




Spring 2021

Empathy's Promise and Limits for Those Disproportionately Harmed by the COVID-19 Pandemic

Theresa Glennon

Temple University, Beasley School of Law, theresa.glennon@temple.edu

Follow this and additional works at: <https://scholarlycommons.law.wlu.edu/crsj>

 Part of the [Civil Rights and Discrimination Commons](#), [Health Law and Policy Commons](#), [Human Rights Law Commons](#), [Law and Race Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Theresa Glennon, *Empathy's Promise and Limits for Those Disproportionately Harmed by the COVID-19 Pandemic*, 27 Wash. & Lee J. Civ. Rts. & Soc. Just. 441 (2021).

Available at: <https://scholarlycommons.law.wlu.edu/crsj/vol27/iss2/6>

This Article is brought to you for free and open access by the Washington and Lee Journal of Civil Rights and Social Justice at Washington and Lee University School of Law Scholarly Commons. It has been accepted for inclusion in Washington and Lee Journal of Civil Rights and Social Justice by an authorized editor of Washington and Lee University School of Law Scholarly Commons. For more information, please contact christensena@wlu.edu.

Empathy’s Promise and Limits for Those Disproportionately Harmed by the COVID-19 Pandemic

Theresa Glennon*

Table of Contents

I. Introduction.....	442
II. The Exacerbation of COVID-19 Illness and Death, Financial Hardship and Toxic Stress.....	448
A. COVID-19’s Severe and Disparate Health Impacts.....	449
B. COVID-19’s Disparate Economic Impact	454
C. COVID-19’s Intensification of Trauma.....	458
III. Empathy’s Promise and Limitations.....	461
A. Understanding Empathy: Emotional Contagion, Cognition, and Empathic Concern.....	462
B. Empathy’s Deficits.....	466
1. Empathy Lags as Numbers Rise.....	467
2. Empathy Barriers at the Boundaries of Race, Ethnicity and Class.....	468
3. Empathy Inverts Across Partisan Lines.....	471
C. Building Reflective Empathy and Compassion.....	472
IV. Conclusion.....	479

* Professor Emerita, Temple University Beasley School of Law. My appreciation to Jeff Dunoff for his insightful questions and editing suggestions and to Cassidy Britt and Kaylin Hawkins for their skilled assistance.

I. Introduction

As Christmas of 2020 arrived, mass media overflowed with stories of extreme hardship.¹ These accounts profiled individuals and families suffering the major afflictions of this pandemic year—severe illness or death, economic hardship, and toxic stress.² Many readers and viewers responded with great empathy and compassion, and some shared well wishes and made donations.³ At the same time, federal legislation to alleviate the financial distress faltered, leaving many to face the end of unemployment assistance.⁴ The inadequate and long-delayed Congressional relief bill faced a veto threat—or worse, a pocket veto that would block additional relief until 2021.⁵ The Senate blocked a vote on a

1. See Emma Bowman, ‘Could You Help Santa?’ In *Christmas Wish Lists, Children Write of Pandemic Hardships*, NPR (Dec. 20, 2020, 8:00 AM), <https://www.npr.org/2020/12/20/947119957/could-you-help-santa-in-christmas-wishlists-children-write-of-pandemic-hardships> (discussing the difficult subjects many children wrote about in letters to Santa) [perma.cc/2TTA-2HWX].

2. See, e.g., Theresa Vargas, *Stark, Devastating Pleas Show Child Poverty and Covid Colliding to Create ‘An Unimaginable Time’ for Country’s Youngest*, WASH. POST (Dec. 23, 2020, 10:00 AM), https://www.washingtonpost.com/local/stark-devastating-pleas-show-child-poverty-and-covid-colliding-to-create-an-unimaginable-time-for-countrys-youngest/2020/12/22/031f88f0-4474-11eb-b0e4-0f182923a025_story.html (profiling requests for aid and stories of hardship received by Alice’s Kids, a charity for children) [perma.cc/5MFZ-G4AV].

3. See Paulina Firozi, *GoFundMe Donations Save D.C. Restaurant that Feeds Homeless*, WASH. POST (Nov. 19, 2020, 11:30 AM), <https://www.washingtonpost.com/lifestyle/2020/11/19/covid-restaurant-homeless-gofundme-donations/> (detailing donations made to save a struggling restaurant) [https://perma.cc/PWR7-JD4A]; see also Katherine Locke, *Navajo & Hopi Families COVID-19 Relief Fund Needs More Money to Continue its Cause*, NAVAJO-HOPI OBSERVER (Dec. 1, 2020, 9:53 AM), <https://www.nhnews.com/news/2020/dec/01/navajo-hopi-families-covid-19-relief-fund-needs-mo/> (highlighting need for additional donations to Navajo and Hopi Families Relief Fund) [perma.cc/BQ4S-QY5K].

4. See Greg Iacurci, *14 Million Workers Face Losing Unemployment Benefits at the End of December*, CNBC (Nov. 25, 2020, 2:26 PM), <https://www.cnbc.com/2020/11/25/14-million-workers-face-losing-unemployment-benefits-at-the-end-december.html> (describing delays in congressional action that led to the interruption of increased pandemic unemployment payments and threatened extended unemployment benefits) [perma.cc/B2K2-FSMM].

5. See, e.g., Mitchell Ferman & Sally Beauvais, *Hungry and Homeless Texans are Waiting Anxiously for Congress to Act. The Day after Christmas, Pandemic Jobless Aid Expires*, TEX. TRIB. (Dec. 23, 2020, 7:00 PM), <https://www.texastribune.org/2020/12/23/texas-stimulus-package-congress->

House-passed bill to raise the value of the stimulus checks from \$600 to \$2,000.⁶

A belated presidential signing salvaged the bill, but it came too late to prevent millions of individuals from experiencing severe delays or termination of unemployment assistance.⁷ The bill's insufficient and short-term relief left families anxious and uncertain.⁸ Although additional funds are expected to be approved in 2021, many families face financial ruin, further entrenching the toxic stress of 2020.⁹ Lawmakers in the world's richest country held vulnerable families dangling over a cliff's edge.¹⁰ Some have

unemployment/ (discussing President Trump's threat to veto the relief legislation) [perma.cc/SVB6-Y3RW].

6. See Mike DeBonis & Tony Romm, *McConnell Blocks Democrats' Attempt to Quickly Approve \$2,000 Stimulus Checks Amid Pressure on GOP to Act*, WASH. POST (Dec. 29, 2020, 5:41 PM), https://www.washingtonpost.com/powerpost/stimulus-checks-senate/2020/12/29/344fa850-49d9-11eb-839a-cf4ba7b7c48c_story.html (noting that then Senate Majority Leader Mitch McConnell blocked the House bill) [perma.cc/8CK7-8FVL].

7. See Jacob Adelman, *Unemployment Cash Won't be Curtailed Despite Late Trump Signature, Official Says*, PHILA. INQUIRER (Dec. 28, 2020), <https://www.inquirer.com/news/unemployment-benefits-gap-trump-pennsylvania-new-jersey-20201228.html> (stating that recipients are likely to face delays in receiving unemployment benefits under bill because as the end of 2020 approached, no guidance had been received by states from the U.S. Labor Department on timing or process) [perma.cc/XG4W-25X7].

8. See *COVID-19 Economic Relief Bill: What it Means for States*, NAT'L CONF. OF ST. LEGIS. (Jan. 2021), https://www.ncsl.org/Portals/1/Documents/statefed/COVID-Econ_Relief_Bill.pdf (showing the December relief bill set the additional weeks of Pandemic Emergency Unemployment compensation to expire on April 5, 2021) [perma.cc/BK79-L9DN].

9. See Jim Tankersley & Luke Broadwater, *With Economy in 'Crisis,' Biden is Ready to Bypass G.O.P. on Stimulus*, N.Y. TIMES (Feb. 8, 2021), <https://www.nytimes.com/2021/02/05/business/biden-stimulus.html> (discussing President Biden's plan to urgently implement a stimulus package) [perma.cc/SG43-5ZFK]; see also Tim Cadogan, *GoFundMe CEO: Hello Congress, Americans Need Help and We Can't Do Your Job for You*, USA TODAY (Feb. 11, 2021, 12:17 PM), <https://www.usatoday.com/story/opinion/voices/2021/02/11/gofundme-ceo-congress-pass-covid-relief-desperate-americans-column/4440425001/> (noting huge uptick in COVID-related fundraisers) [perma.cc/Z66U-AKLA].

10. See Cadogan, *supra* note 9 (calling the influx of COVID-related fundraisers asking for help a "national emergency" and Congress should treat it as such).

already experienced a catastrophic fall, and many have suffered permanent damage that cannot be undone.¹¹

Structural race, ethnicity, and class disparities in the United States concentrated and intensified the health, economic, and psychological impact of COVID-19 for certain populations.¹² Those same structural disparities and the belief system that maintains them may also account for the weak policy response that left the United States with high rates of infection and death, economic devastation of individuals, families, and small businesses, and psychological distress.¹³ A more equal society with a stronger pre-pandemic safety net may have prevented or eased the disproportionate hardship and avoided the drama and cliffhanging.¹⁴ Or the shock of a pandemic and likelihood of extreme hardship might have garnered a stronger and more timely policy response.¹⁵ Yet, many federal lawmakers failed to empathize

11. See Amy Norton, *Pandemic Unemployment Has Taken Its Own Deadly Toll*, U.S. NEWS & WORLD REPORT: HEALTH NEWS (Mar. 1, 2021), <https://www.usnews.com/news/health-news/articles/2021-03-01/pandemic-unemployment-has-taken-its-own-deadly-toll> (noting that as U.S. deaths from COVID-19 passed half a million, another 30,000 Americans have died due to pandemic-related unemployment) [perma.cc/U8J7-X7JK].

12. See, e.g., Darrick Hamilton, Ofronama Biu, Christopher Famighetti, Avi Green, Kyle Strickland, & David Wilcox, *Equitable Recovery: The Role of Race, Labor Markets, and Education*, THE NEW SCH. INST. ON RACE & POL. ECON. (Feb. 2021), <https://www.newschool.edu/institute-race-political-economy/projects-papers/> (discussing the racial inequity highlighted by the COVID-19 pandemic) [perma.cc/X892-YSZD].

13. See e.g., Ibrahim A. Kira, et al., *The Effects of COVID-19 and Collective Identity Trauma (Intersectional Discrimination) on Social Status and Well-Being*, TRAUMATOLOGY (Nov. 19, 2020), <https://psycnet.apa.org/fulltext/2020-87181-001.html> (analyzing the manner in which structural discrimination and inequality undermines public health and COVID-19's contributions to those inequalities) [perma.cc/X287-YHL9].

14. See Gerard Gallagher, Julia Ernst & Eamon N. Dreisbach, *We Should Have Been Prepared: Covid-19 Devastates Vulnerable US*, HEALIO (Apr. 22, 2020), <https://www.healio.com/news/infectious-disease/20200416/we-should-have-been-prepared-covid19-devastates-vulnerable-us> (analyzing the various warnings the United States received regarding the pandemic and the slow response to those warnings) [perma.cc/K5PR-RZT7].

15. See Henry Olsen, *Republicans Can Take a Lesson from Australia's Conservatives on COVID-19*, WASH. POST (Oct. 6, 2020, 4:14 PM), <https://www.washingtonpost.com/opinions/2020/10/06/republicans-can-take-lesson-australias-conservatives-covid-19/> (comparing the strong economic response of the conservative Australian government to the COVID-19 economic crisis to the delayed and limited response by U.S. Republican leaders)

with and take compassionate action to aid the many victims of COVID-19 across American society, and especially to alleviate the disproportionate suffering by Black, Indigenous, Hispanic/Latinx and Asian American communities, along with many working class and impoverished adults and children.¹⁶

The public outpouring of empathy and compassion for individual families was not matched by lawmakers and key policymakers with the power to improve the health and well-being of millions of struggling U.S. families.¹⁷ These federal lawmakers are disproportionately white and wealthy, particularly in the Senate.¹⁸ Some of these lawmakers seemed to care more about

[perma.cc/9BX2-6AXU].

16. See, e.g., Jim Jordan (@Jim_Jordan), TWITTER (Dec. 18, 2020, 9:17 AM), https://twitter.com/Jim_Jordan/status/1339937828365627393 (stating “The best stimulus? A job”) [perma.cc/VXK5-LU23]; Corky Siemaszko & Sarah Kaufman, *For Those Reeling from COVID Losses, Trump Comes Across as Boastful, Insensitive*, NBC NEWS (Oct. 6, 2020, 12:31 PM), <https://www.nbcnews.com/news/us-news/those-reeling-covid-losses-trump-comes-across-boastful-insensitive-n1242196> (describing reactions of those who have been directly impacted by the pandemic) [perma.cc/PG7R-DSNS]; Ursula Perano, *Manchin Says He Will “Absolutely Not” Support \$2,000 Stimulus Checks as First Priority*, AXIOS (Jan. 8, 2021), <https://www.axios.com/manchin-stimulus-checks-senate-biden-9a22ee1d-b2cc-4c2f-8a24-836a66725beb.html> (quoting Sen. Joe Manchin of West Virginia) [perma.cc/5PE8-CQEF]; Morgan Watkins, *Rand Paul Plays Christmas Grinch, Derides Covid-19 Relief Aid Mitch McConnell Negotiated*, LOUISVILLE COURIER J. (Dec. 21, 2020, 9:29 PM), <https://www.courier-journal.com/story/news/politics/2020/12/21/rand-paul-opposes-covid-19-relief-package-mitch-mcconnell-negotiated/3994210001/> (calling the relief package “free money”) [perma.cc/S8EK-2WKB].

