been paired with a concentration of melanin."³⁹²

Black people are significantly overrepresented in the homeless population.³⁹³ Community Psychologist Geraldine Palmer notes that "In 2010, one in 141 Black/African American family members stayed in a homeless shelter, a rate 7 times higher than for White/European American families."³⁹⁴ In 2012, newspaper columnist David Jones reported "In New York City for example, while blacks comprised 25.2 percent of the general population in 2010, they were 55.9 percent of the shelter population. Conversely, white New Yorkers, 36.1 percent of the general population, comprised just 1.9 percent of those living in homeless shelters."³⁹⁵ Unemployment for African American men is twice the rate for White men.³⁹⁶ For many Americans, job loss is linked to eviction.³⁹⁷ Additionally, these racial and economic disparities are often confounded, which along with residential segregation gives rise to racial and spatial differences in health. Since Blacks are more likely to live in areas of lower economic status regardless of their individual income status, they may experience exceptional barriers to accessing health care options and maintaining

³⁹¹ Ibid.

³⁹² Ibid.

³⁹³ Geraldine L Palmer, "Examining the Effects of Scattered Site Supportive Housing on the Social and Economic Integration of Men Who Are Formerly Homeless and Primarily Black/African American," *Journal of Black Studies* 47, no. 8 (2016).

³⁹⁴ Ibid. P. 847.

³⁹⁵ Jones, "Homelessness in America--a Racial Issue."

³⁹⁶ Nicolle A Mode, Michele K Evans, and Alan B Zonderman, "Race, Neighborhood Economic Status, Income Inequality and Mortality," *PloS one* 11, no. 5 (2016). P.8.

³⁹⁷ Matthew Desmond and Carl Gershenson, "Who Gets Evicted? Assessing Individual, Neighborhood, and Network Factors," *Social Science Research* 62 (2017). P. 373.

their health in their communities.³⁹⁸ Often, living in these areas of high poverty and low-income has an impact on one's life expectancy insofar as low-income individuals had the highest mortality risk.³⁹⁹

Studies that focus on the American achievement gap illustrate the extent to which poverty is linked across our institutions—in particularly our nation's schools.⁴⁰⁰ While school settings can be stressful for any student “for African American students, the academic environment involves an extra degree of threat not experienced by nonminority students, due to the negative stereotype about the intelligence of their race.”⁴⁰¹ Low-performance of Blacks in education also feeds the school-to-prison pipeline.⁴⁰² Low-educated Blacks meet a labor market with few opportunities for unskilled workers. In their widely cited study, Becky Pettit and Bruce Western mention that, “The collapse of the employment in poor urban neighborhoods [draws] young Black men into the illegal trade, steeply increasing their risks of arrest and incarceration.”⁴⁰³ This is a double edge sword because as we saw in chapter 4, having a prison record confers a persistent status of a ‘criminal’ or a ‘felon’ that can significantly impact life trajectories. In other words, lower education attainment combined with a lack of employment opportunities constrain the

³⁹⁸ Mode, Evans, and Zonderman, "Race, Neighborhood Economic Status, Income Inequality and Mortality."

³⁹⁹ Ibid.

⁴⁰⁰ Gloria Ladson-Billings, "From the Achievement Gap to the Education Debt: Understanding Achievement in Us Schools," *Educational researcher* 35, no. 7 (2006); Geoffrey L Cohen et al., "Reducing the Racial Achievement Gap: A Social-Psychological Intervention," *science* 313, no. 5791 (2006); Obama, "The President's Role in Advancing Criminal Justice Reform."

⁴⁰¹ Cohen et al., "Reducing the Racial Achievement Gap: A Social-Psychological Intervention." P. 1307.

⁴⁰² Obama, "The President's Role in Advancing Criminal Justice Reform."

⁴⁰³ Pettit and Western, "Mass Imprisonment and the Life Course: Race and Class Inequality in Us Incarceration." P. 153-4.

choices of many Blacks (especially, young Black men), and as a result they often become caught in the criminal justice system (where they are likely to suffer longer sentences than white offenders for comparable crimes).

