



HIGH ROAD POLICY

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Prioritizing Racial Equity and Social Justice in New York State

As it draws to a close, there is growing consensus among pundits that 2020 will go down as one of the “worst,”¹ most traumatic² years in modern history. Defined by “converging crises”³ – from the COVID-19 pandemic⁴ and racial unrest⁵ to historic wildfires, multiple alphabets’ worth of hurricanes,⁶ and intensifying political polarization⁷ – it is easy to appreciate these claims. The simple truth is that Earth’s people and ecosystems suffered serious harms in 2020. And undoing the damage will require a lot more than flipping a calendar page. Indeed, passive page turning and hoping for a “bounce back” to “normal” conditions all but guarantees that more 2020s – more years of converging crises – will occur in the future, and with increasing regularity.⁸ To avoid this outcome, it is necessary to build and commit to follow, in the here and now, paths to transformational change along which institutions and systems that create and maintain inequity and environmental destruction⁹ are dismantled and replaced by new structures that unwaveringly advance the goals of equity, belonging, solidarity, democracy, self-determination, and social and ecological resilience.¹⁰

Charting out and building those pathways is a dynamic, evolving process that crisscrosses multiple spatial and temporal scales and is under constant threat of being extinguished by the

power structures that thrive in the status quo.¹¹ In other words, the task of effecting High Road¹² systems change is overwhelming even during periods of quietude,¹³ let alone from under the crushing weight of 2020’s intersecting economic, social, political, public health, and climate crises.

Yet, as much as crises and catastrophes destroy livelihoods and destabilize communities, they can also build solidarity.¹⁴ Moments of crisis and the “trigger events” that animate them are often key predictors of progressive social change.¹⁵ While there is almost always a delay between these trigger events and the changes that are at least partially motivated by them, such events tend to move public opinion – even if slowly and in ways that are not readily observable from the frontlines of movement actions.

On that note, although 2020 is on course to be remembered for tragedy and preventable loss of human life – both from COVID-19 and from police violence toward persons of color – it can also be the year that pushes a critical mass of people to support, if not actively join the fight for, a paradigm shift. One social movement where public support might be near a tipping point is the movement for racial justice frequently associated with Black Lives Matter (BLM)¹⁶ and the Movement for Black Lives (M4BL).¹⁷

In the two weeks following George Floyd’s murder in Minneapolis in late May 2020, American voters’ net favorability toward BLM experienced an explosive 17-percentage-point surge, to the point where support for BLM was 28 percentage points higher than the opposition – the widest margin on record.¹⁸ As the Pew Research Center reported, 67 percent of U.S. adults claimed to support BLM in June 2020, including 60 percent of adults who identified as White. What is more, between 24 May 2020 and the end of June, there were over 7,100 BLM demonstrations and protests across the nation, with at least one event taking place in each of the 50 states and the District of Columbia.¹⁹ In short, George Floyd’s death, and the numerous²⁰ “re-trigger” events²¹ that have happened since,²² moved public opinion.

According to experts on social movements, when 50 percent or more of the people in a jurisdiction reject current conditions in favor of an alternative paradigm, the window for substantive structural change (in contrast to mere placatory reforms) is open.²³ Crucially, however, that window is a small one, and it begins closing the instant it opens. If shifts in public opinion are not soon met by visible changes to policies and institutions, a movement risks losing the ground that the trigger events helped it gain. Because powerholders tend to actively resist any effort to transform the status quo that privileges them, this possibility of backsliding represents a serious threat to social movements. Namely, when members of the general public lose the sense of urgency that led them to support the movement, powerholders use their platforms to fuel apathy and sow division through various tactics to weaken the movement (e.g., offering tokenistic statements or reforms to pacify the less active public and encourage them to move on, demonizing the movement as becoming too extreme or “anti-American,” etc.).²⁴

Concerningly, the movement for racial justice in the U.S. is increasingly susceptible to these possibilities. In an update to its earlier study, Pew Research recently found that just 55 percent of

American adults supported BLM in September 2020, down from the 67 percent observed in June. Even more troublingly, only 45 percent of adults who identified as White reported support for BLM in Pew’s follow-up survey – a 15-point drop-off relative to three months earlier.²⁵

One takeaway from these observations is that the window for big structural changes to advance racial equity and social justice at a broad scale – a window that was thrust open by dramatic trigger events in 2020 – is at risk of closing. To avert that scenario, allies in power must act now to meet public demands from the 2020 demonstrations with a steady, tangible supply of policy and institutional mechanisms to combat racial inequity and injustice. While this challenge applies to everyone in all realms of society (e.g., households, businesses, communities, governments), the remainder of this article zeroes in on state government, with a focus on New York State (NYS). As the Local and Regional Government Alliance on Race & Equity (GARE) observes a governments’ ability to coordinate peoples’ behavior gives it “a key role in advancing racial equity.”²⁶

Below, the article expands on how the NYS Legislature can embrace that role in a big way, by, among other things: (1) requiring that relevant policy proposals, discretionary decisions, and actions of government agencies in NYS undergo participatory equity impact analyses before they can take effect; and (2) establishing and funding an Office of Racial Equity and Social Justice that (a) issues regulations and guidelines – and provides technical assistance to state and local agencies – on matters relating to equity impact analyses, (b) oversees the creation of a community-driven, context-sensitive, statewide racial equity and social justice action plan, (c) monitors progress and implementation of that plan, and (d) provides technical assistance on racial equity and social justice action planning to local governments.