17. See Greg Iacurci, *Is a \$300 Unemployment Boost a Disincentive to Work? Covid Relief Bill Revives Anxiety*, CNBC (Dec. 27, 2020, 8:49 AM), <https://www.cnbc.com/2020/12/27/300-unemployment-benefits-covid-bill-revives-return-to-work-argument.html> (analyzing the heated arguments surrounding COVID-19 relief bills) [perma.cc/WT5X-KSZD].

18. See Karl Evers-Hillstrom, *Majority of Lawmakers in 116th Congress are Millionaires*, OPENSECRETS.ORG (Apr. 23, 2020, 9:14 AM), <https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires/> (discussing the net worth of various members of Congress) [perma.cc/DQ2W-3AA2]; see also Kristen Bialik, FactTank, *For the Fifth Time in a Row, the New Congress is the Most Racially and Ethnically Diverse Ever*, PEW RES. CTR. (Feb. 8, 2019), <https://www.pewresearch.org/fact-tank/2019/02/08/for-the-fifth-time-in-a-row-the-new-congress-is-the-most-rationally-and-ethnically-diverse-ever/> (showing despite increased diversity in the 116th Congress, in session during 2020, only 9% of senators and 22% of all Congressional lawmakers were members of racial or ethnic minority groups, while 39% of the population were members of those

COVID-19 relief for those who largely share their privileged cultural, economic, racial and social class than for those most harshly affected, and the December 2020 relief bill had a number of provisions that primarily aided the wealthy.¹⁹

Throughout the fall and winter of 2020, empathy failed to move those lawmakers who opposed crucial measures or negotiated down the size of weekly unemployment checks they considered to be overly generous.²⁰ This seemed especially inconceivable in a year in which the pandemic placed front and center wildly disparate rates of COVID-19 illness and death and desperate poverty, and millions of voices joined together to demand racial justice.²¹ Those subjected to racial and economic injustice and advocates for justice and equality recognized an abiding pattern.²² However, this nation's longstanding and deep imposition of inequality by race, ethnicity, and class, and the exacerbation of these inequalities during a global pandemic, proved insufficient to trigger empathetic action by many lawmakers.²³ I set out to further understand this failure of human empathy.

I delved into the extensive, cross-disciplinary, academic literature concerning empathy. My research made it clear that my lay understanding of empathy was uninformed and misguided. While empathy may lead to concerned prosocial actions, humans

groups) [perma.cc/GM9E-M6WY].

19. See, e.g., Luke Broadwater, Jesse Drucker, & Rebecca R. Ruiz, *Buried in Pandemic Aid Bill: Billions to Soothe the Richest*, N.Y. TIMES (Dec. 22, 2020), <https://www.nytimes.com/2020/12/22/us/politics/whats-in-the-covid-relief-bill.html> (calling a provision of the spending bill passed in Congress a giveaway to the rich) [perma.cc/TY9R-LBLZ].

20. See Iacurci, *supra* note 17 (analyzing the Republican belief that the generous benefits offered an incentive to remain unemployed).

21. See Leonard E. Egede & Rebekah J. Walker, *Structural Racism, Social Risk Factors, and Covid-19—A Dangerous Convergence for Black Americans*, 383 NEW ENG. J. MED. E77(1), E77(2) (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2023616> (discussing discrimination and disparities in COVID-19 infections and death that demonstrate underlying structural racism) [perma.cc/7RS4-BLX7].

22. See Julia Haskins, *What Does Racism Have to Do With COVID-19?*, DEBEAUMONT (June 29, 2020), <https://debeaumont.org/news/2020/what-does-racism-have-to-do-with-covid-19/> (noting the tendency to ignore patterns of systemic inequality and injustice related to race and instead blame individuals, not racism, for disparate health outcomes) [perma.cc/R34J-M9PU].

23. See *id.* (noting that the “reality [is] that racism is inherently built into all of our institutions . . .”).

have significant empathy deficits that impede its constructive potential, and even more unnerving, may evoke animosity.²⁴

One might believe that empathy is too ineffectual to combat the ascent of virulent white supremacist, racist, anti-Semitic and extremist thought and action, an ascent that has led to vicious attacks, including on those who challenge the pillars of racial hierarchy.²⁵ Promising research does suggest that even those drawn into hate groups may respond to the call of prosocial empathy, making it worth pursuing further research on this promise.²⁶ The analysis in this Article, however, is directed towards understanding the role of empathy with regard to those who inhabit the halls of power, not those on society's extremist fringes. It asks whether more robust empathy might motivate those in power to act to remedy the clear, disparate and extremely harmful effects of racial and economic hierarchy, particularly in this time of pandemic.

Empathy deficits, and the indifference or antipathy they cause, pose significant challenges to achieving this goal.²⁷ These deficits may be open to amelioration, but despite significant research efforts, no clear path forward yet exists.²⁸ Developing reflective empathy—gaining awareness of one's own barriers to empathy and connecting one's empathy to a larger understanding of others' needs—may guide individuals towards more prosocial actions to support the most vulnerable.²⁹ Those whose racial or

24. See *infra* Part III.B. Empathy's Deficits.

25. See, e.g., Zolan Kanno-Youngs, *Homeland Security Dept. Affirms Threat of White Supremacy After Years of Prodding*, N.Y. TIMES (Oct. 1, 2019), <https://www.nytimes.com/2019/10/01/us/politics/white-supremacy-homeland-security.html> (describing white nationalism as one of the most dangerous threats to the United States) [perma.cc/P67E-HNN3].

26. See Chris Bosley, *Violent Extremist Disengagement and Reconciliation: A Peacebuilding Approach*, U.S. INST. OF PEACE (July 29, 2020), <https://www.usip.org/publications/2020/07/violent-extremist-disengagement-and-reconciliation-peacebuilding-approach> (demonstrating that “routinized prosocial interactions between those disengaging [from extremist groups] and community members and institutions are key to building relationships, generating social bonds, and promoting a sense of belonging”) [perma.cc/3ZE4-C7DF].

27. See *infra* Part III.B. Empathy's Deficits.

28. See *infra* Part III. Empathy's Promise and Limitations.

29. See Ingmar Persson & Julian Savulescu, *The Moral Importance of Reflective Empathy*, 11 NEUROETHICS 183, 191–92 (2018) (arguing that reasoned

wealth privilege give them the greatest power to effectuate these goals, however, may be less likely to exhibit prosocial empathy to those with less privilege.³⁰ The failure to recognize their racial and class privilege impedes their ability to extend empathy across those boundaries.³¹ This conclusion underscores the importance of drawing political leaders from across society, and especially from the ranks of those most burdened by this nation's structural inequalities.

II. The Exacerbation of COVID-19 Illness and Death, Financial Hardship and Toxic Stress

The year 2020 was excruciatingly painful for those who experienced COVID-19-related severe illness or death, loss of a loved one, business loss, unemployment or underemployment, and toxic stress.³² While vaccines have brought hope for 2021, the harm continues.³³ Failed federal leadership on public health, intentional efforts to ignite resentment against public health measures, and mixed messages by state and local governments may have contributed to more than 475,000 deaths officially attributed to COVID-19 as well as more than 550,000 “excess” deaths—those above the expected number—by the end of February, 2021.³⁴ The

reflection may guide empathy to motivate concern for the welfare of others in alignment with justice and fairness).

30. See Katherine Tullmann, *Empathy, Power, and Social Difference*, 54 J. VALUE INQUIRY 203, 211–19 (2020) (reviewing some of the scholarly literature on barriers to empathy by those with greater societal privilege towards those with less societal privilege).

31. See *id.* at 211–14 (referencing studies that show whites often do not recognize their own social power and how that power shapes their goals, desires, perceptions, and beliefs).

32. *Grief & Loss*, CDC (June 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/stress-coping/grief-loss.html> (offering resources for coping with emotions resulting from the pandemic) [perma.cc/3AY2-HAHY].

33. See Katie Thomas & Rebecca Robbins, *Vaccine Gives New Hope for Spring, If Enough People Get the Shots*, N.Y. TIMES (Feb. 3, 2021), <https://www.nytimes.com/2021/02/03/health/covid-vaccines.html> (discussing the positives of the new vaccine options, but also addressing the negatives regarding new variants, slow vaccine rate, and issues surrounding the mass immunization effort) [perma.cc/FNK7-C3UH].

34. See *COVID-19 Mortality Overview*, CDC,

related grief and suffering is incalculable. Much of the initial economic relief ran out over the summer, and by fall 2020 many faced hunger and eviction as Congressional negotiations over further aid faltered.³⁵ Health, economic, and psychological stress have all intersected and amplified each other to impose disproportionate suffering and risk on lower income communities and communities of color.³⁶

A. COVID-19's Severe and Disparate Health Impacts

Journalists and researchers have documented the devastating health and economic toll of this virus on individuals and their families.³⁷ While no group of Americans has escaped the pandemic's harm, factors that have disparate effect on people of color and low-income individuals have led to much harsher COVID experiences.³⁸ People of color and low-income communities have experienced above average rates of COVID-19 infection and have

<https://www.cdc.gov/nchs/covid19/mortality-overview.htm> (last visited Feb. 28, 2021) (for the period up to February 20, 2021, 478,912 COVID reported deaths; as of February 28, 2021, total excess deaths estimated at 551,586) [perma.cc/FV68-553A].

35. Theresa Glennon, Alexis Fennell, Kaylin Hawkins & Madison McNulty, *Shelter from the Storm: Human Rights Protections for Single Mother Families in the Time of COVID-19*, 27 WM. & MARY J. RACE, GENDER & SOC. JUST. (forthcoming 2021) (highlighting how the COVID-19 pandemic has revealed the structural inequalities in the United States).

36. See Merlin Chowkwanyun & Adolph L. Reed, Jr., *Racial Health Disparities and COVID-19—Caution and Context*, 383 NEW ENG. J. MED. 201, 202–03 (2020) (cautioning need to contextualize racial disparities to avoid perpetuating harmful myths).

37. See, e.g., Christopher Spata, *Eviction Looming, Tampa Bay Mother of Four Needs a Home for Christmas*, TAMPA BAY TIMES (Dec. 14, 2020), <https://www.tampabay.com/life-culture/2020/12/14/eviction-looming-tampa-bay-mother-of-four-needs-a-home-for-christmas/> (highlighting housing plight of one family after layoff and the need to manage virtual schooling and protect daughter at high risk from coronavirus) [perma.cc/PR53-ZZAD]; Paul Solman, *How Women are Disproportionately Carrying the Cost of COVID*, PBS NEWSHOUR (Dec. 9, 2020, 6:25 PM), <https://www.pbs.org/newshour/show/how-women-are-disproportionately-carrying-the-cost-of-covid> (noting that at least two million women have dropped out of the labor force since last year) [perma.cc/55GQ-RHVX].

38. See Egede & Walker, *supra* note 21 (analyzing the intersection of structural racism, social risk factors, and health).

suffered greater harm as a result.³⁹ Women of color and their families face multiple and intersecting negative effects of the pandemic.⁴⁰

Many factors contribute to these disparate effects. Black and Hispanic individuals have faced higher rates of exposure, leading to higher rates of COVID infection.⁴¹ In Chicago, Black and Hispanic/Latinx residents had higher age-adjusted rates of mortality, and mortality was higher in neighborhoods with worse access to health care, more comorbid conditions, older age, higher rates of poverty, and neighborhoods that had been historically redlined.⁴² Black and Hispanic and low-income community members are also more likely to have jobs and to live in larger household sizes that have placed them at particular risk.⁴³ Many

39. In contrast, Americans with high socioeconomic status have had substantially lower rates of severe COVID-19 illness and mortality. See Emily E. Wiemers, Scott Abrahams, Marwa AlFakhri, V. Joseph Hotz, Robert F. Schoeni, & Judith A. Seltzer, *Disparities in Vulnerability to Complications from COVID-19 Arising from Disparities in Preexisting Conditions in the United States*, 69 RES. SOC. STRATIFICATION & MOBILITY 100553, 100553(4) (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7476505/pdf/main.pdf> (finding large disparities in vulnerability to severe COVID-19 illness by socioeconomic status).