Civic Indifference and American Poverty

Despite our aforementioned portrait, how often do we pretend that the poor do not exist? Many of us act as if poverty is contagious disease; as if even talking about it renders us susceptible to catching it. The poor are universally stigmatized. The stigma of poverty includes being perceived as incompetent and feeling shunned and disrespected.⁴⁰⁴ It can lead to cognitive distancing, diminish cognitive performance, and cause the poor to forego beneficial programs. Our portrait illustrates several issues that do not often get addressed by people in positions of power and authority or by our fellow citizens. As we've seen in chapter 4, in order to understand American public opinion, we have to understand the perceptions of the social and political world we inhabit and the role the media, in its various forms, plays in shaping these perceptions. We know that "mass media can exert a powerful influence on public perceptions and attitudes."⁴⁰⁵ Even some of our society's media outlets that are generally well intending, generate images of the social world that consistently misrepresent poor and vulnerable citizens in harmful and damaging ways.⁴⁰⁶

The reports that we get about the world come primarily through mass media. As we rely on the media for information about our society, it shapes our social perceptions and

⁴⁰⁴ Crystal C Hall, Jiaying Zhao, and Eldar Shafir, "Self-Affirmation among the Poor: Cognitive and Behavioral Implications," *Psychological Science* 25, no. 2 (2014).

⁴⁰⁵ Martin Gilens, "Race and Poverty in America Public Misperceptions and the American News Media," *Public Opinion Quarterly* 60, no. 4 (1996). P. 528.

⁴⁰⁶ *Ibid.* P. 537.

political attitudes. Distortions of social conditions represented in the media then are likely to result in public misperceptions that reinforce existing biases and stereotypes. Our views on poverty are colored by the belief that economic opportunity is widespread and that anyone who tries hard enough can succeed. Stereotypes stigmatize, and condemn large segments of the poor as undeserving. Many Americans believe that "If people weren't lazy, they wouldn't be without jobs. If women weren't sexually active, they would not be having babies outside of marriage and becoming dependent on welfare, if people didn't drink or use drugs, they would not be homeless."⁴⁰⁷ For people who perceive there to be an abundance of opportunities, poverty itself is presumptive evidence of personal failure. Sadly, many of us write off vulnerable citizens who are poor as undeserving because we believe them to be lazy or as social parasites who prefer to live off the generosity of others.

The ideology of undeservingness is a primary weapon in generating and sustaining an orientation of indifference toward the poor. It assumes that "those who do not behave according to the rules set by mainstream America, particularly those related to work and sexual activity, are undeserving and blames their poverty on deficient morals, behaviors, values, and/or culture."⁴⁰⁸ American politicians, such as Paul Ryan, have used pejorative words and labels directed toward people who are poor.⁴⁰⁹ Ryan says "we have got this tailspin of culture in our inner cities, in particular, of men not working and just generations of men not even thinking about working or learning the value and the culture of work; and

⁴⁰⁷ Hall, Zhao, and Shafir, "Self-Affirmation among the Poor: Cognitive and Behavioral Implications." P. 8.

⁴⁰⁸ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 8.

⁴⁰⁹ Charles M. Blow, "Paul Ryan, Culture and Poverty," New York Times, https://www.nytimes.com/2014/03/22/opinion/blow-paul-ryan-culture-and-poverty.html?_r=0; Think Progress, *The Bill Bennett Show*, podcast audio 2014, <https://soundcloud.com/thinkpro/paul-ryan-on-poverty>.

so there's a real culture problem here that has to be dealt with."⁴¹⁰ Words like these add to the misery that sometimes already exists as a result of a lack of money.⁴¹¹ When people in power the poor are also impacted by reducing their spirit, morale, and humanity, and being renders them invisible. For people who are in poverty "The stigma of poverty can be all encompassing... low-income individuals suffer from the stigma and stereotyping associated with being poor: they are scorned, perceived as incompetent, and disrespected."⁴¹²

Children living in poverty and the working poor demonstrate that stigmas attached to people in poverty are by and large a myth. The working poor "play by the rules" and still cannot escape poverty. Children are poor and our society's labor laws prevent children from occupying positions in our labor force. Still, "The images of the poor are much less likely to be employed than their real work counterparts."⁴¹³ In a study on the misperceptions of people who are in poverty, Martin Gilens emphasizes, "Whatever public sympathy might accompany the perception that the poor are trying to work their way out of poverty is unlikely to emerge from [our society's] newsmagazines."⁴¹⁴

