

The Public Mental Health Framework: thinking about law as preventive medicine

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ABSTRACT

Health, mental health, and well-being are not ‘natural’ but are shaped by social and environmental factors. This article aims to reorient the development of all laws and policies to do more to prevent mental ill-health and promote well-being as a core function of the contemporary state. It introduces a new conceptual and empirical model, the Public Mental Health Framework, based on three areas of research: (i) the social determinants of health and mental health, which include social structures and daily living conditions (such as poverty, inequality, education, employment, discrimination, adverse childhood experiences, and crime); (ii) health and human rights; and (iii) the intermediate social model of disability. It then explains how the Public Mental Health Framework can be incorporated into law and policy development through parliamentary analysis similar to that used for ‘statements of compatibility’ in the *Human Rights Act 1998* (UK) and legislation such as the *Wellbeing of Future Generations (Wales) Act 2015* (Wales), interdepartmental administrative structures, proactive strategic planning, and continued advocacy.

KEYWORDS: human rights; law and policy-making; mental health; social determinants of health and mental health; social model of disability; well-being

I. INTRODUCTION

Health and mental health outcomes for both individuals and populations are more than the natural or inevitable consequence of luck, genes, or personal choices.¹ Contrary to the individualist biomedical framing of popular opinion, clinical medicine, and medical law,² scientific evidence is mounting that health and mental health are in fact ‘determined’ by a

¹ World Health Organization, *Social Determinants of Health* (2022) <www.who.int/health-topics/social-determinants-of-health> accessed 6 March 2024.

² John Coggon and Beth Kamunge-Kpodo, ‘The Legal Determinants of Health (in)Justice’ (2022) 30 *Medical Law Review* 705, 708.

number of external social and environmental factors.³ These factors are known as the social determinants of health and mental health.⁴ While there are different models of social determinants (discussed below), all typically hold that health and mental health are determined by structural factors such as socioeconomic position, the ‘inequitable distribution of money, power and resources’, as well as the circumstances in which people are ‘born, grow, live, work, and age’.⁵ Examples of social determinants include poverty, inequality, homelessness and housing availability, education, discrimination, adverse childhood experiences (ACEs), crime and violence, unemployment and work stress, disadvantaged neighbourhoods, and unhealthy environments.⁶ While access to medical care is itself also an important social determinant,⁷ wider social and environmental conditions have historically been as powerful, if not more powerful, in advancing health and mental health as medical treatments have been in curing disease.⁸ Indeed, it has been estimated that the social determinants of health and mental health make up 40–65 per cent of modifiable health outcomes, while clinical interventions only account for 10–20 per cent, making the social determinants *the* twenty-first-century challenge.⁹

Furthermore, the coronavirus disease 2019 (COVID-19) pandemic has highlighted the way society, law, and public policy can produce health and mental health outcomes. It has demonstrated the power of successful public health interventions¹⁰ and the devastating consequences of policy failure.¹¹ It has also amplified the fault lines of social and health inequity,¹² including how social changes and loss of supports are associated with mental ill-health and suicide.¹³

However, despite the COVID-19 pandemic, previous attempts to implement the social determinants by some governments¹⁴ and their enormous potential to improve health, mental health, and longevity, research on the social determinants has not translated into significant real-world gains in health, well-being, or health equity.¹⁵ Therefore, in 2019, the *Lancet/O’Neill Georgetown University Commission on the Legal Determinants of Health* sought to illustrate the power of law to ‘set norms and standards, translating broad visionary principles into concrete actions’¹⁶ to implement the social determinants of health, while also reinforcing that law is itself an important social determinant.¹⁷ In a landmark report, the

³ Paula Braveman and Laura Gottlieb, ‘The Social Determinants of Health: It’s Time to Consider the Causes of the Causes’ (2014) 129 *Public Health Reports* 19, 20.

⁴ World Health Organization (n 1).

⁵ Commission on Social Determinants of Health, *Closing the Gap in a Generation: Health Equity through Action on Social Determinants of Health* (World Health Organization 2008) 1, 2, 14.

⁶ World Health Organization (n 1).

⁷ Commission on Social Determinants of Health (n 5) 1.

⁸ Braveman and Gottlieb (n 3) 20.

⁹ Vincent Morelli and Joel J Heidelberg, ‘Twenty-First Century Challenge: Social Determinants of Health’ (2023) 50 *Primary Care: Clinics in Office Practice* xx; Angela Donkin and others, ‘Global Action on the Social Determinants of Health’ (2018) 3 *BMJ: Global Health* 1 <https://gh.bmj.com/content/3/Suppl_1/e000603> accessed 5 April 2024.

¹⁰ Marcus Plescia and others, ‘A Pandemic Success Story: Distribution and Administration of COVID-19 Vaccines’ (2022) 28 *Journal of Public Health Management and Practice* 749.

¹¹ In the UK those impacts are still being investigated by the UK COVID-19 Inquiry: ‘About’ (*UK Covid-19 Inquiry*, 2022) <<https://covid19-public-inquiry.uk/about/>> accessed 24 April 2023.

¹² Clare Bambra, Julia Lynch, and Katherine E Smith, *The Unequal Pandemic: COVID-19 and Health Inequalities* (Policy Press 2021).

¹³ Naomi Wilson and others, ‘European Public Mental Health Responses to the COVID-19 Pandemic’ (2023) 33 *European Journal of Public Health* 87.

¹⁴ Alec Irwin and Elena Scali, ‘Action on Social Determinants of Health: A Historical Perspective’ (2007) 2 *Global Public Health* 235.

¹⁵ Lawrence O Gostin and others, ‘The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development’ (2019) 393 *The Lancet* 1857, 1857.

¹⁶ *ibid.*

¹⁷ *ibid.*

multi-disciplinary Lancet/O'Neill Commission proposed a four-part model based on the following principles: (i) harnessing law to implement the sustainable development goals (SDGs), especially universal health coverage; (ii) the governance of national and global health institutions; (iii) using law to implement evidence-based interventions, such as the social determinants of health; and (iv) building the legal capacity of health professionals and their relationships with health lawyers.¹⁸ The Lancet/O'Neill report, being the first of its kind and intended for a wide international audience, was understandably high-level. It provided little practical guidance about how law and policy should actually implement the social determinants of health and mental health beyond the health system. Such a strong focus on health care has sparked concerns of diverting attention 'from more challenging questions about inequalities and the legal interventions required to promote greater health equity and social justice'.¹⁹ It has also been criticized for failing to use a human rights framework.²⁰ Furthermore, the Lancet/O'Neill report was primarily focused on physical health, giving scant consideration to mental health.²¹

Therefore, the purpose of this article is to further develop the legal determinants, building on the third limb (using law to implement evidence-based interventions) and expanding on it to incorporate international human rights law and the intermediate social model of disability, by introducing a new conceptual and empirical model, the Public Mental Health Framework. While physical health, mental health, and well-being are all closely intertwined, I have decided to focus on the social determinants of mental health for the purposes of this article because they are less developed in the literature. Further, if it is not considered separately, mental health is usually quickly overshadowed by physical health issues and tends to be overlooked. In addition, mental ill-health has a high prevalence, affecting 970 million people worldwide,²² is the leading cause of years lived with disability (YLD),²³ can (unlike most physical conditions) result in detention in hospital and coercive treatment,²⁴ and many people are treatment-resistant or suffer from debilitating and permanent side effects from mental health treatments.²⁵ That said, it is likely that the implementation of the Public Mental Health Framework would also improve physical health, and there is no reason why a similar approach could not be adopted for physical health as well.

I argue that mental health law should be understood as being far wider than the stand-alone Mental Health Acts that regulate involuntary detention and psychiatric treatment in most jurisdictions.²⁶ Rather, mental health law ought to be conceptualized more holistically as all laws that relate to mental health,²⁷ including a wide range of legislation and policies that impact almost every area of life including, employment, education, the criminal justice

¹⁸ *ibid.*

¹⁹ Michael Thompson, 'Legal Determinants of Health' (2022) 30 *Medical Law Review* 610, 613.

²⁰ Carmel Williams and Paul Hunt, 'Health Rights Are the Bridge between Law and Health' (2019) 393 *The Lancet* 1781.

²¹ Gostin and others (n 15). Mental health is only mentioned a few times in passing and primarily on page 1895 in relation to the criminal justice system and page 1890 in relation to the mental health system.

²² World Health Organization, *World Mental Health Report: Transforming Mental Health for All* (2022) 40.

²³ *ibid.*

²⁴ The exceptions being substituted decision-making and deprivation of liberty under the Mental Capacity Act 2005 (UK); Peter Bartlett, 'Rethinking the Mental Capacity Act 2005: Towards the Next Generation of Law' (2023) 86 *MLR* 1; 'Modernising the Mental Health Act: Increasing Choice and Reducing Compulsion' (UK Department of Health and Social Care 2018) 49 <www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review> accessed 5 May 2023.

²⁵ Oliver D Howes and others, 'Treatment Resistance in Psychiatry: State of the Art and New Directions' (2022) 27 *Molecular Psychiatry* 58; Tina Minkowitz, 'The United Nations Convention on the Rights of Persons with Disabilities and the Right To Be Free from Non-Consensual Psychiatric Interventions' (2007) 34 *Syracuse Journal of International Law and Commerce* 405.