40. See Naomi Cahn, *Covid-19's Impact on Women of Color*, FORBES (May 10, 2020, 6:01 PM), <https://www.forbes.com/sites/naomicahn/2020/05/10/mothers-day-and-covid-19s-impact-on-women-of-color/?sh=ff1677b41ac9> (discussing possible reasons why women and minorities may be the hardest hit by the pandemic) [perma.cc/BCF6-9VXL].

41. See Ghenga Ogedegbe et al., *Assessment of Racial/Ethnic Disparities in Hospitalization and Mortality in Patients with COVID-19 in New York City*, 3 JAMA NETWORK OPEN 1 (Dec. 4, 2020), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2773538> (comparing outcomes of COVID-19 infection by race and ethnicity) [perma.cc/RDZ3-CNXG].

42. See Molly Scannell Bryan, Jiehuan Sun, Jyotsna Jagai, Daniel E. Horton, Anastasia Montgomery, Robert Sargis, & Maria Argos, *Coronavirus Diseases 2019 (COVID-19) Mortality and Neighborhood Characteristics in Chicago*, 56 ANNALS OF EPIDEMIOLOGY 47, 49-50 (2021), (evaluating neighborhood characteristics that were associated with higher COVID-19 mortality rates).

43. See Milena Almagro & Angelo Orane-Hutchinson, *JUE Insight: The Determinants of the Differential Exposure to COVID-19 in New York City and Their Evolution Over Time*, J. URB. ECON. (2020), <https://www.sciencedirect.com/science/article/abs/pii/S0094119020300644?via%3Dihub> (showing a greater exposure to COVID-19 by lower socioeconomic status workers whose jobs are more likely to carry higher degree of human exposure) [perma.cc/TXY4-LNPD].

essential workers have confronted greater threats of contagion through jobs that require them to work outside their homes and often in close contact with members of the public.⁴⁴ Other household members, even if not essential workers themselves, face greater risk of contracting the virus.⁴⁵ Black and Hispanic/Latina women are also more likely to work in the types of essential positions that expose them to risk.⁴⁶

These higher rates of infection are magnified by structural racism and risk factors that have led to greater rates of severe illness and mortality by race and class.⁴⁷ Counties with larger numbers of structural racism indicators also have greater racial disparities in COVID-19 health outcomes.⁴⁸ Because these communities entered the pandemic with significantly higher rates

44. See Thomas M. Selden & Terceira A. Berdahl, *Risk of Severe COVID-19 Among Workers and their Household Members*, 181 JAMA INTERNAL MED. 120, 121 (2021), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2772328> (analyzing how many adults with an increased risk of severe illness from COVID-19 held essential jobs and could not work at home) [perma.cc/3ZMP-ZMAY].

45. See *id.* (finding that essential workers unable to work at home and the adults who lived with them were at an increased risk of COVID-19 infection and severe illness).

46. See Hamilton et al., *supra* note 12, at 11 (noting that Black and Latinx women are more likely to be essential workers in jobs that involve exposure risks and also pay the lowest wages); see also Anushka Kalyanpur, Dannielle Thomas, Diana Wu, Laura Tashjian, May D. Sifuentes, & Rachel Hall, *Rapid Gender Analysis: Covid-19 in the United States* 6, CARE (Jul. 13, 2020), <https://www.care.org/wp-content/uploads/2020/07/7.8.2020-USA-RGA.pdf> (finding that Black, Latinx and Asian American/Pacific Islander individuals constitute 41% of frontline workers and 76% of healthcare jobs are held by women, with women of color comprising almost half of those workers) [perma.cc/CVR5-2NYQ].

47. See Jerel M. Ezell, Samira Salari, Clinton Rooker, & Elizabeth C. Chase, *Intersectional Trauma: COVID-19, the Psychosocial Contract, and America's Racialized Public Health Lineage*, TRAUMATOLOGY (Jan. 21, 2021), <https://psycnet.apa.org/fulltext/2021-10112-001.pdf> (discussing mental health inequities, particularly the higher rates of mental illnesses among racial/ethnic minorities) [perma.cc/2BE5-239P].

48. See Shin Bin Tan, Priyanka deSouza, & Matthew Raifman, *Structural Racism and COVID-19 in the USA: A County-Level Empirical Analysis*, J. RACIAL & ETHNIC HEALTH DISPARITIES (2021), <https://doi.org/10.1007/s40615-020-00948-8> (using data concerning residential segregation, poverty rates and employment in professional, technical or managerial jobs, and criminal justice system to assess county-based structural racism) [perma.cc/W7MB-9Y6J].

of chronic health conditions due to ongoing inequalities, they have been at much greater risk of moderate or severe illness or death from the virus.⁴⁹ Lower income communities of color also face community-based risks that undermine their ability to fight the virus effectively.⁵⁰ They are more likely to live in areas with greater air pollution, which is linked to more severe COVID-related illness and death.⁵¹

Low-income communities face disparities in access to the health care services that are key to survival in the pandemic.⁵² Black Americans are more likely to live in “health care deserts” and use health care facilities that have fewer of the resources they need.⁵³ Medical care given to people of color is likely to be inferior

49. See Sherita Hill Golden, *Coronavirus in African Americans and Other People of Color*, JOHN HOPKINS MED. (Apr. 20, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid19-racial-disparities> (noting that people of color have a higher burden of chronic health conditions and that about 90% of those hospitalized with severe COVID-19 had at least one underlying medical condition) [perma.cc/MB42-MN66]; see also Matthew A. Raifman & Julia R. Raifman, *Disparities in the Population at Risk of Severe Illness from COVID-19 by Race/Ethnicity and Income*, 59 AM. J. PREVENTIVE MED. 137, 138 (Apr. 30, 2020), [https://www.ajpmonline.org/article/S0749-3797\(20\)30155-0/fulltext](https://www.ajpmonline.org/article/S0749-3797(20)30155-0/fulltext) (identifying individuals with a heightened risk of severe illness from COVID-19) [perma.cc/WX26-NKWC].

50. See Eric Brandt, Andrew F. Beck, & Tesfaye B. Mersha, *Editorial: Air Pollution, Racial Disparities, and COVID-19 Mortality*, 146 J. ALLERGY & CLINICAL IMMUNOLOGY 61, 62–63 (May 7, 2020) (noting that lower-income communities of color are more likely to have historical exposures to higher levels of air pollution, which is thought to worsen underlying diseases).

51. See *id.* (showing that initial research raises concern that racial and socioeconomic disparities in severe COVID-19 illness and mortality include exposure to higher levels of air pollution); see also Andrea Pozzer, Francesca Dominici, Andy Haines, Christian Witt, Thomas Munzel, & Jos Lelieveld, *Regional and Global Contributions of Air Pollution to Risk of Death from COVID-19*, 116 EUR. SOC. CARDIOLOGY 2247, 2251 (Oct. 26, 2020) (analyzing increased susceptibility to mortality from COVID-19 due to exposure to air pollution).

52. See Genevieve P. Kanter, Andrea G. Segal & Peter W. Groeneveld, *Income Disparities in Access to Critical Care Services*, 39 HEALTH AFF. 1362, 1364–65 (Aug. 2020) (noting that critical care services are most lacking in low-income rural communities).

53. Monica E. Peek, Russell A. Simons, William F. Parker, David A. Ansell, Selwyn O. Rogers, & Brownsyne Tucker Edmonds, *COVID-19 Among African Americans: An Action Plan for Mitigating Disparities*, 111 AM. J. PUB. HEALTH 286, 288–89 (2021).

to that provided to white Americans.⁵⁴ The documented implicit bias of many medical providers undermines the quality of health care that Black Americans do receive.⁵⁵

All communities in the United States have experienced a weighty burden of COVID-19 mortality. However, measured at the start of March 2021, Black, Latinx and Indigenous and Pacific Islander Americans have all experienced age-adjusted COVID-19 mortality rates at least two times the rate of white and Asian Americans.⁵⁶ This means that groups other than white and Asian Americans are disproportionately dying at younger ages.⁵⁷ The coronavirus has imposed a markedly disproportionate death toll on young and middle-aged Black men.⁵⁸

Despite the extensive evidence of COVID-19's brutally disproportionate toll on the health and lives by race and class, the early months of the vaccine rollout only served to reinforce those

54. See Ibraheem M. Karaye & Jennifer A. Horney, *The Impact of Social Vulnerability on COVID-19 in the U.S.: An Analysis of Spatially Varying Relationships*, 59 AM. J. PREVENTIVE MED. 317, 318 (2020) (stating that “regardless of income, insurance status, age, or severity of medical condition, racial and ethnic minorities are more likely to be provided inferior medical care than is provided to whites”).

55. See Sarah B. Maness, Laura Merrell, Erika L. Thompson, Stacey B. Griner, Nolan Kline, & Christopher Weldon, *Social Determinants of Health and Health Disparities: COVID-19 Exposures and Mortality Among African American people in the United States*, 136 PUB. HEALTH REP. 18, 20 (2020) (explaining that implicit bias is a factor in healthcare quality disparities).

56. See *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RSCH. LAB (Mar. 5, 2021), <https://web.archive.org/web/20210401082228/https://www.apmresearchlab.org/covid/deaths-by-race> (showing that even without adjustment for age, Black Americans have died at a rate of 179.8 per 100,000, while white Americans have died at a rate of 150.2 per 100,000, with Indigenous Americans suffering the highest rates of mortality) [perma.cc/XKX9-W4L9].

57. See *id.*; Tiffany N. Ford, Sarah Reber & Richard V. Reeves, *Race Gaps in COVID-19 Deaths are even Bigger than They Appear*, BROOKINGS (June 16, 2020), <https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/> (charting the COVID-19 death rates by race and age) [perma.cc/QE9Q-K45F].

58. See Akilah Johnson & Nina Martin, *How COVID-19 Hollowed Out a Generation of Young Black Men*, PROPUBLICA (Dec. 22, 2020, 5:30 AM), <https://www.propublica.org/article/how-covid-19-hollowed-out-a-generation-of-young-black-men> (reporting the disproportionate effect of COVID-19 on Black men) [perma.cc/M9XS-XGVW].

disparities.⁵⁹ As one public health expert noted, “In the absence of a mandate, our natural drift is to inequity.”⁶⁰

The extraordinarily high burden of illness and death from COVID-19 suffered by lower-income and communities of color magnifies the devastating economic toll of the pandemic.

B. COVID-19’s Disparate Economic Impact

A broad swath of American families faced serious economic hardship during 2020, deprivations that are likely to continue in 2021.⁶¹ For millions, these hardships include food and housing insecurity.⁶² While federal, state and local eviction moratoria prevented many evictions during 2020, by year’s end, millions owed more than \$5,000 in back rent and may face imminent eviction once moratoria are lifted.⁶³ More than fifteen million households, disproportionately headed by divorced or single parents with children, reported that they sometimes or often did

59. See Stephen Gandel, *Black and Poor Left Behind in Florida’s Vaccine Rollout*, CBS NEWS (Feb. 11, 2021, 5:00 PM), <https://www.cbsnews.com/news/covid-vaccine-florida-wealthy-white-patients-poor-black/> (listing the vaccination rates by race) [perma.cc/4PLE-R52J]; Tucker Doherty & Joanne Kenen, *Just 5 Percent of Vaccinations Have Gone to Black Americans, Despite Equity Efforts*, POLITICO (Feb. 9, 2021, 11:47 AM), <https://www.politico.com/news/2021/02/01/covid-vaccine-racial-disparities-464387> (highlighting the racial disparity in vaccinations) [perma.cc/K8G6-6EEX].

60. Doherty & Kenen, *supra* note 59 (quoting Debra Furr-Holden, a public health expert at Michigan State University).

61. See Shatakshee Dhongde, *Multidimensional Economic Deprivation during the Coronavirus Pandemic: Early Evidence from the United States*, PLOS ONE (Dec. 16, 2020), <https://doi.org/10.1371/journal.pone.0244130> (highlighting the early economic shock of the pandemic) [perma.cc/7SF8-JBSW]; MATTHEW A. BAUM ET AL., THE COVID STATES PROJECT: A 50-STATE COVID-19 SURVEY REPORT #30: ECONOMIC HARDSHIPS DUE TO THE COVID-19 PANDEMIC 4 (Dec. 17, 2020) (showing the financial hardship Americans face due to COVID-19).

62. See BAUM ET AL., *supra* note 61 (listing job loss, eviction and inability to pay mortgages as consequences of COVID-19).