Our indifference to the poor is also sustained by political mechanisms. As I mentioned in chapter 2, in August of 2015 the Mayor of San Francisco said he would enact 10 day edicts that order the homeless of the city off its streets during the week of the 2016 NFL Super Bowl because being homeless is both "illegal" and "dangerous".⁴¹⁵ For another

⁴¹⁰ *The Bill Bennett Show*.

⁴¹¹ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 8.

⁴¹² Hall, Zhao, and Shafir, "Self-Affirmation among the Poor: Cognitive and Behavioral Implications." P. 619

⁴¹³ Gilens, "Race and Poverty in America Public Misperceptions and the American News Media." P. 524.

⁴¹⁴ *Ibid.*

⁴¹⁵ Knight, "Nothing Like a Super Bowl to Fix S.F.'S Homeless Problem."

example, historically the practice of redlining is well known.⁴¹⁶ In 1934 the Federal Housing Administration (FHA) was created and was responsible for insuring private mortgages.⁴¹⁷ The FHA created a mapping system that ranked neighborhoods on the basis of their perceived stability. Neighborhoods that were heavily populated with Black people were usually considered ineligible for FHA backing. According to Ta-Nehisi Coates:

On the maps, green areas, rated “A,” indicated “in demand” neighborhoods that, as one appraiser put it, lacked “a single foreigner or Negro.” These neighborhoods where black people lived were rated “D” and were usually considered ineligible for FHA backing. They were colored in red.⁴¹⁸

This practice of Redlining was a legal practice in America until 1968. What resulted was often spatial segregation of both race and resources—separating the civically vulnerable from the less civically vulnerable; the have’s from the have-nots. Segregation of this sort can proceed from various sources. For example, it may be that one is already indifferent to the plight of these others and that is what makes them want to segregate one’s self from them. One might intentionally stay away from a group because they outright do not like them. It might also be the result of merely being gullible to information that their real estate agent provides for them. Still, as a result of being separated from the vulnerable, indifference grows. For decades then, the state played a role in constructing and sustaining indifference by restricting citizens' choice of neighborhood—thereby indirectly controlling the kinds of interpersonal interactions people were likely to have. As Elizabeth Anderson explains:

When advantaged groups are able to segregate themselves from the disadvantaged, they lose personal contact with the problems of the disadvantaged. They become ignorant. Enclosed in secure enclaves, insulated from the problems their segregative

⁴¹⁶ Coates, "The Case for Reparations"; Anderson, *The Imperative of Integration*; Mode, Evans, and Zonderman, "Race, Neighborhood Economic Status, Income Inequality and Mortality."

⁴¹⁷ Coates, "The Case for Reparations".

⁴¹⁸ Ibid.

practices impose on others, they become complacent and insular: those people problems are not ours.⁴¹⁹

Importantly, Mode et al. has recently presented evidence that these practices continue in cities like Baltimore and Washington DC, despite the fact that they are illegal. According to Mode, "The cities of Baltimore, MD and Washington, DC reached a settlement with Wells Fargo regarding steering approximately 4000 African American and Hispanic borrowers during 2004-2008 into subprime mortgages when non-Hispanic White borrowers with similar credit profiles received prime rate loans."⁴²⁰ If we are going to overcome the barriers that civic indifference presents, it will be likely that we have to come in to close quarters and interact on personal levels with people who are poor or who are in poverty.

Through mechanisms of mass media and segregative spatial control civic indifference is sustained. These mechanisms are not intended to be all encompassing—a lack of curriculum in our society's primary and secondary schools that focus on the myriad of issues people who are in poverty face may also be a contributor as well, among other things. However, they do occupy centralized role in the generation, construction, and sustaining of the civic indifference that we direct at people who are civically vulnerable which, as we have seen earlier on, makes their situation easy to negate.