²⁶ For instance, Mental Health Act 1983 (UK).

²⁷ Geneva Richardson, 'Reforming Mental Health Law: Principle or Pragmatism' (2001) 54 *Current Legal Problems* 415, 415.

system, child protection, equality and non-discrimination, social security, urban planning, affordable housing, and the environment. While, of course, governments already have many discrete and ad hoc laws and policies intended to regulate the precursors to mental ill-health, such as anti-discrimination legislation,²⁸ the Public Mental Health Framework provides a unifying conceptual structure to guide their development, not just individually but as a collective whole-of-society intervention, while also serving as an impetus for further research and action. The article concludes that the Public Mental Health Framework ought to be widely adopted as a legal and governance norm in the regular course of law and policy development, as part of a broader strategy to build mentally healthy societies. That is, societies designed to maximize mental health, well-being, and quality of life.²⁹ Just as the Lancet/O'Neill report was an appeal for health professionals to embrace the power of law,³⁰ this article is an invitation for *all* lawyers to engage with health and mental health research as an important public health tool. That is, to begin the process of thinking about law as preventive medicine.

In order to support these goals, the article adopts Coggon's multi-disciplinary approach of placing scientific research within a legal and philosophical context³¹ and is organized according to the following structure. First, I provide a brief overview of the Public Mental Health Framework as a way of thinking about how law and policy can be used to prevent mental ill-health and promote well-being. Then, I set out the three areas of research upon which the Public Mental Health Framework draws, being: (i) the social determinants of health and mental health; (ii) health and human rights with a focus on ACEs; and (iii) the intermediate social model of disability. Finally, I explain the significance of the Public Mental Health Framework in the development of all laws and policies through parliamentary analysis similar to that used for the *Human Rights Act 1998* (UK) and legislation such as the *Wellbeing of Future Generations (Wales) Act 2015* (Wales), interdepartmental administrative structures, proactive strategic planning, and continued advocacy.

II. OVERVIEW OF THE PUBLIC MENTAL HEALTH FRAMEWORK

Before digging into the details of the Public Mental Health Framework as a legal and empirical construct, it is desirable to give a brief description of what it is espousing as a whole. Specifically, the Public Mental Health Framework is based on three key concepts. First, that facilitating and promoting the health, mental health, and well-being of its citizens is an important function of the contemporary state, which ought to guide the implementation of all laws and policies. However, obligations can also extend to regulating non-state actors, including corporations, by acting on the 'commercial determinants of health'.³² The commercial determinants refer to 'the systems, practices and pathways through which commercial actors drive health and equity'.³³ Secondly, that the Public Mental Health Framework brings together research from three overlapping fields: the social determinants of health, health and human rights, and the intermediate social model of disability (which have been developing

²⁸ For instance, Equality Act 2010 (UK) ss 25–26.

²⁹ Helen Spandler and David Webb, 'The Social Model of Disability and Suicide Prevention' in Helen Spandler and others (eds), *Madness, Distress and the Politics of Disablement* (Bristol University Press 2022) 135, 157.

³⁰ Gostin and others (n 15) 1862, 1863.

³¹ John Coggon, 'Legal, Moral and Political Determinants within the Social Determinants of Health: Approaching Transdisciplinary Challenges through Intradisciplinary Reflection' (2020) 13 *Public Health Ethics* 41, 45.

³² Anna B Gilmore and others, 'Defining and Conceptualising the Commercial Determinants of Health' (2023) 401 *The Lancet* 1194 (n 16).

³³ *ibid* 1195.

separately for the last 20–30 years) to consider how the social determinants of mental health can be used to create and evaluate laws and policies designed to prevent mental ill-health and support well-being. It takes from public health a population perspective (although it also has effects at the individual level); a prevention orientation (ie, a concern with preventing mental ill-health, including not aggravating and alleviating existing mental ill-health); and a social justice commitment in that it envisages that a mentally healthy world will also be a fairer world.³⁴ It also conceptualizes the social determinants of mental health as often resulting from structural and systemic injustice.³⁵ Similarly, it draws from the health and human rights perspective the notion that mental health and human rights are intimately related, as well as an established international human rights framework and a growing health and human rights literature.³⁶ Thirdly, while it accepts the biopsychosocial model, it uses insights from the intermediate social model of disability to emphasize the importance of social (including legal) factors, lived experience, and disability perspectives in shaping and understanding mental health.³⁷ I expand on these key concepts in turn.

III. THE THEORETICAL AND EMPIRICAL BASIS OF THE PUBLIC MENTAL HEALTH FRAMEWORK: RESEARCH FROM THREE OVERLAPPING FIELDS

A. The social determinants of health and mental health

The social determinants of health and mental health provide the scientific evidentiary basis for the Public Mental Health Framework, drawing on extensive research in psychology, public health, and epidemiology.

The idea that health, mental health, and well-being can be influenced by social and environmental conditions goes back to ancient times³⁸ and is still evolving. In the nineteenth century, one of the founding fathers of epidemiology, Louis-René Villermé (1782–1863), demonstrated that death rates in Paris were not linked to the prevailing theory of Hippocratic miasma, but to rates of privilege and poverty.³⁹

1. *The social determinants of health*

However, it was not until the twenty-first century that the WHO intensified its focus on the social determinants of health, publishing the *Social Determinants of Health: The Solid Facts* report in 1999. Since then, the concept and composition of the social determinants have evolved into a number of different models. Initially, the social determinants of *mental* health were simply included as part of the social determinants of health, rather than having their own separate status (discussed below). The original Solid Facts Report (and the updated version in 2003) noted 10 important social determinants, including: (i) the need for policies to prevent people from falling into long-term disadvantage; (ii) how the social and

³⁴ See Lawrence O Gostin and Lindsay F Wiley, *Public Health Law: Power, Duty, Restraint* (University of California Press 2016) ch 1 for discussion of the conceptual basis of public health.

³⁵ Madison Powers and Ruth Faden, *Structural Injustice: Power, Advantage and Human Rights* (OUP 2019).

³⁶ Johnathan M Mann and others, 'Health and Human Rights' (1994) 1 *Health and Human Rights* 7, 13.

³⁷ Mike Oliver, 'The Social Model of Disability: Thirty Years On' (2013) 28 *Disability and Society* 1024; Tom Shakespeare, *Disability Rights and Wrongs* (Routledge 2006).

³⁸ Dorothy Porter, *Health, Civilization and the State: A History of Public Health from Ancient to Modern Times* (Routledge 1999) 12–17.

³⁹ Chantal Julia and Alain-Jaques Valleron, 'Louis-René Villermé (1782–1863), A Pioneer of Social Epidemiology: Re-Analysis of His Data on the Comparative Mortality in Paris in the Early 19th Century' (2011) 65 *Journal of Epidemiology and Community Health* 666.

psychological environment affects health; (iii) the importance of ensuring a good environment in early childhood; (iv) the impact of work on health; (v) the problems of unemployment and job insecurity; (vi) the role of friendship and social cohesion; (vii) the dangers of social exclusion; (viii) the effects of alcohol and other drugs; (ix) the need to ensure access to healthy food for everyone; and (x) the need for healthier transport systems.⁴⁰ In 2005, the WHO set up the Commission on the Social Determinants of Health (CSDH), which published a watershed report in 2008 entitled ‘Closing the Gap in a Generation’ that took a more conceptual view of the social determinants, focusing on improving daily living conditions (such as education, employment, and social protection) and overarching structural factors like the inequitable distribution of power, money, and resources, as well as the need for ongoing research and measurement.⁴¹ By 2010, the CSDH developed a more sophisticated and complex conceptual framework for the social determinants of health, which emphasized structural determinants such as the socioeconomic context (governance, macroeconomic policies, social policies, and cultural values) and an individual’s socioeconomic position, including aspects like ethnicity, gender, occupation, education, and income.⁴² It also included ‘intermediary determinants’ such as material living and working conditions and food availability, behavioural and biological factors (nutrition, physical activity, and consumption of tobacco and alcohol), and psychosocial factors (stressful living circumstances, relationships, and the level of social support).⁴³ In 2010, ‘The Marmot Review’ written for the English government emphasized six domains of social determinants: (i) giving every child the best start in life; (ii) enabling all children, young people, and adults to maximize their capabilities and have control over their lives; (iii) creating fair employment and good work for all; (iv) ensuring a healthy standard of living for all; (v) creating and developing healthy and sustainable places and communities; and (vi) strengthening the role and impact of ill-health prevention.⁴⁴ Progress (and lack of it) on implementing *The Marmot Review* was updated in 2020⁴⁵ and post-pandemic.⁴⁶ In the USA, *Healthy People 2030* emphasized social determinants in five domains, being: (i) economic stability; (ii) education access and quality; (iii) healthcare access and quality; (iv) neighbourhoods and built environments; and (v) the social community context.⁴⁷ Nevertheless, whatever model is used, it is clear that there are a number of recurring themes, namely that the social determinants involve higher level or ‘upstream’ conditions like government policies and socioeconomic status, as well as more immediate ‘downstream’ social conditions like work stress, poverty, housing affordability, and violence.⁴⁸ In 2011, the Rio Declaration embraced action on the social determinants of health as necessary for healthy, productive, and equitable societies.⁴⁹

⁴⁰ Richard Wilkinson and Michael Marmot (eds), *Social Determinants of Health: The Solid Facts* (World Health Organization 1998) 7.