63. See Claudia Sahn, *The Relief Bill’s Biggest Blind Spot*, N.Y. TIMES (Dec. 22, 2020), <https://www.nytimes.com/2020/12/22/opinion/stimulus-checks-housing-rent.html> (criticizing the pandemic relief package) [https://perma.cc/PT92-A4TA]; see also BAUM ET AL., *supra* note 61, at fig.1 (noting that 13% had missed rent or mortgage payments).

not have enough to eat.⁶⁴ Rates of hunger have quadrupled from 2019.⁶⁵

The widespread economic hardship has inflicted disproportionate harm by race, ethnicity, gender, pre-pandemic income and educational level.⁶⁶ Economic hardships have been significantly more common in Black, Latinx, Indigenous and immigrant communities, and especially in households with children.⁶⁷ Food insecurity is particularly high in communities of color.⁶⁸ Black and Latina women have faced intersecting and extreme economic hardships as COVID-19 spread across the United States.⁶⁹

Mothers' employment has been hard hit.⁷⁰ While economic hardships have been most intense for those with less education, women stopped or scaled back work to care for children across educational levels.⁷¹ Households with children, and in particular

64. See *Food Sufficiency and Food Security Tables—Table 3b, Week 19 Household Pulse Survey: November 11–23*, U.S. CENSUS BUREAU (Dec. 2, 2020), <https://www.census.gov/data/tables/2020/demo/hhp/hhp19.html> (using Food table 3b to show the financial hardship families face due to COVID-19) [perma.cc/5Z7B-QJBL].

65. See *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardship*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 18, 2020), [hereinafter *Tracking the COVID-19 Recession's Effects*], <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and> (using data from the Census Bureau and Department of Labor) [perma.cc/US96-V4MY].

66. See generally Dhongde, *supra* note 61.

67. See *Tracking the COVID-19 Recession's Effects*, *supra* note 65, at tbl.4; BAUM ET AL., *supra* note 61, at fig.3.

68. Danielle Xiaodan Morales, Stephanie Alexandra Morales & Tyler Fox Beltran, *Racial/Ethnic Disparities in Household Food Insecurity During the COVID-19 Pandemic: A Nationally Representative Study*, 14 J. RACIAL & ETHNIC HEALTH DISPARITIES (Oct. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7556612/> (highlighting the difficulties in providing food for the family during the pandemic) [perma.cc/9FWA-2SCS].

69. See *Tracking the COVID-19 Recession's Effects*, *supra* note 65; BAUM ET AL., *supra* note 61.

70. See Jessica Grose, *America's Mothers Are in Crisis: The Primal Scream*, N.Y. TIMES (Feb. 4, 2021), <https://www.nytimes.com/2021/02/04/parenting/working-moms-mental-health-coronavirus.html> (explaining that American mothers have lost tremendous ground in employment) [perma.cc/QQ6W-P7CS].

71. See BAUM ET AL., *supra* note 61, at fig.2.

households with children headed by women, reported the greatest levels of economic hardship.⁷² A shocking 40% of parents with young children have experienced economic harm.⁷³ The pandemic has left many women unemployed or unable to participate in the labor market.⁷⁴ Among women, Black and Hispanic/Latina women with children have been disparately impacted by pandemic-related layoffs or pushed out of employment as many schools went virtual and daycare centers closed.⁷⁵

As of January, 2021, about eighteen million workers were unemployed, only marginally attached to the workforce or underemployed.⁷⁶ The November 2020 unemployment rate for adult women and Black and Hispanic/Latinx workers remained higher than before the pandemic, and well above the averages for white and Asian American workers.⁷⁷ Workers with lower levels of

72. See *id.* at fig.4 (comparing levels of economic hardship).

73. See Elaine Waxman, Poonam Gupta & Dulce Gonzalez, *Six Months into the Pandemic, 40 Percent of Parents with Young Children Have Experienced Economic Fallout*, URB. INST. (Dec. 8, 2020), <https://www.urban.org/research/publication/six-months-pandemic-40-percent-parents-young-children-have-experienced-economic-fallout> (showing four in ten parents living with a child under six lost employment) [perma.cc/2UBQ-CVPW].

74. See Gwynn Guildford & Sarah Chaney Cambon, *Covid Shrinks the Labor Market, Pushing Out Women and Baby Boomers*, WALL ST. J. (Dec. 3, 2020, 2:01 PM), <https://www.wsj.com/articles/covid-shrinks-the-labor-market-pushing-out-women-and-baby-boomers-11607022074> (reporting that women without a bachelor's degree have had the greatest reduction in labor force participation) [perma.cc/76RQ-27JL]; *The Detrimental Impact of Covid-19 on Gender and Racial Equality: Quick Take*, CATALYST (Dec. 8, 2020), <https://www.catalyst.org/research/covid-effect-gender-racial-equality/> (detailing the staggering number of women leaving the workforce) [perma.cc/433A-32QR].

75. See Tyler Atkinson & Alex Richter, *Pandemic Disproportionately Affects Women, Minority Labor Force Participation*, FED. RESERVE BANK OF DALL. (Nov. 10, 2020), <https://www.dallasfed.org/research/economics/2020/1110> (analyzing the pandemic's disproportionate effects on women's employment) [perma.cc/S2TW-QT4C].

76. See Kimberly Amadeo, *What is the Real Unemployment Rate?*, THE BALANCE (Feb. 15, 2021), <https://www.thebalance.com/what-is-the-real-unemployment-rate-3306198> (including 10 million counted as unemployed, almost 2 million as discouraged or "marginally attached" to labor force, and almost 6 million who work part-time but who want full-time employment) [perma.cc/85SK-YVL9].

77. See BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LAB., *THE EMPLOYMENT SITUATION—NOVEMBER 2020 7, SUMMARY TBL.A* (Dec. 4, 2020) (displaying household data that are seasonally adjusted).

education have also experienced significant job losses.⁷⁸ The unemployment rate for workers with less than a high school diploma was more than double that for workers with a bachelor's degree.⁷⁹

COVID-related health disparities may have exacerbated economic disparities as well.⁸⁰ Those who reported having had COVID-19 also reported much higher rates of job loss, missed rent payments, evictions, reduced employment to care for children and pay cuts.⁸¹

Federal and state initiatives provided significant economic assistance during 2020, but the federal failure to ensure that expanded eligibility for unemployment assistance and increased amounts of unemployment assistance continued uninterrupted caused significant hardships during the latter half of 2020.⁸² The untimely signing of the December 2020 relief bill forced many unemployed workers to reapply for benefits, and payment gaps led many to miss rental payments and other essential bills.⁸³ Moreover, unemployed workers were left to fear another unemployment cliff in March 2021, one that lawmakers averted with only a few days to spare.⁸⁴

78. See *id* at 18 (displaying employment status by education level).

79. See *id* (comparing 1.8% with 5.1%).

80. See BAUM ET AL., *supra* note 61, at fig.2.

81. See *id* (revealing effects of COVID-19 infection).

82. See Ellie Kaverman & Andrew Stettner, *Delay in Extending Unemployment Aid Has Shortchanged Workers \$17 Billion in January*, THE CENTURY FOUND. (Feb. 2, 2021), <https://tcf.org/content/commentary/tardy-stimulus-action-causes-pandemic-unemployment-benefit-delays/?agreed=1&agreed=1> (resulting in the inability to pay rent) [perma.cc/GH7U-E2JS].

83. Kaverman & Stettner, *supra* note 82.

84. See Andrew Stettner & Elizabeth Pancotti, *11.4 Million Workers Facing Jobless Benefit Cliff Starting March 14, Unless Congress Acts Swiftly*, THE CENTURY FOUND. (Feb. 10, 2021), <https://tcf.org/content/report/11-4-million-workers-facing-jobless-benefit-cliff-starting-march-14-unless-congress-acts-swiftly/> (reporting the unemployment cliff workers face) [perma.cc/6PRX-94JL]; Jim Tankersley, Michael D. Shear, Thomas Kaplan & Katie Rogers, *A Weekslong Campaign to Sell the Stimulus Bill to the American Public Begins Tonight*, N.Y. TIMES (March 11, 2021), <https://www.nytimes.com/2021/03/11/us/biden-signs-stimulus.html> (reporting that President Biden signed a major pandemic relief bill, which included additional weekly payments and expanded eligibility for unemployment benefits on March 11, 2021) [perma.cc/UWG9-5LXA].

Some economic effects would have been difficult to prevent—a highly contagious and life-threatening global virus wreaked unexpected havoc.⁸⁵ However, much of the economic damage to individuals has resulted from policy choices made with full knowledge of their likely painful and disproportionate impacts.⁸⁶ Those who began the pandemic at the bottom of the economic ladder have suffered the greatest challenges.⁸⁷ An additional 7.8 million Americans fell into poverty between June and November of 2020.⁸⁸ Black and Hispanic Americans, women and those at lower income levels prior to the start of the pandemic have been especially hard hit.⁸⁹ The deliberate policy choices to allow these harsh and disproportionate economic effects, combined with the disparate health effects described above, have exacerbated the toxic stress so many people of color and low-income community members experience.

C. COVID-19's Intensification of Trauma

The shocking statistics about health and economic disparities fail to capture fully the psychological trauma inflicted by these policy choices. U.S. policymakers failed to act decisively even when, by May 2020, it was clear that COVID-19 would not miraculously disappear and longer-term economic measures were

85. See Tom Chivers, *Did Anyone Predict Coronavirus?*, UNHERD (Apr. 22, 2020), <https://unherd.com/2020/04/could-anyone-have-predicted-covid-19/> (looking back and discussing how governments initially handled the pandemic) [perma.cc/ZX85-ZKJQ].

86. See JEEHOON HAN, BRUCE D. MEYER & JAMES X. SULLIVAN, REAL-TIME ESTIMATES DURING THE COVID-19 PANDEMIC THROUGH NOVEMBER 2020, at 2 (Univ. Chi. ed. 2020) (showing the disparate impact between socioeconomic groups).

87. See *id.* (discussing the economic impact).

88. See *id.* (showing how much poverty rose during the month of November).

89. See *id.* at tbl.1. (providing data on the increase in poverty rate for Black Americans and women); MICHAEL KARPMAN, STEPHEN ZUCKERMAN & GENEVIEVE M. KENNEY, UNEVEN RECOVERY LEAVES MANY HISPANIC, BLACK, AND LOW-INCOME ADULTS STRUGGLING, 2 (URB. INST., 2020) (showing that one-third of Hispanic Americans were worse off financially by September).

required.⁹⁰ Their delays caused fear and uncertainty.⁹¹ In addition, the complex rules policymakers created for aid and the inability of state systems to process aid claims in a timely manner imposed further stress on those in need.⁹²

Economic displacement and uncertainty, loss of in-person schooling, and significant illness and death, all with disproportionate impacts by race and class, have fueled an environment of toxic stress.⁹³ Experts have warned that the COVID-19 crisis has created a widespread “psychological tsunami.”⁹⁴ Even those who are employed, particularly frontline and essential workers, have experienced stressors from all directions.⁹⁵ Adults and children have been swimming in toxic stress for many months. Almost seventy percent of mothers say that worry and stress from the pandemic have damaged their health.⁹⁶ Both parents and their children who have confronted food or housing insecurity have reported severe and negative mental health effects.⁹⁷ The disproportionate and high levels of COVID-19

90. See Jason DeParle, *A Year of Hardship, Helped and Hindered by Washington*, N.Y. TIMES (Feb. 14, 2021), <https://www.nytimes.com/2021/02/14/us/politics/coronavirus-poverty.html> (citing warning of need for further government aid) [perma.cc/B4VP-Q36J].

91. See *id.* (“Gaps in aid left families short on food and rent, uncertainty made it impossible to plan and confusion joined fear and worry.”).

92. See *id.* (critiquing the expiring federal aid in the midst of a global pandemic); Patricia Mazzei & Sabrina Tavernise, *Florida is a Terrible State to Be an Unemployed Person*, N.Y. TIMES (Apr. 23, 2020), <https://www.nytimes.com/2020/04/23/us/florida-coronavirus-unemployment.html> (highlighting Florida’s poor response to the pandemic) [perma.cc/2VCU-XMDK].

93. See Seth D. Norrholm, *Prepping for COVID-19’s Psychological Tsunami*, CLEVELAND.COM (Dec. 23, 2020), <https://www.cleveland.com/opinion/2020/12/prepping-for-covid-19s-psychological-tsunami-seth-d-norrholm.html> (explaining some of the negative psychological effects of COVID-19 disruptions) [perma.cc/5HAP-33YL].

94. *Id.*

95. See Rabah Kamal, Nirmita Panchal & Rachel Garfield, *Policy Watch, Both Remote and On-Site Workers are Grappling with Serious Mental Health Consequences of COVID-19*, KFF (Dec. 22, 2020), <https://www.kff.org/policy-watch/both-remote-and-on-site-workers-are-grappling-with-serious-mental-health-consequences-of-covid-19/> (finding that frontline workers are at a particularly high risk of burnout) [perma.cc/Z5QC-9HA5].