Tenderization and American Poverty

As in chapter 4, I intend for the discussion here to serve as a prognosis for tenderly reforming our society in ways that can positively impact people who are poor or in poverty.

We should keep in mind that tenderization is a process. Further we should also be

⁴¹⁹ Anderson, *The Imperative of Integration*.

⁴²⁰ Mode, Evans, and Zonderman, "Race, Neighborhood Economic Status, Income Inequality and Mortality." P.8.

reminded that as a process, tenderization will have to engage various mechanisms.⁴²¹ The set of reforms that I offer here, much like the set of tender reforms offered in chapter 4, are unfinished.⁴²² As such, they invite feedback and input from those afflicted by American poverty.

The measures offered here for protecting vulnerable Americans from having their chances for flourishing restricted by the American economy could be defended in more ways than one. In this way, viewing the measures through the lens of tenderness and tenderization offers a companion justification for their adoption and implementation in our society. Some measures like the universal food delivery system for children can be justified by Rawlsian concerns of social justice.⁴²³ Other measures like protecting social security can be justified by economic reasons that are independent of social justice. Many Americans may believe that it is a problem inequality exists and would be in favor of supporting the measures offered here from one or other of these complimentary rationales for justification. Still, if some of the economic reform measures that civic tenderness prescribes can be justified in a number of ways then so much the better for those programs as we would have *more* reason to do it. My endorsement of the measures proposed here is because these measures, aside from whatever else they might achieve, would achieve the goals of raising awareness of the vulnerability of the poor and protecting them.

As we have noted above, mass media can affect our social and political situations by affecting the importance that we attached to the situation of the poor or to different

⁴²¹ See chapters 3 and 4.

⁴²² See chapter 4, in particularly see the section on Tenderization and the American Criminal Justice system.

⁴²³ Rawls, "Justice as Fairness."; *Justice as Fairness: A Restatement* (Harvard University Press, 2001); Martha Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice," *Feminist economics* 9, no. 2-3 (2003).

political issues. Further, it can influence what we believe to be the causes of national problems, the standard that we use in making evaluations, and even how we perceive our political candidates and elected officials.⁴²⁴ The society's association of character individual flaws both reflects and perpetuates negative stigmas of the poor and decreases support for many social welfare options for both those in a situation of poverty and those who are not.⁴²⁵ The civically vulnerable are, to a large extent, not to blame for their poverty. People who believe that the poor are to blame for their situation are more likely to think of them as undeserving of societal and government aid than those with more accurate perceptions of poverty.⁴²⁶ Admittedly, our media outlets are subject to some of the same biases and misperceptions that plague our society and therefore are likely to reproduce those biases in their portrayals of American social conditions.⁴²⁷ Still, with media serving as a primary vehicle driving public perception, changes over time in media portrayals should be associated with changes in public beliefs.⁴²⁸ The issue isn't that we cannot construct innovative, progressive, or transformative solutions to the problem of poverty. Rather, our preoccupation with the ideology of undeservingness prevents us from seeing the problem. We have to get people to pay attention to the ways people who are poor or in poverty are vulnerable in our society precisely because of their precarious positioning if we are going to be able to come to care about our fellow citizens.

Here, again, I think that the frontiers of affective media can be of use in intervening with and altering public attitudes about what kind and how much help people who are poor or

⁴²⁴ Gilens, "Race and Poverty in America Public Misperceptions and the American News Media."

⁴²⁵ Ibid.

⁴²⁶ Ibid.

⁴²⁷ Ibid. P. 516.

⁴²⁸ Ibid. P. 529.

in poverty really do need. Software developers can develop software that immerses users in the situations of not only those who are poor or in poverty, but also to the experiences of job-loss and its aftermath, the effects of low-education and what classroom struggles are like for the civically vulnerable and the like. Additionally, we should not underestimate the impact collective organizing and protesting can have on public attitudes about the economy. As Santiago states "The occupy movement that emerged in 2011 illustrate[d] how issues of poverty and inequality [can galvanize] people worldwide to question spending priorities, promote structural, change, and reclaim dignity."⁴²⁹ The fore coming proposals are suggestions toward moving our society towards the eradication of poverty.