The next section situates these policy instruments within the framework of “targeted universalism” that scholars and activists developed to guide public sector social, racial, economic, and environmental justice initiatives.²⁷ From there, the article spotlights two separate racial equity proposals that were introduced to the NYS Legislature in early 2020. The final section outlines opportunities for these two erstwhile independent proposals to be amended so they might work together and reinforce one another, thereby building a sturdy foundation on which NYS’s public sector can consistently, consciously, and continuously advance racial equity and social justice across the State of New York.

Transforming Government for Racial Equity

Elsewhere in *High Road Policy*, we argued that there are at least three interconnected strategies needed to set off transformational change and move toward a more equitable, anti-racist, cooperative, democratic, and sustainable social-ecological system: Prefiguration, Disruption, and Capture.²⁸ The latter of these strategies, Capture, involves systematically infiltrating and then progressively rewiring the goals, strategies, norms, policies, and practices of existing (inequitable) institutions, until those institutions become engines for producing and reinforcing an equitable, democratic society.²⁹

Though it need not always be the case, Capture can be a method for institutionalizing gains made when a movement’s Disruptive tactics (e.g., demonstrations and protests) shift public opinion toward the movement’s vision for society.³⁰ More specifically, when organizations or institutions are under heavy pressure from Disruptive tactics, they frequently commit to internal changes to include or center new voices and perspectives in their decision-making processes. Consider, for example, that in the wake of widespread Black Lives Matter (BLM) demonstrations in

May and June 2020, powerful global firms like Google committed to supporting Black executives and achieving greater representation for persons of color on their executive boards.³¹ To the extent that these sorts of organization-level commitments are sincere and produce demonstrable improvements in racial equity over time, they can be seen as incremental steps along a broader path of Capture (though such outcomes are far from guaranteed).³²

Clearly, however, small steps need to be accompanied by giant leaps if a movement wishes to keep its agenda urgent and relevant for the general public. One of the largest and most visible leaps involves Capturing the institutions and structures of government (i.e., transforming them to proactively advance racial equity). Toward that end, the Local and Regional Government Alliance on Race & Equity (GARE) proposes a six-part strategic program for institutional change in government.³³

1. Use a racial equity framework. A governmental jurisdiction’s racial equity framework clearly articulates its vision for racial equity. The vision must emerge from a participatory process and be grounded in and centered on the experiences and aspirations of the jurisdiction’s diverse communities and population subgroups. Further, the framework should clearly explicate the differences between individual, institutional, and structural racism, and it must engage with the existence of implicit and explicit bias, distinguishing between their roles in inequitable outcomes. By specifying these elements in its framework, a government creates a foundational, shared understanding of racial (in)equity and how the government – and all of its agencies, leaders, staff members, etc. – can work to transform existing conditions into envisioned conditions.

2. Operate with urgency and accountability.

When change is framed as a priority and

the public feels that urgency, big things can happen, regardless of how slowly policy processes might have moved in the past. Consider, for example, the pace at which Congress crafted and passed the CARES Act to provide households, businesses, healthcare systems, and state and local governments with more than \$2 trillion in COVID-related federal support.³⁴ The bill earned swift bipartisan approval and was not derailed by common “how will you pay for it?” blockades from members who identify as fiscal conservatives. Urgency drives action. To create urgency, and to make powerholders accountable for making change, movements regularly use highly visible Disruptive tactics that encourage members of the public to reject the status quo.³⁵

3. Build organizational capacity. Adopting a racial equity framework and taking actions at the top tiers of government is not enough. Social justice cannot be advanced with a one-size-fits-all approach. While an overarching racial equity framework for a parent jurisdiction (e.g., a nation or state) is a major step in the right direction, it is critical for the parent jurisdiction to provide resources and support that allow its sub-jurisdictions (e.g., local governments, school districts) to advance racial equity in ways that cater to their unique, place-based circumstances. Put another way, it is necessary to build “racial equity experts and teams” throughout all public agencies at all levels of government.

4. Partner with other institutions and communities. As GARE elegantly states, “the work of government on racial equity is necessary but not sufficient. To achieve racial equity, government must work in partnership with communities and other institutions to achieve meaningful results.”

5. Implement racial equity tools. The patterns of racial, social, and spatial inequities in society are “neither natural nor random – the have been

created and sustained over time.” As such, we need to design and implement tools that will actively reverse these patterns.