⁴¹ Commission on Social Determinants of Health (n 5).

⁴² *ibid* 6.

⁴³ *ibid* 6.

⁴⁴ Michael Marmot and others, *Fair Society, Healthy Lives (The Marmot Review)* (Institute of Health Equity 2010).

⁴⁵ Marmot and others, *Build Back Fairer: The COVID-19 Review* (The Health Foundation and Institute of Health Equity 2020).

⁴⁶ *ibid*.

⁴⁷ Office of Disease Prevention and Health Promotion, ‘Social and Community Context’ (*Healthy People 2030*) <<https://health.gov/healthypeople/objectives-and-data/browse-objectives/social-and-community-context>> accessed 25 September 2023.

⁴⁸ Paul D Hastings, Amanda E Guyer, and Luis A Parra, ‘Conceptualizing the Influence of Social and Structural Determinants of Neurobiology and Mental Health: Why and How Biological Psychiatry Can Do Better at Addressing the Consequences of Inequity’ (2022) 7 *Biological Psychiatry* 1215, 1215–16.

⁴⁹ World Conference on Social Determinants of Health, *Rio Political Declaration on Social Determinants of Health* (2011).

2. *The emergence of the social determinants of mental health*

The social determinants of *mental* health as a separate construct, however, only emerged more recently (around 2010),⁵⁰ with interest exploding in the last 5 years, fuelled by the mental health crisis caused by the pandemic.⁵¹ The social determinants of mental health did not get specific attention from the World Health Organisation until its report in 2014.⁵² Therefore, the social determinants of mental health are less well refined than the social determinants of health, but there is wide agreement that they largely overlap.⁵³ Some definitions of the social determinants of mental health are quite broad. For instance, Ruth Shim notes, ‘broadly those factors that contribute to health and illness that are addressable through policy and programs, environmental change and both collective and individual decisions within society’.⁵⁴ That is, they are defined by their amenity to change (which is part of their attraction to policy-makers), rather than their origin. More recently, Jennifer Dykxhoorn and colleagues identified as many as 55 social determinants of mental health, organized into four levels: individual, family, community, and structural.⁵⁵ However, rather than being based on scientific research, those determinants were identified by asking participants what they thought the social determinants of mental health were and could more accurately be described as perceived causes of mental ill-health, whether or not they were caused by social factors.

A more manageable model of the social determinants of mental health has been developed by Merrill Rotter and Michael Compton, which has identified 16 categories of social determinants of mental health in four domains.⁵⁶ The first is described as highly detrimental US social problems (although they are also problematic elsewhere), being ACEs, discrimination and social exclusion, violence, and criminal justice involvement.⁵⁷ The second is related to socioeconomic status and opportunities for accruing wealth, such as low education attainment, unemployment and job insecurity, poverty, and income inequality.⁵⁸ The third is related to meeting basic needs, such as housing instability, food insecurity, and poor access to transport and healthcare.⁵⁹ Whereas the last group addresses issues surrounding the global and physical environment, such as an adverse built environment, neighbourhood disorder, pollution, and global climate change impacts.⁶⁰ The American Psychiatric Association has recently embraced this model and expanded it to include some factors that are specific to persons who already have mental ill-health (and presumably ensuring that it is not aggravated), such as recognizing stigma against persons with mental ill-health and psychiatric treatment and lack of mental health parity with physical healthcare.⁶¹ It also emphasized the importance of psychosocial factors like a lack of social connectedness, loneliness, social media,

⁵⁰ Fritz Handerer and others, ‘Scoping Review and Narrative Synthesis Comparing the Construct of SDH and SDMH: Matryoshka or Two Independent Constructs?’ (2022) 13 *Frontiers of Psychiatry* 1, 2.

⁵¹ Margarita Alegría and others, ‘Recent Advances on Social Determinants of Mental Health: Looking Fast Forward’ (2023) 180 *American Journal of Psychiatry* 473, 473.

⁵² Ruth S Shim and others, ‘Overview of the Social Determinants of Mental Health’ in Michael T Compton and Ruth S Shim (eds), *The Social Determinants of Mental Health* (American Psychiatric Publishing 2014).

⁵³ *ibid* 3.

⁵⁴ *ibid*.

⁵⁵ Jennifer Dykxhoorn and others, ‘Conceptualising Public Mental Health: Development of a Conceptual Framework for Public Mental Health’ (2022) 22 *BMC Public Health* 1407.

⁵⁶ Merrill Rotter and Michael T Compton, *The Social Determinants of Mental Health: A White Paper Detailing Promising Practices and Opportunities at the New York State Office of Mental Health* (New York State Office of Mental Health 2023) 4.

⁵⁷ *ibid*.

⁵⁸ *ibid*.

⁵⁹ *ibid*.

⁶⁰ *ibid*.

⁶¹ Dilip Jeste and others, *Report of the Presidential Task Force on the Social Determinants of Mental Health* (American Psychiatric Association 2022) 9.

immigration, and social despair.⁶² It noted that in addition to tackling risk factors for mental ill-health, it was important that the social determinants of mental health also recognized positive psychosocial factors that are necessary for building good mental health and well-being.⁶³

3. *The relationship between the social determinants of health and mental health*

Despite the broad congruity between the social determinants of health and mental health, there is some uncertainty about how the social determinants are thought to affect physical and mental health. Fritz Handerer and colleagues conducted a scoping review of the social determinants of health and mental health literatures to compare how the two constructs had been conceptualized by scholars.⁶⁴ They observed that overall the two constructs were not dissimilar with both being mediated by stress and health behaviours.⁶⁵ However, the social determinants of health were generally thought to have a more direct pathway on physical health and were conceptualized in a more concrete fashion (eg housing, transport, toxins), whereas the social determinants of mental health were conceptualized as being more indirect and abstract (eg social support and education), with psychosocial perception and appraisal processes acting as mediators.⁶⁶ Further, the social determinants when combined with individual social cognition skills (how people process social cues and recognize and moderate emotion) are stronger predictors of mental ill-health than classical psycho-physical antecedents of disorder such as the presence of chronic disease or poor cognitive skills.⁶⁷ In contrast, Michael Compton and Ruth Shim hypothesize that the effects of the social determinants on mental health may occur earlier before becoming visible in physical health.⁶⁸ Overall poor and disadvantaged groups tend to be more affected by mental ill-health with stressors and the effects on physical ill-health accumulating across the lifespan and over generations.⁶⁹ The precise relationship between the social determinants of health and mental health is a matter which could be explored in further research.

4. *How the social determinants of mental health inform the Public Mental Health Framework*

For the purposes of the Public Mental Health Framework, there are a number of aspects of the social determinants of mental health that are important for law and policy-making. The first is that the ‘social gradient’—which runs across all levels of society—means that it is not enough to simply address the needs of the lowest group, favouring the universalism of the welfare state with additional support for the more disadvantaged groups or ‘proportionate universalism’.⁷⁰ In particular, the effect of poverty on health and mental health is more than absolute material deprivation, but rather *relative* poverty within a society,⁷¹ indicating that the level of inequality and power differentials within each social hierarchy must be addressed. There has long been evidence that socioeconomic status (a composite measure based on income, education, and occupation) is inversely related to major depression, depressive symptoms, and hostility as well as physical symptoms, especially coronary heart

⁶² *ibid* 9–10.

⁶³ *ibid* 10.

⁶⁴ Handerer and others (n 50).

⁶⁵ *ibid* 8.

⁶⁶ *ibid* 10–11.

⁶⁷ Hernando Santamaría-García and others, ‘The Role of Social Cognition Skills and Social Determinants of Health in Predicting Symptoms of Mental Illness’ (2020) 10 *Translational Psychiatry* 165.

⁶⁸ Shim and others (n 52) 215.

⁶⁹ Margarita Alegría and others, ‘Social Determinants of Mental Health: Where We Are and Where We Need to Go’ (2018) 20 *Current Psychiatry Reports* 95, 96.

⁷⁰ Marmot and others (n 45) 8.