Protect Social Security

Under the current Presidential Administration of Donald Trump, social security has come under attack.⁴³⁰ In our society, social security plays a vital role in reducing poverty. In America, social security lifts 14 million elderly Americans out of Poverty.⁴³¹ A 2013 report uncovers that "Without social security, 21.4 million more Americans would be poor."⁴³² In addition to 90% of people over the age of 65 receiving some form of income from social security, this number includes 1.1 million children.⁴³³ Provided that we remain healthy, we all will live to reach the qualifying age for social security and the risk of economic

⁴²⁹ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 9. Also, in *The Rich and the Rest of Us*, Cornel West and Tavis Smiley echo this sentiment

⁴³⁰ Russell Berman, "Will Trump Cut Medicare and Social Security?," *The Atlantic*, <https://www.theatlantic.com/politics/archive/2017/01/will-trump-cut-medicare-and-social-security/514298/>.

⁴³¹ Paul N Van de Water, Arloc Sherman, and Kathy A Ruffing, "Social Security Keeps 22 Million Americans out of Poverty: A State-by-State Analysis," *Center for Budget and Policy Priorities* (2013).

⁴³² *Ibid.*

⁴³³ *Ibid.*

insecurity experienced by older adults is high (and especially high for racial minorities).⁴³⁴ On average "A minimum of 10 million adults age 65 or older struggle to make ends meet."⁴³⁵ Mutchler et al. state that "When resources fall short of what is needed to cover necessary expenses, older adults have to make difficult choices--between refilling a prescription and paying a utility bill, for example; or between paying the rent and purchasing sufficient food to get through the month."⁴³⁶ These kinds of experiences, while not being eradicated through the presence of social security, are offset by its presence in our society. Going forward, we will have to work hard to ensure that this mechanism stays in place.

In general, the response to the concerns of elderly citizens is usually positive.⁴³⁷ That is to say that the public opinions and general orientation is tenderly disposed. Still, we will have to do the work researching political candidates at election time and take the care to understand their proposed agenda's and their potential impacts. We cannot afford to lose such a valuable protective mechanism on account of ignorance.

Resource Initiatives

In our society, there is a "need to connect vulnerable groups to employment and economic activity as well as ensure that new jobs are ones that offer family-supporting wages, benefits, and opportunities for growth."⁴³⁸ There are already some initiatives in

⁴³⁴ Jan Mutchler, Yang Li, and Ping Ku, "Living Below the Line: Economic Insecurity and Older Americans, Racial and Ethnic Disparities in Insecurity, 2016," 18 (2017).

⁴³⁵ Ibid. P. 1.

⁴³⁶ Ibid. P. 6.

⁴³⁷ Gilens, "Race and Poverty in America Public Misperceptions and the American News Media."

⁴³⁸ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 10.

place that are working toward to doing this. In San Francisco, the Family Independence Initiative develops programming that connects families to these resources by identifying where they already exist in their own communities.⁴³⁹ The program also connects families with other families to support one another while they are improving their lives in their own way. Other organizations like the Delaney Street Foundation provides job training, and employment "for some of the most difficult to employ poor people—former substance abusers, ex-offenders, and the homeless."⁴⁴⁰ In this way, these tender outcomes that works with people who are poor and in poverty to empower and assure them that their own views and their own voice matters, sustaining a sense of self-worth and integrity.

Additionally, the state might develop and implement curriculum geared toward training citizens for the kind of jobs that offer opportunities for-economic security--such as green jobs and jobs using sophisticated forms of technology. Also in, the San Francisco area, programs like Roots of Success and the Earned Assets Resource Network (EARN) have developed training curricula to respond to these emerging jobs.⁴⁴¹

Universal Food Delivery System

Cornel West and Tavis Smiley state that "There are more than 50 million Americans in this country who are hungry and who have no idea where their next meal will come from."⁴⁴² In their poverty manifesto, they argue for the development of a universal food delivery system. The benefits would be two-fold in that such a development would create sustainable jobs in the areas of farming, processing, and transportation while

⁴³⁹ Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Ibid.