6. Be data-driven. To ensure that policy and institutional changes are working, it is important to (1) set measurable goals to which we aspire; and (2) define measurable indicators that allow us to track and monitor the extent to which our policies are moving us toward our aspirations. When these considerations are ignored, public resources are often wasted on developing and implementing policies that have negative or neutral effects on racial equity.

TARGETED UNIVERSALISM

One intentionally flexible policymaking framework in which the foregoing six strategies are positioned to succeed is targeted universalism. Targeted universalism was proposed by racial equity scholars and activists as an alternative to using the two most common variety of policy tools: (1) universal policies that aspire to treat everyone equally (i.e., the same), without regard to group status; and (2) targeted policies that make provisions to individuals who can document their membership to one of the specific groups to which the policies apply. An example policy that purports to be universal is the minimum wage – namely, with some exceptions (e.g., tipped employees), a minimum wage creates a legally binding floor for hourly compensation for work in a given economy.³⁶ An example targeted policy is one that allocates means-tested benefits (e.g., food stamps) to households with income levels that falls below a certain numerical thresholds.

It is beyond the scope of this article to debate the strengths and weaknesses of these two policy approaches. Rather, it is sufficient to note here that universal policies which treat everyone equally are sometimes inefficient (e.g., by allocating resources where they are not needed), and they tend to retain or exacerbate pre-existing racial inequities (i.e., if the original distribution

of resources is uneven and inequitable, then a universal policy that adds a constant level of benefits to each person's endowment will keep the uneven distribution in place). On the other side, targeted policies are often politically untenable due to entrenched, but misconstrued, perceptions that policies which provide benefits to some groups (e.g., Black, Indigenous and Persons of Color) at the exclusion of other groups (e.g., White persons) are unfair and illegitimate.³⁷

Acknowledging these and other weaknesses, John A. Powell and colleagues developed targeted universalism, a policy framework in which there is a global (universal) aspiration for all groups and communities, collectively, and that aspiration gets pursued through targeted policy instruments which are tailored to the unique circumstances and contexts of individual communities.

By definition, targeted universalism is about building inter-group and inter-community solidarity. The aim is to set broadly appealing, universal goals to make all groups or communities better off; and then to pursue those goals through mechanisms that are targeted to specific groups or communities based on each group's empirically observable distance from the envisioned, universal goals. The strength of this framework is that it does not play into group divisions by seeking to close inter-group "gaps" (e.g., the Black-White wealth gap) using targeted policies that tend to be politically controversial. Instead, targeted universalism challenges us to close the gaps that exist between each individual group/community and an overall collective aspiration, while acknowledging that the strategies and tactics will vary by group/community since each group or community is starting from a different place.³⁸

A QUICK EXAMPLE

To make this idea more concrete, consider the case of wages. Policymakers and analysts regularly flag the "Black-White wage gap"³⁹

(or "earnings gap"⁴⁰) and the need to fix it. Overwhelmingly, the discourse takes aim at metrics such as the median amount earned by a Black worker for every dollar earned by a White worker (for Black men, that number is just \$0.51 – an appalling figure that has remained mostly static since the 1950s).⁴¹ The action implied by these analyses is that powerholders should elevate the less advantaged group to the level of the advantaged group, thus "closing" the gap. For instance, policymakers might call on firms of a certain size to perform transparent pay equity audits that reveal the extent of their racial pay gaps. Using that data, policymakers could then require employers to progressively raise wages for workers of color until hourly compensation by occupation is equalized across all groups, and all racial (and gender) pay gaps are closed.

If the hypothetical scenario described above were to play out in reality, it would undoubtedly be met with resentment by some White workers. White workers might perceive the targeted policy actions to be unfair, in that they provide benefits – in the form of pay raises – to some groups and not others. This perception of unfairness (regardless of whether it is justifiable⁴²) would arguably cause greater inter-group animosity that, over time, might erode whatever solidarity and shared interests existed between the groups before the policy change.

Crucially, policies that cause society to become less solidaristic and more competitive are not High Road Policies.⁴³ A High Road, targeted universalism approach would operate much differently. Rather than focus on racial wage gaps in a particular place, a targeted universalist approach could call attention to the wage level that allows workers in that place to achieve a minimum standard of living (i.e., a living wage).⁴⁴ The approach might then establish a universal goal that 100 percent of workers in the region earn a living wage based on their household circumstances. Unlike closing inter-group wage

gaps, closing an overall “living wage gap” is not about raising pay for some groups while holding wages flat for other groups. The goal is to increase wages for all groups.