96. Grose, *supra* note 70.

97. See, e.g., Molly Knowles, Jenny Rabinowich, Stephanie Ettinger de Cuba, Diane Becker Cutts, & Mariana Chilton, “Do You Wanna Breathe or Eat?": *Parent Perspectives on Child Health Consequences of Food Insecurity, Trade-Offs, and*

death and illness, severe material hardship, parental stress and the shuttering of schools have all imposed disproportionately powerful and abiding trauma on children of color and those in low-income communities.⁹⁸

Racism, discrimination and economic hardship were already creating significant toxic stress in communities of color before the pandemic and all of these were intensified during the crisis.⁹⁹ These traumas were further deepened for Black Americans by the horrific police killing of George Floyd in May 2020, cascading revelations of other recent killings of Black individuals by police or white residents, and lack of accountability for those deaths.¹⁰⁰ The failure of many white people, and especially many political leaders, to express empathy and support to those experiencing grief and anger as these revelations cascaded forth only increased the distress.¹⁰¹ In addition, the increasing and horrifying acts of hate and violence against Asian Americans, as some Americans blame them for the pandemic, has created fear and trauma that has too often been left invisible.¹⁰²

Toxic Stress, 20 MATERNAL CHILD HEALTH J. 25, 30–31 (2016) (describing the elevated levels of stress food insecurity causes).

98. See Yarden S. Fraiman, Jonathan S. Litt, Jonathan M. Davis, DeWayne M. Pursley, & the Pediatric Policy Council, *Racial and Ethnic Disparities in Adult COVID-19 and the Future Impact on Child Health*, PEDIATRIC RES. (Feb. 9, 2021), <https://www.nature.com/articles/s41390-021-01377-x> (explaining that racial and ethnic health disparities in COVID-19 also significantly affect their children) [perma.cc/7PB9-WY55].

99. Kira et al., *supra* note 13, at 7.

100. See, e.g., Brooke A. Cunningham, *This, Too, Is What Racism Feels Like*, HEALTH AFF. (Nov. 2020), <https://www.healthaffairs.org/doi/abs/10.1377/hlthaff.2020.01311> (providing personal account of those twin effects) [perma.cc/3M4M-2XVW].

101. See, e.g., Derek R. Avery & Enrica N. Ruggs, *A Death in the Family: A Metaphor about Race and Police Brutality*, 39 EQUAL., DIVERSITY & INCLUSION: AN INT'L J. 769 (2020) (describing unhelpful approaches by white colleagues to conversation about police brutality); Peter Baker & Maggie Haberman, *Trump Rebuffs Protests Over Systemic Racism and Calls Police 'Great People'*, N.Y. TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/08/us/politics/defund-police-trump.html> (reporting on former President Trump's apathy to systemic racism experienced by minority groups) [perma.cc/CM7T-W97P].

102. See ASIAN AMERICAN BAR ASSOCIATION OF NEW YORK & PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, *A RISING TIDE OF HATE AND VIOLENCE AGAINST ASIAN AMERICANS IN NEW YORK DURING COVID-19: IMPACT, CAUSES, SOLUTIONS 2–7* (Karen R. King & Christopher M. Kwok eds., 2021) (discussing data demonstrating the rise in hate crimes and violence towards Asian American

Nor should the mental health effects of widespread grief be ignored. Each life lost may affect an entire family, circle of friends, community of co-workers, and caregivers.¹⁰³ The pandemic has not only stolen untold lives, but it has impeded grieving, leaving families unable to gather together to memorialize and hug as they remember a lost loved one. Some must shoulder their own grief while also caring for those suffering and dying from COVID-19.¹⁰⁴ These losses may trigger chronic, impairing grief, described by experts as “complicated grief.”¹⁰⁵ Black communities have disproportionately experienced this grief in relation to COVID-19 as well as the wrongful deaths of George Floyd, Ahmaud Arbery, Breonna Taylor and others.¹⁰⁶ Yet, not until January 19, 2021, was there a first official effort to mourn as a nation for those lost and support those grieving.¹⁰⁷

III. Empathy's Promise and Limitations

While some lawmakers have voiced concern for and worked to assist those experiencing the most grave health, financial and psychological hardships due to the pandemic, others have turned their gaze elsewhere.¹⁰⁸ They have focused more on abstract issues,

people).

103. See Jeffrey D. Kravetz, *Pandemic Loss*, 35 J. GEN. INTERNAL MED. 2437, 2437 (2020) (describing the personal and devastating experience of COVID-19 grief).

104. See, e.g., *id.* (returning to COVID medical care after losing father to COVID led to “disabling anxiety”).

105. Camilla Gesi, Claudia Carmassi, Giancarlo Cerveri, Barbara Carpita, Ivan Mirko Cremone, & Liliana Dell’Osso, *Complicated Grief: What to Expect After the Coronavirus Pandemic*, FRONTIERS IN PSYCHIATRY (May 26, 2020), <https://www.frontiersin.org/articles/10.3389/fpsy.2020.00489/full> [perma.cc/TY2U-UKFV].

106. See Kimberly D. Manning, *When Grief and Crises Intersect: Perspectives of a Black Physician in the Time of Two Pandemics*, 15 J. HOSP. MED. 566, 566–67 (2020) (discussing the experiences of Black Americans in the last year).

107. Peter Baker, *On Night Before Inauguration, Biden Leads Mourning for Virus Victims*, N.Y. TIMES (Jan. 19, 2021), <https://www.nytimes.com/2021/01/19/us/politics/biden-inauguration-coronavirus.html> (describing the national mourning ceremony for Americans lost to the coronavirus held by President Biden on the eve of his inauguration) [perma.cc/9J3L-ZCAN].

108. See, e.g., Jeff Stein & Erica Werner, *McConnell Warns White House*

such as the national debt or moral hazard concerns about helping too much, rather than the Americans who have faced the pandemic's most devastating effects.¹⁰⁹ Would greater empathy motivate lawmakers and policymakers to assist all those suffering during the pandemic, and in particular to meet the needs of those whose greater harm results from our nation's structural inequalities?

Empathy has the power to spur prosocial action, but it also has serious limitations as a motivator of compassionate assistance for all those who have faced pandemic-related health, financial or toxic stress effects.¹¹⁰ What do we need to understand about empathy, what are the barriers to empathy and compassionate action for those who need assistance and kindness, and how should we address those barriers?

A. Understanding Empathy: Emotional Contagion, Cognition, and Empathic Concern

Empathy is commonly viewed as a positive force for mutual understanding and compassionate actions towards others, and individuals are commonly encouraged to show empathy towards others.¹¹¹ Empathy has also been the subject of intensive study and

Against Making Stimulus Deal as Pelosi and Mnuchin Inch Closer, WASH. POST (Oct. 20, 2020, 6:34 P.M.), <https://www.washingtonpost.com/us-policy/2020/10/20/trump-economic-stimulus-pelosi/> (stating that Republicans were expressing concern over a stimulus package because they feared the party would split and it would impact the Supreme Court nomination of Justice Amy Coney Barrett) [perma.cc/Q6TS-7KTQ].

109. See, e.g., Zack Hoopes, *Toomey, Perry Skeptical of Renewal as End of Pandemic Unemployment Benefits Nears*, THE SENTINEL (July 7, 2020), https://cumberlink.com/news/local/govt-and-politics/u_s_lawmakers/toomey-perry-skeptical-of-renewal-as-end-of-pandemic-unemployment-benefits-nears/article_ceeflaf0-55d3-5bf7-808c-eeee9e019080.html (reporting that Senator Pat Toomey expressed fear that \$600 weekly unemployment benefit would deter workers from returning to work) [perma.cc/6FLP-ZWEC].

110. See C. Daniel Batson, David A. Lishner, & Eric L. Stocks, *The Empathy-Altruism Hypothesis*, OXFORD HANDBOOK OF PROSOCIAL BEHAV. 259, 260 (David A. Schroeder & William G. Graziano, eds. 2015) (examining empathic concern as a motivator of prosocial behavior).

111. See, e.g., Claire Cain Miller, *How to Be More Empathetic*, N.Y. TIMES (Jan. 31, 2019), <https://www.nytimes.com/guides/year-of-living-better/how-to-be-more-empathetic> (explaining how to develop empathy) [perma.cc/SF4J-T9H7].

debate across numerous fields of scholarship, as researchers have sought to understand its perplexing variability.¹¹² C. Daniel Batson et al. describe empathy as an “other-oriented emotion,” but they note the various terms scholars have used to express this other-orientation.¹¹³ The term empathy has different meanings to different scholars: Some use empathy and empathic concern interchangeably,¹¹⁴ while others have rejected “empathy” as “hopelessly flawed,” and instead use terms like “concern” or “sympathy.”¹¹⁵ As these debates continue, this Article focuses on the research of those who delve deeper into the concept of empathy, its limitations and its potential.

Empathy is often understood as having three key components: Affective, cognitive and motivational.¹¹⁶ Emotional contagion or experience sharing is a powerful affective force that leads one individual to “experience” the feelings of a proximate person or group of individuals.¹¹⁷ This can be an intense emotional experience as when a parent “feels” the distress of their child, or a co-worker “feels” the pain of a hammer gone astray.¹¹⁸ This

112. See, e.g., Hannah Read, *A Typology of Empathy and Its Many Moral Forms*, 14 PHILOSOPHY COMPASS e12623 (1,2) (2019), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/phc3.12623> (arguing that different types of empathy are well equipped to handle moral tasks and ill-equipped to handle others) [perma.cc/8VG5-GJ3X].

113. See Batson et al., *supra* note 110 (explaining that other scholars have used terms such as pity, compassion, tenderness and sympathy to describe these other-oriented emotions).

114. *Id.*

115. Tullmann, *supra* note 30, at 221.

116. Erika Weisz & Mina Cikara, *Strategic Regulation of Empathy*, 25 TRENDS IN COGNITIVE SCI. 213, 214 (2021) (analyzing how these three components may work together to create empathy).

117. See Paul Bloom, *Empathy and Its Discontents*, 21 TRENDS IN COGNITIVE SCI. 24, 25 (2017) (noting limitations to the empathetic experience, particularly with regard to moral decision-making); see also Jamil Zaki, *Choosing Empathy, A Conversation with Jamil Zaki*, EDGE.ORG (Oct. 20, 2015), https://www.edge.org/conversation/jamil_zaki-choosing-empathy (using the phrase “experience sharing,” while noting others use the phrase “emotional contagion”) [perma.cc/Y4TD-PWZ6]. But see Persson & Savulescu, *supra* note 29, at 184 (distinguishing emotional contagion, or experiencing what another feels, from imagining what another feels).

118. See Frans B.M. de Waal, *Putting the Altruism Back into Altruism: The Evolution of Empathy*, 59 ANN. REV. PSYCHOL. 279, 283 (2008) (noting that a child may even use a tantrum to gain the desired response by triggering emotional contagion in the parent); see also Bloom, *supra* note 117 (highlighting his

emotional contagion may elicit assistance, such as soothing a distressed child or seeking medical care for an injured co-worker. Emotional contagion can, however, also produce problematic effects. For example, being in close proximity to a person experiencing negative feelings, such as depression, may lead another person to negative experience feelings over a period of time, or observation of a nonverbal racially biased reaction may lead the observer to feel and exhibit that bias.¹¹⁹ These responses may be automatic and instantaneous and, without self-awareness, work outside cognitive control.¹²⁰

A second type of response involves cognitive work, described by theorists as cognitive empathy or mentalizing.¹²¹ Jamil Zaki describes this as “explicit consideration of the world as someone else sees it,”¹²² while Frans de Waal describes it as “empathic perspective-taking.”¹²³ Cognitive empathy may require adequate information to appreciate the situation of the other and imagine how one would feel in the other’s circumstance.¹²⁴ However, de Waal emphasizes that while one may engage in perspective-taking as a solely cognitive process, empathic perspective-taking requires one to combine cognition with emotional engagement.¹²⁵ Without emotional engagement, de Waal warns, perspective-taking “would

conclusion that there is a distinct difference between compassion and empathy).

119. See Yuan Bai, Qing Cai, Zhanwei Du, Yongjan Yang & Chijun Zhang, *Modeling and Inferring Mobile Phone Users’ Negative Emotion Spreading in Social Networks*, 78 FUTURE GENERATION COMP. SYS. 933, 933 (2017) (investigating the negative emotion spreading mechanism at the individual level of large user groups); see also Dana R. Carney, Kyonne-Joy Isaac & Greg Willard, *Some Evidence for the Nonverbal Contagion of Racial Bias*, 128 ORG. BEHAV. & HUMAN DECISION PROCESSES 96, 105–06 (2015) (highlighting how one may “catch” others’ racial bias through passive observation).

120. See de Waal, *supra* note 118, at 287 (discussing how highly empathetic persons are more inclined to unconscious motor mimicry showing how the subconscious can take over).

121. See Weisz & Cikara, *supra* note 116, at 214 (describing the cognitive component of empathy); see also Zaki, *supra* note 117 (explaining that once empathetic capacity exists, it can play a role in social relationships).

122. Zaki, *supra* note 117, at 214.

123. de Waal, *supra* note 118, at 285.