⁷¹ Mann and others (n 36) 17.

disease.⁷² The second is that the life-course approach reflects the different effects of the social determinants at different stages of the life course, as well as their cumulative effects over time.⁷³ In particular, the life-course approach stresses the salience of critical or sensitive periods, particularly in infancy, childhood, and prenatally.⁷⁴ Dilip Jeste and Vivian Pender note that one of the things that is unique to the social determinants of mental health is that most mental ill-health and substance abuse problems have an early age of onset (even if treatment does not occur until later), often in childhood and adolescence, which disrupts education, subsequent job opportunities, and income more so than for conditions with later onset.⁷⁵ Of course, the focus cannot be only on children without any consideration of the social determinants and stressors encountered by their parents, as parents who are under emotional and financial stress are more likely to engage in damaging behaviours, neglect, and be unable to meet their family's needs.⁷⁶ Thus, the social determinants must be thought of as being intergenerational.⁷⁷

Thirdly, many social determinants are cumulative and have a 'dose-response relationship', meaning that the greater the exposure, the greater the risk of developing mental ill-health, as well as a diagnosis that is more severe and difficult to treat.⁷⁸ Poverty and many social determinants can be thought of as being similar to toxins, which become more dangerous with greater exposure.⁷⁹ This means that it is not necessary to completely eradicate certain social determinants (and the difficulty in doing so should not be used as an excuse for inaction), as *any* reduction in exposure is valuable in reducing the risk of mental ill-health and promoting well-being.

Finally, the social determinants are not about displacing personal responsibility for behavioural choices, but rather about recognizing that the ability of individuals to control their self-care is dependent on wider social determinants.⁸⁰ For instance, it is difficult to eat healthy food if it is not available locally, is too expensive, or if life stressors are driving unhealthy food choices.⁸¹

B. Health and human rights

The health and human rights movement provides the Public Mental Health Framework with the normative basis, structure, and authority of international human rights law to reinforce the scientific evidential basis of the social determinants of mental health. While the relationship between health and human rights is contained in the WHO Constitution and numerous declarations and treaties, it was relatively unexplored until the emergence of the health and human rights movement in the mid-1990s. In 1994, Johnathon Mann and colleagues recognized that health and human rights were complimentary approaches for promoting human well-being.⁸² They proposed a ground-breaking tripartite conceptual

⁷² Nancy Adler and others, 'Socioeconomic Status and Health: The Challenge of the Gradient' in Jonathan Mann and others (eds), *Health and Human Rights: A Reader* (Routledge 1999) 181, 188.

⁷³ Commission on Social Determinants of Health (n 5).

⁷⁴ *ibid.*

⁷⁵ Dilip V Jeste and Vivian B Pender, 'Social Determinants of Mental Health: Recommendations for Research, Training, Practice and Policy' (2022) 79 *JAMA Psychiatry* 283, 283.

⁷⁶ James Kirkbride and others, 'The Social Determinants of Mental Health and Disorder: Evidence, Prevention and Recommendations' (2024) 23 *World Psychiatry* 58.

⁷⁷ Shim and others (n 52) 29.

⁷⁸ Carol Koplan and Anna Chard, 'Adverse Early Life Experiences' in Compton and Shim (n 52) 47, 55.

⁷⁹ Mary Jane Osmick and Marcella Wilson, 'Social Determinants of Health-Relevant History, a Call to Action, an Organisation's Transformational Story, and What Can Employers Do?' (2020) 34 *American Journal of Health Promotion* 219, 221–222.

⁸⁰ Marmot and others (n 45) 5.

⁸¹ Shim and others (n 52) 12.

⁸² Mann and others (n 36) 8.

structure for understanding the relationship between health and human rights.⁸³ First, that the state, through public health policies, programmes, and practices, can impact human rights (both positively and negatively), and that human rights need to be respected when the state and public health officials exercise their public health powers.⁸⁴ Secondly, that poor health outcomes are often the result of serious, multiple, and repeated human rights violations and thirdly, that health and human rights are inextricably linked.⁸⁵ For the purposes of the Public Mental Health Framework, the second and third propositions are of particular interest in terms of understanding how the social determinants of mental health are often a result of (and are strongly influenced by) problems with a range of human rights related to poverty, an adequate standard of living, housing, security of the person, children's rights, discrimination and inequality. The first proposition can also still be relevant. For instance, through the use of involuntary detention and psychiatric treatment on persons who already have mental health conditions and in terms of the mental health impacts of other public health measures, such as the public health response to the COVID-19 pandemic.⁸⁶

Over the last 20 to 30 years, health and human rights has matured and become a burgeoning field, deepening the understanding of both health and human rights. As noted by Alicia Yamin, rights-based approaches to health (as with the social determinants) have turned human suffering and health inequity from an inevitable natural occurrence into a matter of political choice and justice.⁸⁷ Human rights principles, such as paying attention to the legal and policy environment; participation; equality and non-discrimination; the availability, accessibility, acceptability, and quality of services; and accountability, have become standard in rights-based approaches to public health⁸⁸ and have become part of medical and public health education.⁸⁹ Health and human rights has its own journal, has inspired new professional forums, has sparked collaboration between human rights bodies and WHO, and become part of mainstream law and policy-making.⁹⁰ The right to the highest attainable standard of health has grown from a relatively unknown 'paper right' limited to civil and political rights to a rich and multi-layered hybrid right that is capable of being systematized and implemented in practice.⁹¹

Yet, despite their obvious overlap, the social determinants and health and human rights movements have failed to properly engage with the other.⁹² As Yvette Maker and Bernadette McSherry observe, both fields have been inhibited by the maintenance of disciplinary silos, a lack of exploration of common ground that examines the details of how the two perspectives interrelate, and a lack of interdisciplinary interest and expertise.⁹³ On the

⁸³ *ibid* 13.

⁸⁴ *ibid*.

⁸⁵ *ibid*.

⁸⁶ Kay Wilson, 'The COVID-19 Pandemic and the Human Rights of Persons with Mental and Cognitive Impairments Subject to Coercive Powers in Australia' (2020) 73 *International Journal of Law and Psychiatry* 101605.

⁸⁷ Alicia Yamin 'Will We Take Suffering Seriously? Reflections on What Applying a Human Rights Framework to Health Means and Why We Should Care?' (2008) 10 *Health and Human Rights* 45, 45–46.

⁸⁸ Laura Ferguson, 'Health Justice in the Context of Health and Human Rights' (2023) 113 *American Journal of Public Health* 182, 183.

⁸⁹ Benjamin Meier and others, 'Human Rights and Public Health: Deepening Engagement at a Critical Time' (2018) 20 *Health and Human Rights* 85, 88.

⁹⁰ Gillian MacNaughton, 'The Maturing Right to Health: Deeper, Broader and More Complex but Still Unequal' (2020) 22 *Health and Human Rights* 343, 344.

⁹¹ Paul Hunt and Gunilla Backman, 'Health Systems and the Right to the Highest Attainable Standard of Health' (2008) 10 *Health and Human Rights* 81, 82.

⁹² Audrey Chapman, 'The Social Determinants of Health, Health Equity and Human Rights' (2010) 12 *Health and Human Rights* 17, 17.

⁹³ Yvette Maker and Bernadette McSherry, 'Human Rights and the Social Determinants of Mental Health: Fostering Interdisciplinary Collaboration' (2024) 31 *Psychiatry, Psychology and Law* 1021 <<https://dx.doi.org/10.1080/13218719.2023.2243297>> accessed 5 April 2024.

one hand, the key reports on the social determinants of health and mental health noted above, including the Lancet/O'Neill Report on legal determinants, are not framed by human rights or rights discourse.⁹⁴ On the other hand, while a number of Special Rapporteurs and health and human rights scholars have called for greater cooperation between social determinants and human rights approaches, they have tended to focus on the operation of individual rights, particularly the right to health, rather than on how human rights can inform social determinants research and its application at higher policy and legal levels.⁹⁵ In particular, the need to address *relative* poverty and the deleterious effects of economic inequality on health and mental health across the social gradient has been largely ignored by health and human rights.⁹⁶ As Lisa Montel notes, social determinants approaches aim for substantive equality, rather than formal equality or the narrower non-discrimination protections in typical human rights legislation; human rights advocacy and remedies do not necessarily target systemic injustice.⁹⁷

Nevertheless, the strength of the Public Mental Health Framework is that it recognizes that the social determinants of health and human rights are mutually reinforcing and need greater collaboration and integration between them to be able to use law and policy to prevent mental ill-health and promote well-being.⁹⁸ Both are concerned with health inequity and human well-being.⁹⁹ Furthermore, as both approaches challenge power imbalances, vested interests, and systemic injustice, and involve some redistribution of resources to marginalized groups,¹⁰⁰ they need to unite to defeat a common enemy: neoliberalism.¹⁰¹ As Gostin and colleagues argue, the findings from scientific research (including on the social determinants) 'can strengthen political and public support for the enactment of public health laws (by giving an evidence-based rationale for their implementation)',¹⁰² as well as strengthening the philosophical links between law and health and countering 'nanny state' arguments.¹⁰³ The social determinants provide the evidence for scientifically backed and outcome-focused upstream public health interventions. Human rights, on the other hand, have the moral authority of being universally agreed values that are legally binding and operate within established international and regional human rights systems,¹⁰⁴ rather than relying on weaker ethical and economic claims. When scientific evidence is incomplete or indeterminate, human rights can provide a normative basis for action. Furthermore, unlike the social determinants, human rights define the rights-bearers, duty-bearers, and set clear standards with established accountability mechanisms to measure conduct, performance, and outcomes.¹⁰⁵ The practice of standard-setting, monitoring, and enforcement can form a bridge between the world of science and that of policy, principle, and law-making.¹⁰⁶

⁹⁴ Chapman (n 92) 18; Carmel Williams and Paul Hunt, 'Health Rights Are the Bridge between Law and Health' (2019) 393 *The Lancet* 178.