According to the Cornell University ILR Buffalo Co-Lab’s forthcoming Living Wage Atlas for New York State – which compares estimated hourly wages for full time workers to place- and household-specific living wage thresholds using data from the U.S. Census American Community Survey and MIT’s Living Wage Calculator⁴⁵ – 27.7 percent of full time workers in the Buffalo-Niagara metropolitan region earn less than a living wage. Breaking that figure down by race and ethnicity shows that 24.1 percent of White workers earn below a living wage, compared to 45.9 percent of Black, Indigenous and Workers of Color (BIPOC).⁴⁶ While there is a marked gap between White and BIPOC workers in the region, the goal should not be to “close” that gap by keeping 24.1 percent of White workers below a living wage while incrementally reducing the percentage of sub-living-wage BIPOC workers until it reaches 24.1 percent. The goal should be to use targeted instruments to begin moving both groups toward the universal goal of zero workers earning below a living wage. Given the much larger magnitude of sub-living-wage status for BIPOC relative to White workers, more and more aggressive targeted instruments are necessary to achieve the universal goal for the former (BIPOC) group. However, separate instruments would also be crafted to achieve the universal goal for the latter (White) group. Under targeted universalism, all groups and communities ultimately benefit, but at paces and degrees that reflect the empirical and contextual differences between each group’s current distance from the universal goal.

TOOLS FOR A TARGETED UNIVERSAL GOVERNMENT APPROACH TO ADVANCING RACIAL EQUITY

While targeted universalism might, in theory, sound like an appealing framework for advancing racial equity and social justice from within state

or local government, for the approach to work in practice there need to be institutions and infrastructure in place to support it. The Local and Regional Government Alliance on Race & Equity’s (GARE) six-part strategic program (see above) implicates at least three pillars for making targeted universalism work for racial equity.

First, a **comprehensive racial equity and social justice action plan** follows GARE’s first four recommendations.⁴⁷ Specifically, an effective equity plan: (1) articulates a clear, community-driven understanding of and vision for racial equity and social justice in a jurisdiction; (2) frames racial equity and social justice as urgent matters that cannot wait; (3) describes programs and parties responsible for cultivating a shared understanding of and commitment to racial equity and social justice among all employees and representatives of the government; and (4) involves, empowers, and networks local partners in planning, carrying out, and monitoring the jurisdiction’s shared vision for racial equity and social justice. For more information on developing a racial equity action plan, refer to GARE’s “how-to” manual that is linked in the bibliography.⁴⁸

Second, the development and adoption of **racial equity tools** attends to GARE’s final two recommendations:⁴⁹ to (5) implement racial equity tools and (6) be data-driven. Broadly speaking, a racial equity tool is any device that formally “integrates explicit consideration of racial equity in decisions, including policies, practices, programs, and budgets.”⁵⁰ One of the most common racial equity tools is an Equity Impact Assessment or Equity Impact Analysis (EIA). Similar to the Environmental Impact Assessments required under New York’s State Environmental Quality Review Act (SEQR), EIAs are systematic processes that, for any qualifying policy proposal or decision, require responsible parties to: identify and engage stakeholders; document racial inequities using quantitative and qualitative data; examine root causes of observed inequities

in participatory, community-driven settings; consider possible adverse impacts to affected racial groups or spatial communities; specify and compare alternatives; recommend alternatives that advance racial equity and address root causes of inequity; and identify indicators and processes for monitoring the results of decisions for signs of greater equity over time.⁵¹ Although an EIA must be modified for and adapted to the local contexts in which it applied, GARE’s own racial equity tool template suggests that all EIAs must answer at least six questions or clusters of questions:

- 1. Proposal:** What is the policy, program, practice or budget decision under consideration? What are the desired results and outcomes?
- 2. Data:** What’s the data? What does the data tell us?
- 3. Community engagement:** How have communities been engaged? Are there opportunities to expand engagement?
- 4. Analysis and strategies:** Who will benefit from or be burdened by your proposal? What are your strategies for advancing racial equity or mitigating unintended consequences?
- 5. Implementation:** What is your plan for implementation?
- 6. Accountability and communication:** How will you ensure accountability, communicate, and evaluate results?

Designing tools and guidelines for inclusive, participatory processes that answer these types of questions is indispensable from the project of advancing racial equity and social justice. Yet, because any given public agency might lack the capacity to take on this large and important responsibility in its own operations, at least one more pillar is needed to form a comprehensive racial equity initiative for government: a leadership organization. A **core racial equity organization** or leadership team is “responsible for designing,

coordinating, and organizing racial equity plan[ning] and activities across a governmental jurisdiction...that is [pursuing] equitable systems change.”⁵² This core entity is an official, formal organization that is authorized by the government to operationalize and oversee its commitment to equity – it is the jurisdiction’s “engine for change... moving a diverse community of people in a common direction, and building the movement and momentum to arrive at the destination of equitable outcomes.”⁵³

Together, a (1) community-driven racial equity and social justice action plan, (2) clear, robust, community-informed and collectively developed suite of equity tools, and (3) diverse, inclusive, representative core equity team, frame the superstructure in which a targeted universalist approach to racial equity can hatch, grow, thrive, and eventually spread its wings across the state (Fig. 1). The participatory visioning processes that inform a state’s strategic action plan establish the shared, universal goals for racial equity and social justice in that state. Clear and consistent equity tools allow agencies to operationalize those goals and monitor the extent to which all groups and communities in the state are moving toward the goals. And the core equity team establishes flexible guidelines and provides technical assistance for using equity tools, performing equity action planning, and monitoring progress in diverse local communities throughout the state, to ensure that local (targeted) actions and policies are moving all people and communities in the state toward the state’s universal goals.