124. Tullmann, *supra* note 30, at 207.

125. See de Waal, *supra* note 118, at 285 (elaborating further on how this empathic-perspective-taking can be manifested into targeted helping, finely tuned to another’s specific situation and goals).

be a cold phenomenon that could just as easily lead to torture as to helping.”¹²⁶

Empathy, whether emotional, cognitive or both, is usually considered prosocial when it motivates a helpful response to another's distress.¹²⁷ Some have described this as “empathic concern” or “compassion.”¹²⁸ At its best, empathy encompasses all three aspects: emotional, cognitive and motivational.¹²⁹ Human beings find it easiest to empathize with and take prosocial actions toward those they know well or who are in close physical proximity to themselves.¹³⁰ Lawmakers and other policymakers, however, must go beyond having empathy only for their close connections and incorporate knowledge about the larger society, including its structural disparities. If not, as Katherine Tullmann states, “poor empathetic practices” may increase oppression.¹³¹ Some have adopted the phrase “social empathy” to describe this translation of interpersonal empathy to empathic concern for the large number of persons affected by structural inequalities.¹³²

Social empathy does benefit from close connection and the knowledge it engenders.¹³³ Family, friend and employment relationships, such as those between gay and lesbian and straight individuals, may enhance social empathy.¹³⁴ These close connections have provided many straight persons with education

126. *Id.* at 287.

127. *See* Read, *supra* note 112, at 4 (noting that these words are often used in different manners by different scholars).

128. *Id.*

129. *See* Weisz & Cikara, *supra* note 116, at 214 (arguing that empathy contains these three components).

130. *See* Persson & Savulescu, *supra* note 29, at 184 (elaborating how spatial and temporal proximity affects the level of empathy people have).

131. Tullmann, *supra* note 30, at 207.

132. *See, e.g.,* ELIZABETH A. SEGAL, SOCIAL EMPATHY: THE ART OF UNDERSTANDING OTHERS 175–76 (2018) (finding that high levels of interpersonal empathy are often correlated with high levels of social empathy and describing social empathy as involving contextual understanding and macro perspective-taking).

133. *See* Persson & Savulescu, *supra* note 29, at 184 (replying to Jesse Prinz and Paul Bloom's argument that empathy is discriminatory, and it is easier to show empathy when the individual is similar to yourself and not in a large group).

134. *See* de Waal, *supra* note 118, at 291 (highlighting amplification of empathetic response by similarity, familiarity, social closeness, and positive experience with another).

about and insight into the structural inequalities facing gay and lesbian individuals and couples, and these relationships have likely increased social support for their legal rights.¹³⁵ On the flip side, social empathy is less likely when close interpersonal connections to those facing structural inequalities are absent. These connections are often lacking across racial divides in a societal context of intense racial segregation of neighborhoods, schools and employment.¹³⁶ Without these close connections, white individuals may not learn from those who experience structural racial barriers, and they may not be motivated to prevent or ameliorate the harmful effects of these barriers.¹³⁷ This lack of close connection may help explain why members of privileged white communities, who have escaped many of the pandemic's greatest harms, may not experience empathic concern for and understanding of the disproportionate suffering of people of color and low-income communities.

B. Empathy's Deficits

Skeptics of empathy as a strategy to motivate individuals towards prosocial behavior point to these and other barriers to empathic concern.¹³⁸ A common deficit relates to the number of those in distress; empathy fails as the number of those in distress rises.¹³⁹ Empathy also falters at perceived social boundaries, notably social boundaries embedded in hierarchy, such as differences in race and class.¹⁴⁰ Empathy likewise may fail across

135. See Aditi Kodipady, Victor Kumar & Liane Young, *A Psychological Account of the Unique Decline in Anti-Gay Attitudes* at 6 (unpublished) (Dec. 25, 2020), <https://psyarxiv.com/rvp57/> (emphasizing how individuals are better able to appreciate the harm experienced by a gay family member or friend than by a stranger not within their social circle) [perma.cc/4XUR-BLZS].

136. See *id.* at 7 (explaining that sexual orientation is a “horizontal” category, meaning it has a similar distribution across human lineages).

137. See *id.* (elaborating that anti-Black prejudice is sustained by the reduced likelihood of close interpersonal relationships between Black and white people).

138. See Persson & Savulescu, *supra* note 29, at 184 (noting that some believe that empathy is biased, pushing us in the direction of parochialism and racism).

139. See *id.* at 184 (describing how empathy as “innumerate,” which means that the larger the group, the more difficult it is to empathize).

140. See Tullmann, *supra* note 30, at 213 (discussing those with “social power and how that power shapes their goals”).

partisan political lines.¹⁴¹ Indeed, individuals who experience empathy for those who share their political group may experience antipathy towards those in groups perceived as different.¹⁴²

1. *Empathy Lags as Numbers Rise*

The overwhelming number of people suffering during the pandemic may actually undermine individuals' ability to experience empathy for those affected.¹⁴³ Paul Slovic explains this process of "psychic numbing" as follows:

The fast, intuitive gut feeling is miraculous in many ways, but it has some flaws. . . . One is that it doesn't deal with numbers in magnitude very well. If we're talking about lives, one life is tremendously important and valuable and we'll do anything to protect that life, save that life, rescue that person. But as the numbers increase, our feelings don't commensurately increase as well.¹⁴⁴

Large numbers may decrease, rather than increase, empathy.¹⁴⁵ This "identifiable victim effect", or "compassion fade," creates a stronger emotional response and desire to help one individual than to help large numbers of people affected by major risks or disasters.¹⁴⁶ Because of this phenomenon, individual stories of loss

141. See Eli J. Finkel et al., *Political Sectarianism in America: A Poisonous Cocktail of Othering, Aversion, and Moralization Poses a Threat to Democracy*, 370 *SCI.* 533, 533 (2020) (explaining that political polarization in the United States is more severe than in most countries, causing a sharp divide by political affiliation).

142. See *id.*; see also Bloom, *supra* note 117, at 27 (citing examples in which experiencing empathy for one's group members may result in antipathy towards others).

143. See Persson & Savulescu, *supra* note 29, at 184 (noting that the larger the group, the more difficult it is for individuals to empathize); see also Fraiman, *supra* note 98, at 1 (highlighting the disproportionate impact of COVID-19 on Black and Hispanic communities).

144. Tiffanie Wen, *What Makes People Stop Caring?*, BBC (June 30, 2020), <https://www.bbc.com/future/article/20200630-what-makes-people-stop-caring> [perma.cc/SRL8-7PLU].

145. See *id.* (citing Paul Slovic for the proposition that individuals' concern may decrease as the number of those in need rises).

146. See Marcus M. Butts, *Helping One or Helping Many? A Theoretical Integration and Meta-Analytic Review of the Compassion Fade Literature*, 151 *ORG. BEHAV. & HUMAN DECISION PROCESSES* 16, 16–17 (2019) (noting how one's

may lead to an outpouring of concern and assistance, but evidence of the vast numbers who have died or lost their jobs may trigger compassion to fade and fail to elicit an empathetic response.¹⁴⁷

2. *Empathy Barriers at the Boundaries of Race, Ethnicity and Class*

Empathic emotional engagement is more likely to be activated towards those perceived as similar than towards those socially constructed as not only different but also inferior.¹⁴⁸ Automatic emotional engagement, or identification with others, is more likely to occur in the context of “physical similarity, shared experience, and social closeness.”¹⁴⁹ While emotional contagion has been largely viewed as automatic in most people, that emotional engagement may not be triggered in relation to those in a different group, such as those on opposing sides of a war, political issue or sporting event.¹⁵⁰ Not only do many individuals lack concern for others across these boundaries, but they may feel *schadenfreude*, a type of antipathy which finds pleasure in misfortune that harms one perceived as outside their group boundary.¹⁵¹ This empathy gap across group lines blocks even the “automatic” empathy that is measurable through brain scan technology.¹⁵²

Race is a powerful social construct in the United States that is used both overtly and implicitly to support racial hierarchy or

relationship with the individual may also impact the sense of compassion).

147. *See id.* at 16 (conducting a meta-analysis of forty-one studies on compassion fade).

148. *See de Waal, supra* note 118, at 287 (comparing the motivational structures of imitation and empathy).

149. *Id.*

150. *See Weisz & Cikara, supra* note 116, at 219 (noting how it is difficult to develop empathy when on opposing sides of negotiation, but once one can adopt this perspective it will be beneficial).

151. *See Emile G. Bruneau, Mina Cikara, Rebecca R. Saxe & Jay J. Van Bavel, Their Pain Gives Us Pleasure: How Intergroup Dynamics Shape Empathic Failures and Counter-Empathic Responses*, 55 J. EXP. SOC. PSYCHOL. 110, 111 (2014) (defining “*schadenfreude*”).

152. *See Zaki, supra* note 117 (demonstrating that even in arbitrarily assigned groups, individuals demonstrate more empathy toward those in their own group).

caste.¹⁵³ This social construction of race also powerfully undermines empathy across racial groups, particularly undermining empathy by white people for members of communities of color.¹⁵⁴ Individuals are much more likely to experience and demonstrate prosocial empathy for those who share their racial group identity than for those outside that group.¹⁵⁵ Individuals with higher levels of bias are less likely to “intuitively grasp outgroup members’ intentions and actions.”¹⁵⁶ These differences arise across multiple kinds of settings, including in health care.¹⁵⁷ Stated simply, individuals are less likely to “feel” the pain of those outside their racial group.¹⁵⁸ Times of threat or risk, like a global pandemic, actually increase intolerance and punitive attitudes toward those perceived as members of outgroups.¹⁵⁹ Most concerning, those with greater social power are

153. See ISABEL WILKERSON, *CASTE* 49, 327–28, 382 (2020) (showing how caste is rigid but membership in dominant and subordinate groups “shape shifts” as needed to uphold caste hierarchy); IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 39–40 (2019) (describing the historical development of race as a social construct).

154. See Tullmann, *supra* note 30, at 213–14 (“Whites often do not recognize their own social power and how that power shapes their goals, desires, perceptions, and beliefs.”).

155. See Shihui Han, *Neurocognitive Basis of Racial Ingroup Bias in Empathy*, 22 *TRENDS IN COGNITIVE SCI.* 400, 409–11 (2018) (explaining how racial ingroup bias in empathic brain activity is mediated by distinct neurobiological mechanisms related to same-race and other-race pain); see also Jay J. Van Bavel et. al., *Using Social and Behavioral Science to Support COVID-19 Pandemic Response*, 4 *NATURE HUMAN BEHAV.* 460, 462 (2020) (“[B]eing threatened with disease is often associated with higher levels of ethnocentrism; greater fear and perceived threat are associated with greater intolerance and punitive attitudes toward out-groups.”); see also Mina Cikara, Emile G. Bruneau & Rebecca R. Saxe, *Us and Them: Intergroup Failures of Empathy*, 20 *CURRENT DIRECTIONS PSYCHOL. SCI.* 149, 149–50 (2011) (highlighting how outgroup member’s suffering dampened empathic response compared to ingroup response).

156. Jennifer N. Gutsell & Michael Inzlicht, *Empathy Constrained: Prejudice Predicts Reduced Mental Simulation of Actions During Observation of Outgroups*, 46 *J. EXPERIMENTAL SOC. PSYCHOL.* 841, 844 (2009).

157. See Han, *supra* note 155, at 401 (examining environments in which biases against outgroup members impose barriers to empathy).

158. See *id.* (highlighting different ways researchers have investigated the neurocognitive underpinnings of racial ingroup bias in expressions of empathy).

159. See Van Bavel et al., *supra* note 155, at 462 (stating that collective stress causes stronger ingroup connections).

least likely to experience empathy that leads to prosocial action across racial boundaries.¹⁶⁰

Empathy deficits correlate with lessened motivation to assist those in other racial groups.¹⁶¹ This lack of empathy is more pronounced among individuals who are members of a more socially dominant group and who also embrace and promote group-based inequality.¹⁶² These barriers to empathy are especially damaging in contexts in which, as in the United States, less powerful racial and ethnic groups are also those most harmed by the pandemic's health, economic and psychological effects.

Class boundaries create similar empathy barriers, and they often intersect with and amplify racial and ethnic barriers to empathy.¹⁶³ Class boundaries are often accompanied by strong negative stereotypes that are used to justify the plight of poverty as a deserved condition.¹⁶⁴ For example, Americans generally fail to see those in poverty as victims of structural forces, and they are less likely to want to help people struggling with poverty than to blame them for their poverty.¹⁶⁵ In turn, this reduced empathy and increased stigma exacerbates the psychological suffering of those living with the struggles of poverty.¹⁶⁶

160. See Tullmann, *supra* note 30, at 214–18 (noting that “white privilege breeds ignorance about social power”).

161. Han, *supra* note 155, at 401.

162. See Sa-kiera Tiarra Jolynn Hudson, Jim Sidanius, & Mina Cikara, *Preference for Hierarchy is Associated with Reduced Empathy and Increased Counter-empathy Towards Others, Especially Out-Group Targets*, 85 J. OF EXPERIMENTAL SOC. PSYCH. 1, 1–3 (2019) (testing “how individuals’ preference for hierarchy interacts with target group membership and functional relations between groups” in order to predict levels of empathy); see also Cikara et al., *supra* note 155, at 151 (discussing empirical studies on empathy).