⁹⁵ Maker and McSherry (n 93).

⁹⁶ MacNaughton (n 90) 344.

⁹⁷ Lisa Montel, 'The Social Determinants of Health, Law and Urban Development: Using Human Rights To Address Structural Health Inequalities in Our Cities' (2022) 30 *Medical Law Review* 680, 702.

⁹⁸ Kay Wilson, 'Conceptualizing the Social Determinants of Mental Health Within an International Human Rights Framework: A Focus on Housing and Employment' (2024) 26 *Health and Human Rights Journal* 1.

⁹⁹ Montel (n 97) 687.

¹⁰⁰ Ferguson (n 88) 183.

¹⁰¹ Irwin and Scali (n 14) 244–248.

¹⁰² Gostin and others (n 25) 1896–1897.

¹⁰³ *ibid.*

¹⁰⁴ Paul Hunt and Gunilla Backman, 'Health Systems and the Right to the Highest Attainable Standard of Health' (2008) 10 *Health and Human Rights Journal* 81.

¹⁰⁵ *ibid.* 87.

¹⁰⁶ Ashley Schram and others, 'Advancing Action on Health Equity through a Sociolegal Model of Health' (2021) 99 *The Milbank Quarterly* 904, 912–913.

Human rights approaches require that states not only take action to redress living conditions and health systems, but also continually make improvements and ensure that the needs of vulnerable groups are not forgotten.¹⁰⁷ The human rights principle of participation in individual and policy decision-making, especially for persons with disabilities and mental health conditions, ensures that social determinants interventions are not just scientifically sound but have community buy-in.¹⁰⁸ It is often noted that social determinants interventions are often most successful when community groups pressure states to act¹⁰⁹; similarly, human rights groups and advocates are experienced at grass-roots organizing.¹¹⁰

Of course, it is difficult to explore the relationship between the social determinants and health and human rights movements without giving some special attention to the right to health, albeit acknowledging a general longstanding neglect of this right with respect to the highest attainable standard of mental health.¹¹¹ While much of the literature on the right to health and mental health is predominantly focused on health systems rather than prevention,¹¹² the Committee for the Convention on the Rights of Social Economic, and Cultural Rights, responsible for monitoring the implementation of the right to health, has acknowledged the importance of social and environmental conditions as part of the right to health. For example, in General Comment 14, the Committee reinforces that the right to health is dependent on many other rights and that the right to health is broader than medical care, including the underlying socio-economic factors necessary for a healthy life, such as food, housing, sanitation, and safe and healthy working conditions.¹¹³ While action on the social determinants of mental health requires a whole-of-government response beyond the health sector, health ministers, health departments, health researchers, and health workers have a central role in educating, advocating, and leading action on prevention in non-health sectors and society as a whole as part of the realization of the right to health and mental health.¹¹⁴

The synergy between social determinants and health and human rights approaches and how they can enhance each other for the purposes of the Public Mental Health Framework is best demonstrated by exploring an example. While there are many social determinants, for the purposes of this article, I focus on ACEs. I explore further examples of housing and employment elsewhere.¹¹⁵

1. ACEs

The treatment of children and young people, due to their vulnerability and developing brains, nervous, and immune systems can, as already noted, have serious effects on lifelong mental health and well-being.¹¹⁶ While Diana and Nikolas Rose have criticized the recognition of ACEs as targeting ‘specific, individualized, sites of risk’,¹¹⁷ when viewed collectively across the population, they can be conceptualized as a wider public mental health concern,

¹⁰⁷ Hunt and Backman (n 104) 89.

¹⁰⁸ Maker and McSherry (n 93) 7.

¹⁰⁹ Marmot and others (n 45) 135.

¹¹⁰ Ferguson (n 88) 183.

¹¹¹ Paul Hunt and Judith Mesquita, ‘Mental Disability and the Human Right to the Highest Attainable Standard of Health’ (2006) 28 *Human Rights Quarterly* 332.

¹¹² Andrew Molas, ‘Defending the CRPD: Dignity, Flourishing and the Universal Right to Mental Health’ (2016) 20 *The International Journal of Human Rights* 1264.

¹¹³ Office of the High Commissioner of Human Rights, CESCR General Comment 14: The Right to the Highest Attainable Standard of Health (art 12) (11 August 2000) UN Doc E/C.12/2000/4, paras 3–4.

¹¹⁴ Fran Baum, *Governing for Health: Advancing Health Equity through Policy and Advocacy* (OUP 2019) ch 4.

¹¹⁵ Wilson (n 98) 6–8.

¹¹⁶ World Health Organization (n 22).

¹¹⁷ Diana Rose and Nikolas Rose, ‘Is “Another” Psychiatry Possible?’ (2023) 53 *Psychological Medicine* 46, 50.

despite much individual variation.¹¹⁸ ACEs can be broadly defined as ‘inconsistent, stressful, threatening, hurtful, traumatic, or neglectful social interchanges experienced by fetuses, infants, children, or adolescents’.¹¹⁹ They can include poverty, hunger, abuse, neglect, family dysfunction, having a parent with mental ill-health such as post-natal depression, discrimination, maltreatment, and bullying.¹²⁰ The prevention of such experiences accords with the many provisions in international human rights law aimed at protecting children from poverty,¹²¹ neglect, violence and abuse, sexual abuse and maltreatment,¹²² exposure to hazardous work,¹²³ as well as rehabilitation and support post-abuse,¹²⁴ access to education,¹²⁵ and the care necessary for their well-being.¹²⁶

C. The intermediate social model of disability

The social model of disability is often hailed as the ‘big idea’ of the Disability Rights Movement¹²⁷ and is a political tool for theorizing and advocating the rights of persons with disabilities, which has been widely accepted (at least in some form) by governments, policy-makers, and disabled persons’ organizations worldwide.¹²⁸ The social model is best understood as a collection of approaches that focus on how social and environmental barriers ‘disable’ persons with various kinds of impairments.¹²⁹ Social models also reject the medical model, which views disability as being solely caused by biological limitations that the individual must struggle to overcome and which can only be resolved by medical treatment. While it is not expressly incorporated into the CRPD, social model concepts nevertheless underpin the entire treaty,¹³⁰ although there was some debate during the CRPD negotiations as to which social model should be preferred.¹³¹ The British or ‘Strong’ Social Model of Disability, which has been politically dominant, makes a distinction between a person’s bodily and mental impairment (which is regarded as neutral) and a person’s disability, which is regarded as being socially constructed as a result of various social, environmental, and attitudinal barriers and exclusions that oppress persons with impairments.¹³² The Strong Model emerged in the 1970s when a number of wheelchair user activists, including Vic Finkelstein, Paul Hunt, and Mike Oliver sought to form a union of disabled persons to highlight the social causes of disability and the segregation of persons with disabilities from mainstream economic and social life.¹³³ The model has subsequently expanded from physical impairments

¹¹⁸ Paula Braveman, ‘Social Conditions, Health Equity and Human Rights’ (2010) 12 *Health and Human Rights* 31, 34.

¹¹⁹ Koplan and Chard (n 78) 48.

¹²⁰ *ibid.*

¹²¹ UDHR, art 25; ICESCR, arts 10–11; Convention on the Rights of the Child 1989 (CRC) arts 24 (right to health), 26 (adequate standard of living).

¹²² CRC, arts 3 (institutional safety and separation from parents only where there is abuse and neglect), 19 (protection from violence, neglect, abuse, maltreatment, and exploitation), 34 (protection from sexual exploitation and abuse).

¹²³ ICESCR, art 10(3); *ibid* art 32.

¹²⁴ CRC, art 39.

¹²⁵ UDHR, art 26; International Covenant on Civil and Political Rights 1954 art 18; ICESCR, art 13; *ibid* art 28.

¹²⁶ CRC, art 3.

¹²⁷ Mike Oliver, ‘The Social Model of Disability: Thirty Years On’ (2013) 28 *Disability & Society* 1024.

¹²⁸ Colin Barnes, ‘Understanding the Social Model of Disability: Past, Present and Future’ in Nick Watson, Alan Roulstone, and Carol Thomas (eds), *Routledge Handbook of Disability Studies* (2nd edn, Routledge 2019) 14.

¹²⁹ Rannveig Traustadottir, ‘Disability Studies, the Social Model and Legal Developments’ in Oddny Mjoll Arnadottir and Gerard Quinn (eds), *The UN Convention on the Rights of Persons with Disabilities: European and Scandinavian Perspectives* (Martinus Nijhoff Publishers 2009).

¹³⁰ Rosemary Kayess and Philip French, ‘Out of the Darkness and into the Light: Introducing the Convention on the Rights of Persons with Disabilities’ (2008) 8 *Human Rights Law Review* 1, 7, 21.

¹³¹ Kay Wilson, *Mental Health Law: Abolish or Reform?* (OUP 2021) 25.

¹³² Raymond Lang, ‘The Development and Critique of the Social Model of Disability’ (University College London, Leonard Cheshire Disability and Inclusive Development Centre 2007) 3.