Shortly after the widespread Black Lives Matter (BLM) demonstrations that were organized in response to George Floyd’s death in May 2020, several states took initial steps toward building the architecture described above. For instance, between June and September 2020, the governors in states like Vermont,⁵⁴ New Mexico,⁵⁵ and Oregon⁵⁶ empaneled racial justice advisory councils to, among other things, document

racial inequities and recommend principles, policies, and programs for advancing equity in their states. However, advisory councils tend to lack the authority and funding to engage in large-scale, community-driven action planning, or to set binding regulations. Thus, while the creation of these bodies is a starting point, their potential to catalyze transformational change remains uncertain. At the local level, places like King County, Washington⁵⁷ and Rochester, New York⁵⁸ have gone much farther (and much earlier – well before the summer of 2020), by creating and implementing strategic equity plans that use racial equity tools, and establishing core teams to offer guidance and technical assistance in action planning.

The upshot is that there are plenty of examples of governments building toward a superstructure like the one pictured in Figure 1. With that in mind, how might a state like New York, where the government currently lacks all three pillars, begin its own construction project? The final sections of this article argue that there is no need to start from scratch. Rather, two proposals that were introduced to the New York State (NYS)

Assembly during the 2019-20 legislative session contain valuable blueprints that, when combined and slightly modified, have the potential to make NYS a national model for transforming state government for racial equity.

Two Opportunities to Advance Racial Equity in New York State

Prior to the COVID-19 pandemic, two separate opportunities to advance racial equity and social justice in New York State (NYS) – via several of the mechanisms described hereinbefore – were introduced to the lower chamber of the State Legislature. Both proposals have since been referred to the NYS Assembly’s committee on Governmental Operations,⁶⁰ where they face the prospect of dying out if they are not deliberated and acted on by the committee’s membership. This section summarizes the basic elements and legislative intent of each opportunity, connecting them to the concepts and frameworks from above. The concluding section offers thoughts on how the two opportunities might be modified and adopted in concert to advance racial equity and social justice in NYS from within a targeted universalist framework.

OPPORTUNITY 1: EQUITY IMPACT ASSESSMENT

Racial equity tools are one of at least three pillars of a governmental program for advancing racial equity and social justice (Fig. 1). One of the most effective and widely recommended racial equity tools is the Equity Impact Analysis or Equity Impact Assessment (EIA).⁶¹ Recall that an EIA is a “systematic examination of how different racial and ethnic groups will likely be affected by a proposed action or decision...[It is] used to minimize unanticipated adverse consequences in...proposed policies, institutional practices, programs, plans and budgetary decisions.”⁶²

At present, NYS does not require its public agencies or legislative bodies to conduct EIAs for the actions or decisions that they propose to

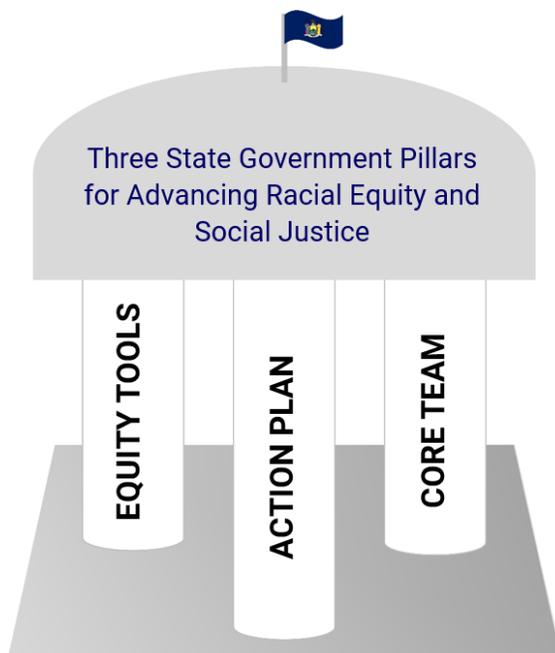


Figure 1. Three pillars of a state government racial equity and social justice program (inspired by GARE⁵⁹)

undertake. A bill introduced to the NYS Legislature by Assembly Member Latrice Walker (D-NY 55) could change that reality. Specifically, NYS Bill A03422 calls for an EIA to be performed for any “qualifying bill” introduced to the NYS Assembly or Senate that might “have adverse disparate effects on minority groups.”⁶³ The output of any EIA – a report called an “equity impact statement” – would then be appended to each qualifying bill and made available for public comment. In cases where equity impact statements or public comments reveal substantive adverse impacts, the legislative sponsor must either (1) amend the bill to mitigate those impacts, (2) or submit, as an attachment to the bill, a written statement detailing their justification for advancing the bill vis-à-vis evidence of adverse impacts.⁶⁴ Thus, while the EIA requirement could result in amendments or negative publicity for a given inequitable legislative proposal, bill A03422 does not include provisions to definitively block that bill from being put to a vote.