163. See Bernice Lott, *Cognitive and Behavioral Distancing from the Poor*, 57 AM. PSYCH. 100, 106 (2002) (“Mental health workers also do not feel comfortable with low-income clients and find it difficult to empathize with them.”).

164. See *id.* at 101–02 (describing different negative stereotypes held by many, including legislators, of people living in poverty).

165. See Michèle Lamont, *Addressing Recognition Gaps: Destigmatization and the Reduction of Inequality*, 83 AM. SOCIO. REV. 419, 422 (2018) (showing these views were strongest among members of the working class).

166. See *id.* (“[S]tigma can contribute to poverty, which in turn affects physical and subjective well-being.”).

3. Empathy Inverts Across Partisan Lines

After a time of uncommonly divisive speech by a now former President and popular pro-Trump paraphernalia carrying the tagline “F**k Your Feelings,” it is less surprising to learn that not only is empathy often lacking across partisan lines, but some individuals express *schadenfreude* when learning of hardships experienced by their partisan opponents.¹⁶⁷ Ideological polarization, which involves differences in policy views, has not significantly increased. However, affective polarization, the “tendency to dislike and distrust those from the other party,”¹⁶⁸ has increased dramatically in recent years.¹⁶⁹

Affective polarization creates stronger animosity towards the “out-group” than warm feelings towards those sharing a political identity, and it is at a very high level in the United States.¹⁷⁰ Eli J. Finkel et al. describe political sectarianism as consisting of three main ingredients: “othering—the tendency to view opposing partisans as essentially different or alien to oneself; aversion—the tendency to dislike and distrust opposing partisans; and moralization—the tendency to view opposing partisans as

167. See Michael D. Jones & Mark K. McBeth, *Narrative in the Time of Trump: Is the Narrative Policy Framework Good Enough to be Relevant?*, 42 ADMIN. THEORY & PRACTICE 91, 93 (2020) (collecting aggressive and negative comments about others by former President Trump); see also Jeff Sharlet, “F—k Your Feelings”: In Trump’s America, the Partisan Battle Flag is the New Stars and Stripes, VANITY FAIR (Sept. 8, 2020), <https://www.vanityfair.com/news/2020/09/trump-partisan-battle-flag-is-the-new-stars-and-stripes> (describing various slogans found on Trump flags and the ideologies behind them) [perma.cc/DA2R-EDQL].

168. James N. Druckman, Samara Klar, Yanna Krupnikov, Matthew Levendusky & John Barry Ryan, *Affective Polarization, Local Contexts and Public Opinion in America*, 5 NATURE HUM. BEHAV. 28, 28 (2021).

169. See Shanto Iyengar, Yphtach Lelkes, Matthew Levendusky, Neil Malhotra & Sean J. Westwood, *The Origins and Consequences of Affective Polarization in the United States*, 22 ANN. REV. POL. SCI. 129, 131–32 (2019) (using several different measures for affective polarization, including feeling thermometers and trait ratings).

170. See Druckman et al., *supra* note 168, at 28 (noting the rise in affective polarization in America during the COVID-19 pandemic); see also Eli J. Finkel et al., *Political Sectarianism in America: A Poisonous Cocktail of Othering, Aversion, and Moralization Poses a Threat to Democracy*, 370 SCI. 533, 533 (2020) (showing that of nine countries, the United States demonstrated the highest level of outgroup hate in 2017).

iniquitous.”¹⁷¹ Othering, aversion, and moralization all undermine the cross-group empathy needed for bipartisan support for relief to those most harshly affected by the pandemic.

Given these disturbing features of empathy, does the developing scholarly literature provide any basis to expect that constructive approaches to empathy development can improve prosocial actions by those in power, particularly in the midst of a global pandemic?

C. Building Reflective Empathy and Compassion

*“If you instead view empathy as something that people can control, then people can choose to align their empathy more with their values.”*¹⁷²

The significant limitations of empathy are disheartening. They undermine confidence that empathy is a useful tool for furthering the social good. Yet, those seeking prosocial action continue to invoke empathy to advocate for aid to those most deeply harmed by this global catastrophe.¹⁷³ And, while the media often highlights narratives of conflict and animosity during the pandemic, there is also significant evidence of individuals stepping up to aid their neighbors.¹⁷⁴ There is evidence those experiencing

171. Finkel et al., *supra* note 170, at 533.

172. Zaki, *supra* note 117.

173. See, e.g., Mark Brennan, Dana Winters, & Pat Dolan, Opinion, *We’re All First Responders Amid Coronavirus, Armed with Kindness, Compassion and Empathy*, USA TODAY (May 8, 2020, 7:00 AM), <https://www.usatoday.com/story/opinion/2020/03/24/coronavirus-pandemic-demands-kindness-compassion-empathy-column/2898413001/> (opining that showing empathy is the single most important action one can take during a catastrophe) [perma.cc/3ATJ-72Y5]; Editorial Board, *Congress Must Show American People Empathy by Passing a Relief Bill*, BANGOR DAILY NEWS (Dec. 12, 2020), <https://bangordailynews.com/2020/12/12/opinion/editorials/congress-must-show-american-people-empathy-by-passing-a-relief-bill/> (arguing that Congress must show empathy to Americans suffering in light of the COVID-19 pandemic) [perma.cc/NV6C-R34H].

174. Compare Jonah Engle Bromwich, *Fighting Over Masks in Public is the New American Pastime*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/06/30/style/mask-america-freedom-coronavirus.html> (describing scenes of people fighting over COVID-19 supplies) [perma.cc/UW2F-8PAF], with *Neighbors Helping Neighbors*, HARTFORD COURANT, <https://www.courant.com/coronavirus/neighbors/> (highlighting stories of Hartford, Connecticut area individuals acting to help their community during the

calamities demonstrate “groundswells of prosocial behavior and feelings of community,” a phenomenon described by Zaki as “catastrophe compassion.”¹⁷⁵

In contrast, however, federal lawmakers and policymakers are often embedded in a world that is strikingly different than the one inhabited by the vast majority of people who live in the United States. They are strikingly distant from those most affected by racial and income inequality.¹⁷⁶ They are much more white, educated and wealthy than the general population, which may inhibit their ability to emotionally resonate with, cognitively appreciate and experience motivation to aid communities that they perceive as different than and subordinate to their own.¹⁷⁷ They may believe that maintaining power requires stoking the fires of negative affective partisanship—even encouraging their supporters to take pleasure in the pain of their opponents.¹⁷⁸ These lawmakers also may believe that they inhabit a hostile world in which tribalism is the only avenue to political or physical safety.¹⁷⁹ In fact, reports surfaced that some lawmakers felt pressured to support the fraudulent election claims and hesitated to condemn the January 6th insurrection or its instigators due to threats and the fear those threats generated.¹⁸⁰ All these factors and pressures

pandemic) [perma.cc/W5RP-8P4M].

175. Jamil Zaki, *Catastrophe Compassion: Understanding and Extending Prosociality Under Crisis*, 24 *TRENDS IN COGNITIVE SCI.* 587, 588 (2020).

176. See IDA A. BRUDNICK, CONG. RSCH. SERV., RL30064, CONGRESSIONAL SALARIES AND ALLOWANCES: IN BRIEF 1 (2019) (“The compensation for most Senators, Representatives, Delegates, and the Resident Commissioner from Puerto Rico is \$174,000.”).

177. See *id.*

178. See, e.g., Alexander Bor & Gabor Simonovits, *Empathy, Deservingness, and Preferences for Welfare Assistance: A Large-Scale Online Perspective-Taking Experiments 27* (July 30, 2020) (unpublished manuscript) (describing the correlation between dispositional empathy and attitudes toward welfare).

179. See, e.g., Arash Javanbakht, *The Politics of Fear*, *PSYCH. TODAY* (Mar. 23, 2019), <https://www.psychologytoday.com/us/blog/the-many-faces-anxiety-and-trauma/201903/the-politics-fear> (“Tribalism is the biological loophole that many politicians have banked on for a long time.”) [perma.cc/TE4L-62XY].

180. See Michael Balsame, *Lawmakers are Reportedly Receiving Threats ahead of Rormer President Donald Trump's Impeachment Trial*, *BUS. INSIDER* (Jan. 25, 2021, 1:47 AM), <https://www.businessinsider.com/lawmakers-receiving-threats-ahead-of-trump-impeachment-trial-2021-1> (discussing the continued threats to law makers prior to Donald Trump's second impeachment trial)

may make lawmakers especially prone to the limitations to empathy described in this article.¹⁸¹

Despite these major concerns, Zaki maintains that empathic concern is a choice.¹⁸² Lawmakers and policymakers can choose empathic concern across boundaries. Humans are not deterministically constrained by the empathy limitations examined in this Article.¹⁸³ Those limitations are open to change, and individuals can choose to change them. As research on empathy's relationship to prosocial action develops, insights about how to address empathy's limitations are beginning to emerge.¹⁸⁴ The research establishes that empathy is not solely an in-born characteristic or inalterable ability, and individuals can expand their empathic concern.¹⁸⁵ This research that individuals can change their empathic responses provides hope that the empathic limitations of psychic numbing or social group boundaries can be decreased.

This power to change one's empathic responses is shown by studies that empathy-related brain activity shifts as individuals comply with instructions to either be more empathetic or remain more detached while viewing emotional and stressful movie scenes.¹⁸⁶ Compassion training, which teaches participants to

[perma.cc/KP2P-U83U].

181. See Molly J. Walker Wilson, *The Rhetoric of Fear and Partisan Entrenchment*, 39 L. & PSYCH. REV. 117, 118 (2016) ("As political actors employ strategies to influence impressions and attitudes of those they seek to persuade, they fall prey to their own biases. Ironically, the very act of engaging in repeated, effortful impression management and persuasion serves to further entrench and polarize these groups.").

182. See Zaki, *supra* note 117 ("Lately, I've begun thinking about empathy not as something that happens to us, but rather as a choice that we make, even if we're not aware we're making it.").

183. See *id.* (arguing that empathy is dynamic and not inflexible).

184. See *id.* (describing the growing body of research surrounding empathy and its prosocial possibilities).

185. Tania Singer & Olga M. Klimecki, *Empathy and Compassion*, 24 CURRENT BIOLOGY R875, R875, R877–78 (2014) (concluding from neuroplasticity research that compassion and empathy training can increase prosocial behavior).

186. See K.C. Borha Jimenez et al., *Change in Brain Activity Following the Voluntary Control of Empathy*, 216 NEUROIMAGE 1, 10 (2020) ("[B]rain activity is significantly altered while participants choose whether to focus on the social and empathy triggering aspects of complex emotional stimuli.").

visualize kindness towards others—including distant others—shows promise to increase prosocial actions towards strangers.¹⁸⁷

Interventions may also help reduce the psychic numbing or compassion fade associated with the large numbers of those negatively affected by COVID-19.¹⁸⁸ In addition to appealing to sympathy, messages that present helping behavior as efficacious to solve a problem may lead to increased actions to help, even when the numbers of those needing aid are very large.¹⁸⁹ During the pandemic, news articles may elicit more empathic concern and actions if they both humanize individuals facing pandemic harms and connect information about the scale of the problem to solutions readers can help achieve.

Social construction theory helps explain the power of cross-group views and a theoretical basis for remaking those views.¹⁹⁰ Rather than viewing group hierarchies as natural and unchangeable, social construction theory reminds us that it takes effort to maintain and police these boundaries.¹⁹¹ White supremacists in the twentieth century understood well that strong policing was required to keep groups apart and in tension with each other, and they used strategies such as the criminalization of intimate relationships and marriage across racial divides to preserve white power by invoking “racial integrity.”¹⁹²

187. See Singer & Klimecki, *supra* note 185, at R876 (discussing neuroplasticity research on the effect of compassion and empathy training on brain structure and function).

188. See Lauren Kogen & Susan Dilliplane, *How Media Portrayals of Suffering Influence Willingness to Help: The Role of Solvability Frames*, 31 *J. MEDIA PSYCH.* 92, 98 (2017) (proposing that framing a problem as solvable could induce greater societal response).

189. See *id.* (finding that solvability increased willingness to help through an increased sense of efficacy, while paradoxically framing problem as unsolvable increased willingness to help through increased feelings of sympathy).

190. See Anne Schneider & Helen Ingram, *Social Construction of Target Populations: Implications for Politics and Policy*, 87 *AM. POL. SCI. REV.* 334, 334–35 (1993) (discussing how social constructions of “target populations” by more powerful groups affect public policy).