⁴⁴² West, *The Rich and the Rest of Us*. P. 193.

simultaneously addressing hunger in America. Given that America is "rich with fertile farm land and potential growing spaces in metropolitan areas" the two posit, "a new food delivery system should be easiest to solve."⁴⁴³ The system would offset the degree to which poor and impoverished citizens have limited access to fresh produce and healthy foods, which in turn can impact the mortality rates of the poor. According to West and Smiley, "A Universal Food Delivery System would support and work to expedite all local, national, and international efforts aimed at delivering fresh, canned, and packaged produce to the hungry and, in the process, create sustainable, living-wage jobs for Americans currently underemployed or unemployed."⁴⁴⁴

Social Impact Bonds

Social impact bonds provide funding to innovative and effective service providers for programs that address particular social needs. Santiago writes that

Instead of relying on government funding, philanthropic funders provide financial resources to pay for the program. Government, service providers, and funders then agree upon targeted social outcomes, and independent evaluators monitor program performance. If the program reaches the agreed targets, the government reimburses the initial funders for their "invested capital" and then will reinvest in the program, thereby reducing the risk of taxpayers paying for ineffective programs.⁴⁴⁵

This particular measure of reform is tender in that it is in its nature a collective effort and it works, on all sides, to protect the vulnerabilities that stakeholders assume. Having their vulnerabilities met protects the recipients of these programs. Our philanthropists, government, and taxpayers are also protected from the vulnerabilities that are potentially generated by ineffective programs. Perhaps one investment our philanthropists can make

⁴⁴³ Ibid.

⁴⁴⁴ Ibid. P. 194.

⁴⁴⁵ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 10.

is toward the aggressive development of affective technologies as means of attitude intervention and bringing about significant alteration in public attitudes.

Integrative Scattered Public Housing

In our society, "poverty rates [are] correlated with rates of homelessness because a lack of adequate income prevents people from being able to afford market rate housing."⁴⁴⁶ Another reform measure our society might adopt, then, is the construction of subsidized public housing facilities in affluent or suburban neighborhoods. Despite the myth that low-income housing diminished property valued, it actually does not nor do neighbors do not respond negatively towards the new residents.⁴⁴⁷ Geraldine Palmer found that housing in more affluent neighborhoods has some influence on the increase of incomes.⁴⁴⁸ An employment placement program provided by a city contract--as is already the case in many affluent communities--so that the civically vulnerable have a legitimate shot at economic stability can compliment this measure.⁴⁴⁹

Universal Savings Account for All Children

Some regions of America have embarked on more progressive solutions toward ending poverty such as the establishment of savings accounts for children which are aimed at accruing savings over the course of childhood to facilitate children's ability later on to attend college, purchase a home, or start a business. Santiago states that "The city of San

⁴⁴⁶ Palmer, "Examining the Effects of Scattered Site Supportive Housing on the Social and Economic Integration of Men Who Are Formerly Homeless and Primarily Black/African American." P. 848.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

Francisco was the first county in the United States to offer a publicly funded, universal children's college savings account (kindergarten to college). In the fall of 2013, Cleveland began the March into Kindergarten College Savings Accounts for 15,000 public school children."⁴⁵⁰ Establishing a national savings account for all children or a mechanism of financial matching the savings that localized governments accrue for their children could offset the school-to-prison pipeline and it could provide all of our nation's children a legitimate opportunity for success in our society's labor market.

Conclusion

This chapter focuses on the role of tenderization in relation to issues of American Poverty. We looked at a portrait of the civically vulnerable that included children, the working poor, and Black Americans. Further, we explored our society's civic indifference toward the civically vulnerable and some of the ways this indifference is constructed and sustained through ideologies of undeservingness. As was the case in our application of tenderization to the American Criminal Justice system, we saw that our private and public attitudes about the poor are shaped by the media and spatial mechanisms that render the concerns of the poor invisible. In the final section, I provide a sketch of a direction our society can head towards in becoming more tender to those who live in poverty. The provided sketch of reform measures is not exhaustive. This is a function of the unfinished feature that these measures take on. What results are measures that serve as a springboard platform for our deliberation about what the civically vulnerable need and how their vulnerability can be met.

⁴⁵⁰ Santiago, "Fifty Years Later: From a War on Poverty to a War on the Poor." P. 10.

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