Observe this EIA requirement applies to “qualifying bills” that are anticipated to alter the composition of one of three enumerated “affected populations”:

- *Correctional population*: “persons incarcerated in, but not limited to, prison, jail, or facilities operated by the office of children and family services, and persons supervised in the community including, but not limited to, persons on probation, parole, post-release supervision, or persons supervised by the office of children and family services”;
- *Public assistance population*: “persons who receive public assistance or welfare including, but not limited to, family assistance, safety net assistance, veteran assistance, medical assistance for needy persons, institutional care for adults and childcare”; and
- *Child welfare population*: “children [under eighteen years old] placed in out-of-home care, foster care, or kinship care.”

The bill goes on to define “minorities” as persons who are “members of” racial or ethnic groups other than Non-Hispanic/Latinx White persons. The EIA requirement from the bill is triggered for any proposed legislation that might increase the “minority” share of one or more of the “affected populations” listed above. The intent here is both transparent and well-reasoned. Namely, the bill recognizes that “minority” persons are “overrepresented in” the three “affected populations.” Hence, any new legislation must ensure that this overrepresentation does not increase in magnitude.⁶⁵ This argument is consistent with the stock-and-flow logic⁶⁶ of systems thinking⁶⁷ – explicitly, if the stock of interest is the number of “minority” persons in the “affected populations,” then one way to keep the size of that stock in check is to decrease the flow of “minority” persons into the “affected populations.” Legislation that could result in [disproportionately] more minority persons flowing into an affected population would exacerbate existing inequities and should not be pursued.

For all the clarity and quality in this justification, the bill is potentially vulnerable to the same critique leveled against almost all targeted policies (see above). That is, the bill’s framing tends to focus on closing racial gaps in three affected populations. One feasible way to achieve that objective is to block new legislation that would add more minority persons to those populations (i.e., the purpose of bill A03422). Another way, which is technically feasible under bill A03422, is to allow legislation that increases the number of White persons in the affected populations. Whereas the former describes a desirable outcome, the latter possibility could undermine both support for the bill among legislators and a more universal goal of, say, reducing the size of all three “affected populations” to zero over time.

The above is not to say that bill A03422 is too controversial or far-reaching. In fact, as outlined below, it has room to be even more ambitious.

The point is that to institutionalize EIA and other racial equity tools in NYS government, it may be advantageous to adopt a targeted universalist framework. Recall that, under targeted universalism, universal ends of social justice and equity are pursued through targeted means that reflect the empirical differences between communities and population subgroups. Successfully constructing those targeted, context-sensitive means hinges on the results from participatory equity analyses and related exercises. In that sense, a bill requiring public agencies or legislative bodies to perform EIAs prior to taking qualifying actions or making qualifying decisions is simply a way to implement a statewide, universal vision for equity and social justice (as such, the scope of that bill should be broad, much like the scope of the State Environmental Quality Review Act [see below]). When viewed from that angle, a bill like A03422 becomes less about closing targeted gaps, and more about pursuing universal goals. It is an essential pillar in a program for transformational change (Fig. 1) – but one that cannot stand alone. For it to realize its fullest potential for systems change, the institutionalization of EIA must be linked to a comprehensive, community-driven vision and strategic action plan for racial equity and social justice. And, to create that universal vision and action plan, it is necessary to establish and empower a formal, core racial equity organization or leadership team.

OPPORTUNITY 2: A NEW YORK STATE OFFICE OF RACIAL EQUITY AND SOCIAL JUSTICE

Months before the widespread eruption of Black Lives Matter (BLM) demonstrations in summer 2020, NYS Assembly Member and Majority Leader Crystal Peoples-Stokes (D-NY 141)⁶⁸ introduced bill A10319 to the NYS Legislature, calling to establish a formal, statewide Office of Racial Equity and Social Justice (ORESJ).⁶⁹ Following the aforementioned recommendations from the

Local and Regional Government Alliance on Race & Equity (GARE) to “use a racial equity framework” almost exactly, the bill clearly defines and distinguishes between individual, institutional, and structural racism, and names race as an artificial social construct that presently and unfairly acts as a predictor of individual success and life outcomes in NYS:

- “*Equity* means fair and just opportunities and outcomes for all individuals.
- *Social justice* means every individual deserves to benefit from the same economic, political and social rights and opportunities, free from health disparities, regardless of race; socioeconomic status; age; sex, including on the basis of gender identity or orientation; religion; disability; or other characteristics.
- *Race* means a social construct that artificially divides people into distinct groups based on characteristics such as physical appearance, including color; ancestral heritage; cultural affiliation; cultural history; ethnic classification; and the social, economic and political needs of a society at a given period.
- *Inequity* means systematic and patterned differences in well-being that disadvantage one group in favor of another caused by past and current decisions, systems of power and privilege, and policies.
- *Individual racism* means explicit or implicit pre-judgment bias or discrimination by an individual based on race.
- *Institutional racism* means policies, practices, and procedures that work better for some members of a community than others based on race.”⁷⁰