¹³³ *Aims and Policy Statement* (Union of the Physically Impaired against Segregation 1976) <<https://disability-studies.leeds.ac.uk/wp-content/uploads/sites/40/library/UPIAS-UPIAS.pdf>> accessed 11 January 2023.

to all impairments including mental ill-health.¹³⁴ The Strong Model rejects the notion of disability as a ‘personal tragedy’ in terms of loss of functioning, and rather views impairments as a form of natural human differentiation¹³⁵ and even pride.¹³⁶

However, the Strong Model is controversial and has been criticized for ignoring the disadvantage caused by the biological aspects of impairment and the lived experience of pain and restriction, which would not be rectified even in a perfectly non-discriminatory and inclusive society.¹³⁷ Therefore, some theorists, like Tom Shakespeare, take an ‘intermediate view’,¹³⁸ which conceptualizes the social model as an *interaction* between an individual’s impairment and their society and environment.¹³⁹ The intermediate social model is arguably more consistent with the ‘inclusive description’ of disability in Article 1 of the CRPD, which uses the language of interaction rather than the social constructionism of the Strong Model.¹⁴⁰ As Tom Shakespeare observes, ‘to accept—or even prioritise—wider structural change does not necessitate the abandonment of medical research or clinical interventions’.¹⁴¹ From this perspective, prevention (such as through the Public Mental Health Framework), medical treatment, rehabilitation *and* the removal of external barriers, provision of social supports, and legal measures to eradicate discrimination are all permissible.¹⁴²

Furthermore, some theorists argue that the social model has evolved since the CRPD to form the basis of the ‘human rights model’ of disability, although it can be difficult to distinguish between the two models.¹⁴³ Unlike the social model, the ‘human rights model’ also claims to take into account the disabling effects arising from the embodiment of impairment in response to the critique discussed above, although it is unclear exactly how it does so.¹⁴⁴

In the Public Mental Health Framework, the intermediate social model has a role in helping to strengthen the relationship between the social determinants of mental health and human rights while adding some of its own insights based on the lived experiences of persons with mental ill-health. In particular, there are three main contributions: (i) reinforcing the importance of changing social structures rather than solely relying on an individualized biomedical model; (ii) using the lived experiences of persons with mental ill-health as a way of reflecting on and understanding the role of the social determinants in causing and exacerbating mental ill-health; and (iii) using disability perspectives to better understand the social determinants and modify possible interventions.

1. Reinforcing the importance of social change

In the Public Mental Health Framework, the social determinants, health and human rights, and the intermediate social model of disability all emphasize the importance of changing social structures to improve health, mental health, and well-being and reject the prevailing

¹³⁴ Barnes (n 128) 19.

¹³⁵ Kjersti Skarstad, ‘Human Rights through the Lens of Disability’ (2018) 36 *Netherlands Quarterly of Human Rights* 24, 26.

¹³⁶ Lang (n 132) 28.

¹³⁷ Dimitris Anastasiou and James M Kauffman, ‘The Social Model of Disability: Dichotomy between Impairment and Disability’ (2013) 38 *Journal of Medicine and Philosophy* 441, 450.

¹³⁸ Adi Goldiner, ‘Understanding “Disability” as a Cluster of Disability Models’ (2022) 2 *The Journal of Philosophy of Disability* 28, 34.

¹³⁹ *ibid* 34; Tom Shakespeare, *Disability Rights and Wrongs Revisited* (Routledge 2014) 28.

¹⁴⁰ Wilson (n 131) 25.

¹⁴¹ Shakespeare (n 139) 18.

¹⁴² Tom Shakespeare and others, ‘Rehabilitation as a Disability Equality Issue: A Conceptual Shift for Disability Studies’ (2018) 6 *Social Inclusion* 61, 63.

¹⁴³ Theresa Degener, ‘Disability in a Human Rights Context’ (2016) 5 *Laws* 35; Francesco Seatu, ‘The Convention on the Rights of Persons with Disabilities and International Human Rights Law’ (2018) 7 *International Human Rights Law Review* 82, 87; Wilson (n 131) 23–24.

¹⁴⁴ Degener (n 143).

biomedical determinism of psychiatry.¹⁴⁵ That said, the Public Mental Health Framework does not dismiss the biopsychosocial model that mental health is determined by biological factors (like genetics, brain function, and substance abuse), psychological factors (like learned habits for dealing with emotions, relationships, and responsibilities), and social structural factors (like family, community, socio-economic, and environmental circumstances).¹⁴⁶ While the exact pathways are unknown, ongoing research has demonstrated that structural social factors and daily stressors can impact brain development and functioning at a biological and psychological level across the lifespan, with larger effects on minority groups.¹⁴⁷ That is, social injustice and environmental stressors do not just slide off the skin, but can be absorbed by the person and can disrupt biological and psychological functioning. As Shakespeare acknowledges, ‘disabling ... [social and environmental] ... barriers both cause and exacerbate impairment. For example, poverty and social exclusion make impairments worse and create additional impairments, particularly the risk of mental illness.’¹⁴⁸ However, a genuine multi-factorial account of disability, which gives appropriate weight to biological, psychological, and social factors is required.¹⁴⁹

To this extent, even the American Psychiatric Association has recently admitted that the ‘social’ part of the biopsychosocial model has been significantly neglected by psychiatry and a focus on the social determinants of mental health is vital to correct that imbalance.¹⁵⁰ Further, there is growing acknowledgement that the narrow biomedical framing of psychiatry has been too reductive and that ‘business as usual has failed and will continue to do so’ without greater emphasis on and incorporation of the social determinants of mental health.¹⁵¹ Likewise, the social determinants and ‘global mega-trends’, such as increasing intergenerational inequality, unregulated social media, wage theft, insecure employment, and housing unaffordability, have begun to be recognized as driving the youth mental health crisis.¹⁵²

2. Using lived experience to understand the social determinants

Social models of disability foreground lived experience as an important source of knowledge and expertise in understanding disability. While lived experience research on social determinants is still relatively scarce, research indicates that people with mental ill-health tend to attribute it to social and environmental factors, mostly uncontrollable life events, and to a much lesser extent to biological causes like heredity.¹⁵³ Many persons with lived experience also report that the social determinants are not widely recognized in mainstream treatment or in the ongoing ‘health work’ that persons with mental ill-health undertake in the daily effort of moving towards recovery.¹⁵⁴ Furthermore, many persons with lived experience and their civil society groups have embraced the importance of the social determinants in both

¹⁴⁵ Alice Mander, ‘The Stories That Cripple Us: The Consequences of the Medical Model of Disability in the Legal Sphere’ (2022) 53 *Victoria University of Wellington Law Review* 337, 358.

¹⁴⁶ World Health Organization (n 22) 19–20.

¹⁴⁷ Margarita Alegría and others (n 51) 475–476.

¹⁴⁸ Shakespeare (n 139) 28.

¹⁴⁹ Tom Shakespeare and others, ‘Blaming the Victim All Over Again: Waddell and Aylward’s Biopsychosocial (BPS) Model of Disability’ (2017) 37 *Critical Social Policy* 22, 35.

¹⁵⁰ Jeste and others (n 61) 4.

¹⁵¹ Vikram Patel and others, ‘Transforming Mental Health Systems Globally: Principles and Policy Recommendations’ (2023) 402 *Lancet* 656, 656–657.

¹⁵² Patrick McGorry and others, ‘The Lancet Psychiatry Commission on Youth Mental Health’ (2024) 11 *Lancet Psychiatry* 731.

¹⁵³ Marta Elliot and others, ‘Subjective Accounts of the Causes of Mental Illness in the USA’ (2011) 58 *International Journal of Social Psychiatry* 562.

¹⁵⁴ Colleen Reid and others, ‘The Lived Experience of Recovery: The Role of *Health Work* in Addressing the Social Determinants of Mental Health’ (2019) 38 *Canadian Journal of Community Mental Health* 45, 58.

prevention and treatment and are also pushing for a shift away from a narrow biomedical understanding of mental ill-health and well-being towards one that underscores the social determinants.¹⁵⁵ From this perspective, mental ill-health is understood not as a personal deficit, but as a response to crushing social systems and life circumstances that cannot be addressed by medical treatment alone.¹⁵⁶ Indeed, persons with mental ill-health are disproportionately affected by many social determinants, having significantly lower education, higher unemployment, higher homelessness, and greater involvement with the criminal justice system than the rest of the population.¹⁵⁷ Further, the Wessely Review¹⁵⁸ and Royal Commission into Victoria's Mental Health System¹⁵⁹ (based on submissions from people with lived experience) recognize the need to address wider social factors like discrimination, housing, employment, relationships, and financial difficulties, which can trigger a mental health crisis, as being necessary to reduce coercion in psychiatry and the strain on the mental health system. Therefore, the voices of persons with lived experience are important in terms of understanding the effect social determinants have in contributing to mental ill-health and in aggravating existing disability.