191. See Andreas Wimmer, *The Making and Unmaking of Ethnic Boundaries: A Multilevel Process Theory*, 113 *AM. J. SOCIO.* 970, 971 (2008) (“[E]thnicity is the product of a social process rather than a cultural given, made and remade rather than taken for granted, chosen depending on circumstances rather than ascribed through birth.”).

192. See, e.g., *McLaughlin v. Florida*, 379 U.S. 184, 193 (1964) (invalidating a Florida statute that imposed greater penalties for interracial cohabitation than

Stigmatizing narratives regarding race and class have also been employed to undermine public support for desperately needed welfare benefits.¹⁹³ Despite this long history of denigration of racial minorities, however, large, multiracial groups came together to protest the killing of George Floyd, demonstrating the potential for empathic concern across racial divides.¹⁹⁴

Reframing may be one strategy to overcome empathy limitations based on hierarchical social boundaries.¹⁹⁵ Learning about the perspectives of members of an outgroup may increase recognition of disparities among groups and improve helping.¹⁹⁶ In some circumstances emphasizing our common humanity—the recognition that all humans have the same basic needs and desire to avoid suffering—increases compassion for others.¹⁹⁷ Encouragement to consider oneself an American first may reduce

for intra-racial cohabitation); *Loving v. Virginia*, 388 U.S. 1, 7 (1967) (striking down a Virginia state law that criminalized marriage between white and non-white persons).

193. See Glennon et al., *supra* note 35 (“[S]tigmatizing assistance to those in poverty has been a “constant theme throughout American history”); see generally James D. Johnson, Nelgy Olivio, Nathan Gibson, William Reed, & Leslie Ashburn-Nardo, *Priming Media Stereotypes Reduces Support for Social Welfare Policies: The Mediating Role of Empathy*, 35 J. PERSONALITY & SOC. PSYCH. 463 (2009).

194. See, e.g., Courtenay W. Daum, *White Complicity*, 42 NEW POL. SCI. 443, 443–44 (2020) (“[W]ithin days [of George Floyd’s death] protests developed across the country as Americans came together to march in George Floyd’s name to protest police brutality against people of color.”).

195. See Eric J. Vanman, *The Role of Empathy in Intergroup Relations*, 11 CURRENT OP. IN PSYCH. 59, 60 (2016) (“One method of effecting empathy change is to train people in perspective taking.”).

196. See *id.* (noting that priming a group with multicultural perspective prior to perspective taking exercises may improve motivation to help across social group barriers); but see Linda Zou & Sapna Cheryan, *When Whites’ Attempts to be Multicultural Backfire in Intergroup Interactions*, 9 SOC. & PERSONALITY PSYCH. COMPASS 581, 587–89 (2015) (explaining that priming with multicultural or color blind perspectives produces different outcomes in different studies, and stating the importance of educating study participants about both perspectives).

197. See Debbie Ling, Melissa Petrakis & John Henry Olver, *The Use of Common Humanity Scenarios to Promote Compassion in Healthcare Workers*, 74 AUSTL. SOC. WORK 110, 117 (2021) (“[V]iewing common humanity scenarios strengthened a sense of connection and concern for others.”); Wimmer, *supra* note 191, at 989 (noting that “universal moral qualities and membership in ‘the human family’ are often evoked, so it seems, by the most excluded and stigmatized groups”).

animus towards members of another political party.¹⁹⁸ However, members of groups that are protective of their distinctiveness may respond less favorably to calls to a common identity than to an emphasis on the ability of different societal groups to work well together.¹⁹⁹

Research on implicit bias and social empathy may also have important implications for avoiding the racial and class boundedness of empathy. For example, bringing biases and methods to consciousness and providing an interactive process through which people journal about their efforts to disrupt bias may help people “break the prejudice habit.”²⁰⁰ Efforts to build social empathy lead people from experiences of empathy for others to education about structural inequalities and strategies for positive change.²⁰¹ However, much of the research does not involve well-controlled empirical studies, and in some cases, studies have demonstrated decreases, rather than increases, in intergroup empathy, leaving us with much to learn.²⁰²

This glimpse of an extensive literature on reducing empathy's limitations and increasing empathic concern and prosocial action does provide hope that empathic concern is a skill that may be learned.²⁰³ It may be changeable—through reflection, awareness of

198. See Matthew S. Levendusky, *Americans, Not Partisans: Can Priming American National Identity Reduce Affective Polarization?*, 80 J. POL. 59, 66 (2018) (“[P]riming American identity makes subjects view the opposing party more positively due to a process of recategorization.”).

199. See Christine Kershaw, David E. Rast III, Michael A. Hogg & Daan V. Knippenberg, *Battling Ingroup Bias with Effective Intergroup Leadership*, BRIT. J. SOC. PSYCH. (forthcoming 2021) (manuscript at 4) (finding that intergroup relational approach was most effective among study participants who demonstrated the highest levels of intergroup bias at the outset of the intervention).

200. Patricia G. Devine, Patrick S. Forscher, Anthony J. Austin & William T. L. Cox, *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCH. 1267, 1276–77 (2012).

201. See Jennifer M. Frank & Karen Rice, *Perceptions of Poverty in America: Using Social Empathy to Reframe Students' Attitudes*, 36 SOC. WORK EDUC. 391, 399 (2017) (describing positive results of a course designed to teach students about inequality, which increased the students' expressed empathy levels).

202. See Cikara et al., *supra* note 155, at 151–52 (noting that rigorous empirical studies on prejudice-reduction and conflict-resolution programs are quite rare and some programs have shown negative effects).

203. See SEGAL, *supra* note 132, at 191 (suggesting that empathy is, at least in part, a learned trait).

one's own limited horizon and significant efforts to learn beyond that horizon—and our society would benefit tremendously from encouraging this work.²⁰⁴ Yet, perhaps the more important lesson from the empathy literature concerns the challenges and limits to empathy's power to motivate prosocial action.²⁰⁵ Lack of close connection, psychic numbing, and social boundaries lead individuals in groups with greater privilege to experience reduced empathy or even schadenfreude towards those with less privilege who experience hardship.²⁰⁶ While the more encouraging research tells us that these barriers are not inevitable, they are common and unlikely to undergo dramatic change any time soon.

It should not be the obligation of the public at large, and especially not of those most negatively impacted by racial, ethnic and class inequalities, to teach empathy to lawmakers.²⁰⁷ Instead, it is reasonable to require empathic concern—concern that extends beyond those closely connected, past the individual to large numbers, and across racial, income and partisan boundaries—as a prerequisite for positions of power. Those who want to hold public office have a responsibility to choose boundary-crossing forms of empathy, to listen across those boundaries and educate themselves about the structural inequalities that shape people's lives *before* they assume power. This responsibility lies with all of those who hold a place of privilege in our society. As Isabel Wilkerson explains:

When an accident of birth aligns with what is most valued in a given caste system, whether being able-bodied, male, white or other traits in which we have no say, it gives that lottery winner

204. See, e.g., Persson & Savulescu, *supra* note 29, at 187–88 (stating that combining empathy with reflective reasoning can expand one's range of empathy). *But see* Tullmann, *supra* note 30, at 221–25 (expressing skepticism about empathy's value, but proposing asymmetrical reciprocity and enlarged horizons as tools to achieve empathy's goals).

205. See Cikara et al., *supra* note 155, at 150 (“While increased empathy can facilitate positive attitudes and prosocial behavior toward outgroups, there are circumstances in which empathy can backfire—making it important to understand when and why intergroup empathy breaks down.”).

206. See *id.* (“In general, people show dampened or even absent ‘matching’ neural and physiological responses when witnessing an outgroup member in physical pain.”).

207. See WILKERSON, *supra* note 153, at 386 (arguing that it is every individuals' responsibility to educate themselves in empathy).

a moral duty to develop [radical] empathy for those who must endure the indignities they themselves have been spared. . . . Radical empathy . . . means putting in the work to educate oneself and to listen with a humble heart to understand another's experience from their perspective, not as we imagine we would feel. . . . It is the kindred connection from a place of deep knowing that opens your spirit to the pain of another as they perceive it.²⁰⁸

However, the predictable empathy limitations of humans underscore the need to fill the halls of power with individuals who come from a wide range of social groups and circumstances, rather than the predominantly white, wealthy lawmakers and policymakers who currently inhabit those halls. Empathic prosocial action for communities of color and low-income communities is most likely to come from those who share their experiences.²⁰⁹

IV. Conclusion

This Article began with the hardships and uncertainty experienced by so many at Christmas, 2020. As my writing drew to a close in February 2021, a new and inequitable set of hardships struck residents of Texas.²¹⁰ Power outages and water issues during and after winter storms caused widespread adversity and misery.²¹¹ These hardships resulted in large part from deliberate policy choices at the state level, choices that left the power grid, essential to all Texans, vulnerable to winter weather.²¹² The winter

208. *Id.* at 385–86.

209. *See, e.g.,* Fabiola Cineas & Li Ahou, *8 First-term House Members Explain How They Plan to Prioritize Racial Justice*, VOX (Feb. 17, 2021, 8:00 AM), <https://www.vox.com/22268519/progressive-house-freshmen-policy-ideas-racial-justice> (noting that the Congressional Progressive Caucus includes members of communities of color and low-income communities) [perma.cc/E4AN-HFZZ].

210. *See, e.g.,* Reese Oxner, *Texans Now Face a Water Crisis after Enduring Days Without Power*, TEX. TRIBUNE (Feb. 19, 2021 5:00 PM), <https://www.texastribune.org/2021/02/19/texas-water-power-outages/> (“As Texas faced record-low temperatures this February and snow and ice made roads impassable, the state’s electric grid operator lost control of the power supply, leaving millions without access to electricity.”) [perma.cc/R4UJ-MCC3].

211. *See id.*

212. *See* Erin Douglas, Kate McGee & Jolie McCullough, *Texas Leaders Failed to Heed Warnings that Left the State’s Power Grid Vulnerable to Winter Extremes*,

storm and its resulting power and water issues have had their harshest effects on struggling Black and Latinx and low-income communities, including numerous deaths caused by the loss of power for oxygen tanks, carbon monoxide poisoning, and exposure to the cold.²¹³

Structural inequalities by race, ethnicity and class preceded the COVID-19 pandemic. Since the start of the pandemic, inadequate action at the federal level has failed to diminish, and has sometimes increased, those disparities.²¹⁴ Empathy seems like an obvious force to motivate prosocial action by government officials to assist those who have faced the greatest health, economic and psychological harms of the COVID-19 pandemic. Yet, they seem to have been limited by the barriers to empathy that blunt empathy's potential to motivate these prosocial actions. This was not inevitable: People can and should choose to overcome these limitations to empathy and prosocial action, particularly when they hold great power.

We do not, however, know how to inculcate empathic concern across hierarchical divides, especially in wealthy, white lawmakers, who may believe structural inequalities work to their advantage.²¹⁵ We would be well-served to demand that those who

Experts Say, TEX. TRIBUNE (Feb. 17, 2020), <https://www.texastribune.org/2021/02/17/texas-power-grid-failures/> (stating that Texas officials were aware that the power grid was vulnerable to the cold weather) [perma.cc/B77C-CQDA].

213. See N'dea Yancey-Bragg & Rick Jeris, *Texas' Winter Storm Could Make Life Worse for Black and Latino Families Hit Hard by Power Outages*, USA TODAY (Feb. 20, 2021, 1:21 p.m.), <https://www.usatoday.com/story/news/nation/2021/02/20/texas-ice-storm-blackouts-minorities-hardest-hit-recovery/4507638001/> (“[P]eople of color and low-income communities who were disproportionately affected by blackouts and burst pipes could now face the hardest journey to recovery.”) [perma.cc/D6WJ-W833]; see also Giulia McDonnell Nieto del Rio, Richard Fausset & Johnny Diaz, *Extreme Cold Killed Texans in Their Bedrooms, Vehicles and Backyards*, N.Y. TIMES (Feb. 20, 2021, 4:38 p.m.), <https://www.nytimes.com/2021/02/19/us/texas-deaths-winter-storm.html> (describing various fatalities that resulted from the cold weather in Texas and noting that many of the victims were already disadvantaged prior to the storm) [perma.cc/D3ZX-78CS].

214. See Valerie Wilson, *Inequities exposed: How COVID-19 Widened Racial Inequities in Education, Health, and the Workforce*, ECON. POL'Y INST. (June 22, 2020), <https://www.epi.org/publication/covid-19-inequities-wilson-testimony/> (discussing the disproportionate impact that the pandemic has had on communities of color) [perma.cc/5AGJ-GY67].

215. See SEGAL, *supra* note 132, at 170 (describing the development of

wish to seek public office develop their empathic capacities before they gain political power. Those who come from the communities most harmed by structural inequalities are most likely to have the needed empathic capacities and knowledge to better appreciate how structural inequalities undermine so many lives. We need their empathy and insights to guide us through this pandemic and beyond.

empathy as a lifelong process that is opaque and not yet completely understood).