The bill then advances a baseline, statewide, universal vision for pursuing racial equity and social justice through “changes in policy, practice

and allocation of state resources so that race or social justice constructs do not predict an individual’s success, while also improving opportunities and outcomes for all people” (emphasis added).⁷¹ In this statement, bill A10319 unequivocally calls on state government to adopt a targeted universalist approach to improving quality of life for all New Yorkers that acknowledges, diagnoses, and targets the uneven and inequitable patterns of opportunities and outcomes that currently exist throughout the state.

Importantly, the ORESJ would not be an advisory committee with nonbinding authority like recent examples from other states (see above). Instead, it would be an official division of the Executive Department with a dedicated director, staff, and budget, and with binding powers. The powers and duties of the Office would include:

- “To act as the official state planning and coordinating office for changes in policy, practice and allocation of state resources so that race or social justice constructs do not predict an individual’s success, while also improving opportunities and outcomes for all people, and performing all necessary and appropriate services required to fulfill these duties.
- To establish, oversee, manage, coordinate and facilitate the planning, design and implementation of the state’s racial equity and social justice action plan, such plan shall incorporate and embed racial equity and social justice principles and strategies into operations, programs, service policies and community engagement to eliminate inequity, institutional racism and individual racism in the state, and shall include racial equity and social justice training for all state employees.
- To advise and assist the state agencies in developing policies, plans and programs for eliminating institutional racism and improving racial equity and social justice.
- To perform racial equity and social justice reviews and make recommendations for improving management and program effectiveness pertaining to racial equity and social justice, including, but not limited to, an annual racial equity and social justice impact statement which shall accompany the executive budget.
- To establish, oversee, manage a racial equity and social justice advisory committee, the composition and duties of such committee as determined by the director” (emphases added).⁷²

For these reasons, bill A10319 provides precise blueprints for creating – in essentially the exact form advocated above – two of three necessary pillars of a state government superstructure for advancing racial equity and social justice (Fig. 1). The ORESJ would oversee the creation of a community-engaged, shared vision for racial equity and social justice, provide direct education on that vision to public agencies and government employees, establish guidelines and provide technical assistance on using equity tools, develop a statewide strategic action plan, and monitor progress toward that plan, all while holding individual public agencies accountable when they do not meet the plan’s shared goals and objectives. Even more fundamentally, the remit of the entity is to improve life and community-level outcomes for all New Yorkers from within a targeted universalist framework that is sensitive to inter-group and place-based differences. For these reasons, bill A10319 is a model High Road Policy⁷³ whose passage would rapidly accelerate the movement for racial and social justice in NYS. To hasten progress even further, the proposal could be coupled with legislation based on the Equity Impact Assessment bill (A03422 – covered in the previous subsection) to firmly install all three pillars of racial equity and social justice in New York State’s public sector.

Moving Forward: Toward a New York State Racial Equity and Social Justice Review Act (RESJRA)

When the New York State (NYS) Legislature decided that “the protection and enhancement of the environment...should be given appropriate weight...in determining public policy...[and] reaching decisions,” it passed the State Environmental Quality Review Act (SEQR).⁷⁴ SEQR requires that “most projects or activities proposed by a state agency or unit of local government, and all discretionary approvals (permits) from a NYS agency or unit of local government,” undergo an environmental impact assessment.⁷⁵ The NYS Department of Environmental Conservation (DEC) issues guidelines and regulations on the SEQR process and provides technical assistance to state and local agencies. It further publishes detailed manuals, complete with decision trees and answers to frequently asked questions, which spell out the elements of environmental impact assessment and what to do when an environmental review suggests that a policy or project will have adverse ecological impacts.⁷⁶

The SEQR model, in which the DEC acts as a coordinating, regulating, and technical assistance office that helps facilitate legislatively mandated environmental impact assessments, is an instructive one for advancing racial equity and social justice in NYS. Consistent with targeted universalism, SEQR begins by laying out a shared, universal vision for the state government’s role in protecting New York’s ecosystems:

“all [public] agencies [in NYS] conduct their affairs with an awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and all future generations.”⁷⁷

While all agencies are responsible for moving toward that collective vision, each agency is

granted the flexibility to meet SEQR obligations in ways that are sensitive to their specific contexts and operations. If any agency abuses that flexibility and fails to comply with SEQR, then affected citizens, coalitions, or organizations are eligible to take legal action against the transgressing agency – potentially resulting in the controversial decision/action being blocked or remedied.⁷⁸

At least three lessons from the SEQR model stand out for the purposes of this article. First, **SEQR’s universal vision is advanced by making environmental review requirements near universal in scope.** Stated more plainly, SEQR applies to “all agencies of government at the state, county, and local level within New York,” where state agencies include any “department, agency, board, public benefit corporation, public authority, or commission.”⁷⁹ Any time any such agency makes a “discretionary decision...to approve, fund, or directly undertake an action that may affect the environment,” SEQR’s environmental review provisions are triggered and the agency must perform an environmental impact assessment.