3. *Using disability perspectives to better understand the social determinants*

Finally, some social determinants of mental health are best understood through a disability lens (in terms of how they affect persons with disabilities compared with other groups). For instance, while housing is an important social determinant of mental health for most people, it is especially so for persons with mental ill-health, given historical and ongoing institutionalization, the bi-directional relationship between mental ill-health and homelessness, and the need of persons with mental ill-health for supported housing with a range of mental health and practical support services.¹⁶⁰ Similarly, social determinants like psychosocial workplace hazards (such as overwork, bullying and harassment, and trauma) that cause or aggravate mental ill-health for everyone, can also raise issues of disability discrimination and the need for reasonable accommodation in the workplace for persons with disabilities.¹⁶¹

The intermediate social model could also soften and modify some measures that might otherwise be used to implement the social determinants. For instance, having a parent with mental ill-health is an ACE. However, rather than rely on coercive and heavy-handed interventions against the parent, which might otherwise be justified to protect the child (such as child removal, or involuntary detention and psychiatric treatment), the social model of disability prioritizes alternatives that also respect the rights of parents with mental ill-health, such as the offering of social and peer supports, parenting courses, and family therapy. It also draws attention to the importance of making a range of non-medical assistance available to the parent to respond to difficulties in relation to housing, employment, indebtedness, accessing social security, and loneliness, which may be additional stressors exacerbating the parent's mental ill-health and harming their child.

¹⁵⁵ Erandathie Jayakody and Malitha Perera, 'Standing Up against the Weight of History: The Importance of Lived Experience in the Mental Health Context' in Kay Wilson and others (eds), *The Future of Mental Health, Disability and Criminal Law* (Routledge 2023) 298.

¹⁵⁶ *ibid.*

¹⁵⁷ Amy Ehnholt and others, 'Prevalence and Correlates of Four Social Determinants in a Statewide Survey of Licensed Mental Health Services' (2022) 73 *Psychiatric Services* 1282, 1283–1284.

¹⁵⁸ Independent Review of the MHA 1983, 'Modernising the Mental Health Act: Increasing Choice, Reducing Compulsion' (UK Government, Final Report, December 2018).

¹⁵⁹ Victorian Government, *Royal Commission into Victoria's Mental Health System—Final Report* (2021).

¹⁶⁰ Wilson (n 98) 6–7.

¹⁶¹ World Health Organization and International Labour Organization, *Mental Health at Work Policy Brief* (2022) 14.

Having set out the theoretical and empirical basis for the Public Mental Health Framework, in the next section, I will explain how the Public Mental Health Framework can be used by law and policy-makers to prevent mental ill-health and promote well-being.

IV. BUILDING A MENTALLY HEALTHY SOCIETY: SIGNIFICANCE OF THE PUBLIC MENTAL HEALTH FRAMEWORK FOR THE DEVELOPMENT OF ALL LAWS AND POLICIES

The Public Mental Health Framework has an important role in raising awareness of the impact that law and policy can have on mental ill-health and well-being as the basis for a mentally healthy society. It can also help governments determine *which laws and policies to develop and reform*, and *how to reform them* to prevent mental ill-health and promote well-being as a cohesive whole-of-government public mental health and well-being intervention. By drawing on actual data and scientific evidence, as well as the universal moral value of international human rights law and insights from persons with mental ill-health through the intermediate social model of disability, the Public Mental Health Framework can and should evolve as new evidence accrues from data and research. Deep social determinants research can help identify new issues that require legislative attention (for instance, the effect of digital transformation and AI, the effects of climate change, and potential poverty-reducing measures such as universal basic income (UBI)), as well as suggest specific legislative and policy reforms. Examples include setting the minimum wage, strengthening the regulation of workplace psychosocial hazards, housing policy, consumer debt protections, and tax reforms.

In applying the Public Mental Health Framework, law and policy-makers should ask the following questions:

- 1) What does research on the social determinants of health and mental health reveal about how a particular law or policy will impact mental health (especially well-established findings replicated by many studies)? While this should be done with the intention of preventing mental ill-health, it should also consider how a law or policy might have positive impacts or improve resilience and promote well-being;
- 2) Which human rights are relevant to the law or policy and what does discourse around those rights suggest is the best way to protect, respect, and fulfil them taking into account the social determinants research? If the social determinants research is ambiguous, incomplete, or indeterminate, can health and human rights discourse provide a clear and principled direction?; and
- 3) What does the intermediate model of social disability and consultation with persons of lived experience about the law or policy indicate in terms of how that law or policy might impact persons with mental ill-health, or modify any proposed intervention?

While the social determinants have been gradually incorporated into individual clinical medical practice with the growth of ‘social prescribing’ (eg, doctors connecting people with community services)¹⁶² and health-justice partnerships (where doctors and lawyers work together to help patients solve their legal problems),¹⁶³ it is really through the overarching processes of law and policy development where the Public Mental Health Framework can have the most impact. While it is not possible to be exhaustive here, there are a number of ways

¹⁶² Jeste and Pender (n 75) 284.

¹⁶³ Schram and others (n 106) 916–917.

in which the Public Mental Health Framework could be incorporated into the law and policy-making processes with the aim of preventing mental ill-health and promoting well-being. The first is through subsuming the Public Mental Health Framework into the parliamentary law and policy-making process. The second is through the creation of interdepartmental administrative structures focused on implementing the Public Mental Health Framework through ‘health in all policies’ and health impact assessments (HIAs). The third is through the creation of proactive strategic plans to implement the Public Mental Health Framework, and the fourth is post-legislation advocacy and implementation monitoring. I discuss each approach in turn.

A. Human rights and well-being legislation

There are two ways in which the Public Mental Health Framework could be incorporated by legislation into all law and policy-making processes. The first is through a parliamentary analysis during the drafting and passage of all new legislation, and the second is through legislation like the *Well-being of Future Generations (Wales) Act 2015* (Wales), which requires certain public bodies (including Ministers) in Wales to act in the pursuit of economic, social environmental, and cultural well-being and sustainable development.

The idea of a parliamentary analysis of all legislation using the Public Mental Health Framework or something like it is new, but could be similar to a ‘statement of compatibility’ under the Human Rights Act 1998 (UK).¹⁶⁴ This could improve the quality of legislation, or at least include added points of accountability, by requiring law and policy-makers to scrutinize all laws and policies to consider their impacts on health, mental health, and well-being, and to consider alternative provisions that might be more compatible with those goals before that legislation is passed by parliament. It might also force governments to publicly justify why they are passing new legislation that is harmful to health, mental health, and well-being. While such an approach is imperfect and may not prevent a government that is not committed to implementing the social determinants or human rights from working around the Public Mental Health Framework, it is a first step. It is also difficult to see how the Public Mental Health Framework could be institutionalized into all law and policy-making without some kind of overarching legislative requirement.

The analogy with the Human Rights Act 1998 (UK) is consistent with the importance of human rights within the Public Mental Health Framework (albeit limited to the civil and political rights in the European Convention at a regional level, rather than the many relevant treaties at the international level).¹⁶⁵ I also note that coming out of the pandemic, Nikolas Rose and colleagues called for an immediate ‘mental health audit’ of all laws and policies,¹⁶⁶ which would presumably involve a similar sort of assessment for all existing laws. Such an analysis might spark a number of health, mental health, and well-being reforms. For example, Lisa Montel has argued for a specific mandate in the national planning scheme that health, mental health, and well-being be taken into account in all urban development (such as through community gardens, green spaces, and quality dwellings) as a counterweight to other goals like a strong economy or building a certain number of houses.¹⁶⁷ Whereas, Aliza Cohen and colleagues have used a social determinants analysis to argue for a more supportive and less coercive and punishing approach to the way drug addiction is handled by the

¹⁶⁴ Human Rights Act 1998 (UK) s 19.

¹⁶⁵ *ibid* sch 1. Although in practice the Joint Committee on Human Rights in the UK may not limit its review to the human rights listed in the European Convention: Kris Glendhill, *Human Rights Acts: The Mechanisms Compared* (Hart Publishing 2015) 315.

¹⁶⁶ Rose and Rose (n 117).