With that in mind, recall that the Equity Impact Assessment (EIA) bill currently sitting in the Assembly’s governmental operations committee (bill A03422) is relatively narrow in scope, applying only to proposals introduced to the Legislature and only when such proposals might increase the “minority” share of one or more “affected populations,” of which three are specified (see above). For the bill to develop into a more complete “equity tools” pillar for NYS (Fig. 1), its scope might broaden so that an EIA is required any time a legislative proposal *or* discretionary decision of any public agency in NYS could affect the gap between a given group’s/community’s status and some universal vision(s) for success articulated in a statewide racial equity and social justice action plan.

Second, **even though SEQR is self-enforcing, a formal statewide organization serves as its caretaker by issuing regulations and providing guidance on the process.** Public agencies depend on the DEC for education and answers on how an environmental review should operate, what to do if a review reveals potentially adverse impacts, and how environmental reviews advance the shared goal of protecting New York’s ecosystems. If the DEC did not perform these functions, environmental review processes would be more piecemeal and less effective. It follows that for EIA to be properly institutionalized throughout NYS government, a dedicated agency like the proposed Office of Racial Equity and Social Justice (bill A10319) is required.

Finally, **the self-enforcing nature of SEQR gives it valuable flexibility to be adapted to agency- and case-specific contexts, but at the potential cost of accountability.** More precisely, despite acting as a caretaker for SEQR, the “DEC has no authority to review the implementation of SEQR by other agencies...there are no ‘SEQR Police.’”⁸⁰ As such, SEQR noncompliance can only be enforced by “citizens or groups who can demonstrate that they may be harmed by” a SEQR violation.⁸¹ Because demonstrating legal standing to bring a SEQR challenge is not always straightforward,⁸² the degree to which public agencies are accountable to SEQR can exhibit considerable spatial and temporal variation. The lesson for racial equity analysis is that self-enforcing EIA processes ought to be subject to review and approval by the Office of Racial Equity and Social Justice (ORESJ) when circumstances warrant it. For instance, in cases where citizens or groups raise issues of impropriety in an EIA but lack the capacity or technical expertise to demonstrate legal standing, the ORESJ could intervene to perform a review, unburdening citizens from having to engage in lengthy (and possibly costly) legal confrontations.

Taken together, these lessons implicate a minimum of four substantive – admittedly complex – steps for transforming NYS government into an engine of racial equity and social justice (refer to Fig. 1):

1. **Establish the core equity organization:** Adopt NYS Bill A10319 to create a statewide Office of Racial Equity and Social Justice (ORESJ).
 - a. Consult with appropriate parties – including community-based organizations and relevant professionals – to determine a reasonable annual budget for the ORESJ given its duties and responsibilities.
 - b. Emphasize and embrace the urgency of racial and social justice in NYS, and allocate funds in the requisite amount.
2. **Use equity tools:** Amend and adopt NYS Bill A03422 to require that an EIA be performed for any legislative proposal of or discretionary decision by a public agency that may affect the extent to which “race or social justice constructs...predict” individual-, group-, or community-level success in NYS.⁸³ The modified version of the bill could be modeled after SEQR and reframed as the State’s Racial Equity and Social Justice Review Act (RESJRA), thereby acknowledging its consistency with (and precedent in) existing laws. Much like the DEC’s role in SEQR, the ORESJ can be the entity responsible for issuing RESJRA regulations and establishing guidelines
3. **Adopt a vision and action plan for equity:** Empower the ORESJ to oversee a deeply inclusive, participatory process that results in a comprehensive racial equity and social justice vision and action plan for NYS. Acknowledging the ORESJ’s mandate to improve outcomes and opportunities for all New Yorkers, the vision must be a universal one that is implemented through context-sensitive, targeted strategies and tactics.

4. **Implement the vision:** Following SEQR, phase in the RESJR process over a two-year period to allow public agencies time to adjust their practices and procedures in alignment with the RESRJ law.⁸⁴ Provide the ORESJ with the authority to check for local compliance with RESRJ and hold agencies accountable when their policies or decisions violate RESRJ.

The essential ingredients for this recipe are almost all already sitting in the Legislature's kitchen in the form of bills A03422 and A10319. With the policy window for big structural changes potentially closing (see above), it is necessary to start baking a new, more equitable system now, before the ingredients reach their expiration dates.

Russell Weaver, PhD, is a geographer and Research Director at the Cornell University ILR Buffalo Co-Lab. He is the lead author of *Shrinking Cities: Understanding Urban Decline in the United States* (Routledge Press). Contact: rcweaver@cornell.edu

About High Road Policy

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