¹⁶⁷ Montel (n 97) 691–692.

criminal law and civil laws related to employment, education, housing, family regulation, and social security.¹⁶⁸ It might also switch the focus of health services to prevention and early intervention, rather than delaying treatment until more expensive interventions are required, often with worse outcomes.¹⁶⁹

The Wellbeing for Future Generations Act (Wales) 2015 (Wales) is world-first well-being legislation designed to implement the SDGs and the requirement that post-devolution Wales would promote sustainable development as outlined in The Government of Wales Act 1998 (UK).¹⁷⁰ A similar bill has been proposed in England by Simon Fell and Lord Bird in February 2022, but it has not progressed past the second reading stage.¹⁷¹ The Welsh Act requires public bodies, public service boards in each local authority area, and local councils to implement the seven well-being goals, being: (i) prosperity (an innovative, productive, and low-carbon society that generates wealth); (ii) resilience (maintaining and enhancing biodiversity and functioning ecosystems); (iii) health (maximizing physical and mental well-being); (iv) equality (where people can fulfil their potential regardless of background or circumstances); (v) cohesive communities (attractive, viable, safe, and well-connected communities); (vi) a vibrant culture and thriving Welsh language; and (vii) global responsibility (positively contributing to global well-being).¹⁷² In addition, it sets out five ‘ways of working’ being (i) thinking long-term, (ii) prevention, (iii) integration, (iv) collaboration, and (v) involvement. The Act takes a long-term intergenerational perspective by using the sustainability principle to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.¹⁷³ It also requires regular reporting by public bodies as to how they are meeting their well-being goals as well as two oversight bodies: (i) the Auditor-General to keep track of how well the public bodies are meeting their goals¹⁷⁴ and (ii) the Office of the Future Generations Commission to provide advice and assistance to public bodies and the Auditor-General with respect to the interests of future generations and progress towards well-being objectives.¹⁷⁵ The implementation of the Act has been criticized as being vague and confusing, subject to resource constraints from the Welsh and UK governments, often involving a lack of partnership, and being too locally focused.¹⁷⁶ Despite the permission provided by the Act, it still requires much tenacity to challenge the status quo.¹⁷⁷ However, while at the start many public bodies simply used well-being language to describe what they were already doing and stuck to narrow health goals, as time progressed, work under the Act has become more innovative as public bodies have focused on building connections and even bringing in public health consultants to advise on transport initiatives.¹⁷⁸ Implementation has also involved the introduction of a targeted UBI aimed at those leaving care at the age of 18 years, as well as requiring businesses who receive public money to de-carbonize and improve the physical and mental health of their

¹⁶⁸ Aliza Cohen and others, ‘How the War on Drugs Impacts Social Determinants of Health beyond the Criminal Legal System’ (2022) 54 *Annals of Medicine* 2024.

¹⁶⁹ Stewart Greenwell and Daniel Ardebic, ‘A New Health and Social Care Context in Wales: Promoting Resilience Through a Shift in Perspective and Different Relationships’ (2017) 25 *Journal of Integrated Care* 265, 267.

¹⁷⁰ Montel (n 97) 693; Government of Wales Act 1998 (UK) s 121.

¹⁷¹ Wellbeing of Future Generations Bill 2022 (UK).

¹⁷² Wellbeing of Future Generations (Wales) Act 2015 (Wales) (WFGA 2015) s 4, table 1.

¹⁷³ *ibid* s 5(1).

¹⁷⁴ *ibid* s 15.

¹⁷⁵ *ibid* ss 17–22.

¹⁷⁶ Isabelle Carter and Eleonor MacKillop, ‘Can We Promote Plural Local Pathways to Sustainable Development? Insights from Implementation of Wales’s Future Generations Act’ (2023) 25 *Journal of Environmental Policy and Planning* 554, 566.

¹⁷⁷ Sophie Howe and Don Nutbeam, ‘Interview with Inaugural Future Generations Commissioner for Wales, Sophie Howe: Embedding a Wellbeing Approach in Government’ (2023) 33 *Public Health Research and Practice* 1, 3.

¹⁷⁸ *ibid* 3.

workforce.¹⁷⁹ Further, non-statutory organizations have also begun to adopt the well-being goals.¹⁸⁰ The inaugural Future Generations Commissioner for 7 years, Sophie Howe, has observed:

Putting such wellbeing mechanisms into law is critically important. It doesn't mean necessarily you can force anyone to do anything or stop anything from happening, but the ability to wave the law is really important. The holistic nature is also really important. It needs to be a mission for a whole country so they actually know where they want to go and have a set of long-term goals that the country can aspire to.¹⁸¹

There is no reason why both a parliamentary analysis process *and* well-being and future generation's process for public bodies could not be mutually reinforcing and used in tandem. Of course, the effect of such legislation cannot be easily or directly measured and would probably take some time to manifest changes in population health, but the scientific basis of the social determinants of mental health (discussed in Section III.A above) indicates that laws and policies supportive of mental health should have some impact. Further, the negative impact of poor law and policy-making on mental health is well documented.

B. Interdepartmental administrative structures

The Public Mental Health Framework, in alignment with social determinants research, promotes the concept of 'joined-up' government and government departments which work towards health, mental health, and well-being together, beyond the health sector and with a focus on health equity. It is widely agreed that in order to promote health, mental health, and well-being, 'health in all policies' and health impact assessments are required as part of the law and policy-making processes.¹⁸² While leadership needs to come from the top and central agency of government,¹⁸³ interdepartmental administrative bodies and structures can help ensure that health, mental health, and well-being are incorporated into non-health sector laws and policies and that when they are, they are not confined to enabling access to health services. It also allows for greater consistency and information-sharing. In Wales, the Wellbeing of Future Generations (Wales) Act 2015 creates public service boards to perform this function in local areas with representatives from the local authority, health board, fire and rescue, and a natural resources body.¹⁸⁴ The Public Health Act 2017 (Wales) also provides for the enactment of health impact assessment regulations which can require public bodies to undertake HIAs.¹⁸⁵ The Welsh government is currently undertaking a consultation to develop HIA regulations which will provide the first statutory basis for HIAs.¹⁸⁶ Other such arrangements that can perform this coordination function are intergovernmental taskforces, partnerships,¹⁸⁷ and workgroups¹⁸⁸ that encourage cross-departmental and cross-sector collaboration, with opportunities for wide consultation and involvement of affected communities. The Future Generations Commissioner has also suggested the creation of a

¹⁷⁹ *ibid* 2–3.

¹⁸⁰ Marmot and others (n 45) 133.

¹⁸¹ Howe and Nutbeam (n 177) 3.

¹⁸² Baum (n 114) 53–54.

¹⁸³ *ibid* 32.

¹⁸⁴ WFGA 2015, s 29.

¹⁸⁵ Public Health Act 2017 (Wales) ss108–110.

¹⁸⁶ <https://www.gov.wales/health-impact-assessment-regulations>

¹⁸⁷ Baum (n 114) 53–54.

¹⁸⁸ Merrill Rotter and others, 'The Social Determinants of Mental Health: A Descriptive Study of State Mental Health Agencies' Priorities' (2022) 58 *Community Mental Health Journal* 1121, 1122.

Minister for Prevention with access to 10 per cent of all department's budgets to foster collaboration and integration.¹⁸⁹ Nevertheless, such interdepartmental administrative structures should not remove focus from the importance of improving daily living conditions for well-being on the ground.¹⁹⁰

C. Proactive strategic plans

In addition to assessing all laws and policies as they are made, the Public Mental Health Framework can be used to help the government make proactive strategic plans as to how it will use laws and policies to prevent mental ill-health and promote well-being, as well as rolling out specific social determinants programmes. For instance, the Wellbeing of Future Generations (Wales) Act 2015 provides that public service boards must develop (via consultation) local well-being plans setting out their objectives and how they propose to implement them.¹⁹¹

D. Continued advocacy and implementation monitoring

Further, often appropriate laws exist, but are not properly implemented. Therefore, the Public Mental Health Framework requires continued advocacy and monitoring after the laws and policies come into effect.¹⁹² In addition, the Public Mental Health Framework could in some instances inform the interpretation and development of the common law. For instance, the liability of employers for workplace psychiatric injuries induced by work stress, by using social determinants research to shape the scope of the duty of care and determine which psychosocial hazards are reasonably foreseeable.¹⁹³

V. CONCLUSION

Law and policy have a powerful role in structuring society and regulating relationships, which can have positive or negative effects on health, mental health, and well-being depending on what they provide and how they are made. The Public Mental Health Framework is a new conceptual and empirical model that guides the use of law and policy to prevent mental ill-health and promote well-being as a core function of the contemporary state. The theoretical foundations of that framework are grounded in a large body of research on the social determinants of health and mental health, health and human rights, and the social model of disability, which combine science, morality, and insights from persons with lived experience and the intermediate social model of disability to lay the foundations for a mentally healthy society. The Public Mental Health Framework can be incorporated into legislative and administrative government processes, such as using 'incompatibility statements' similar to those used by the Human Rights Act 1998 (UK) and the Wellbeing of Future Generations (Wales) Act 2015, to inform the production of all new laws and policies within and beyond the health sector. It can also be used to conduct audits of existing laws and the creation of proactive strategic plans for a comprehensive approach to public mental health and well-being. In addition, it provides a blueprint for a state in which health, mental health, and well-being are at the forefront of law and policy-making, as well as a conceptual model to stimulate further research and public discourse. Governments can keep building hospitals

¹⁸⁹ Howe and Nutbeam (n 177) 3.

¹⁹⁰ Matthew Fisher, 'Moving Social Policy from Mental Illness to Public Wellbeing' (2022) 51 *Journal of Social Policy* 567, 577.

¹⁹¹ WFGA 2015, ss 36–43.

¹⁹² Dawes (n 17).

¹⁹³ Kay Wilson and Ian Freckelton, 'Work Stress, Vicarious Trauma and the Public Mental Health Framework: *Kozarov v Victoria* [2022] HCA 12 and Its Aftermath' (2023) 30 *Journal of Law and Medicine* 64, 663–665.

and training psychiatrists, psychologists, counsellors, and nurses, but will never be able to redress the growing mental health crisis without dealing with the underlying causes—the social determinants of health and mental health, human rights infringements, and disability discrimination. Rather, the Public Mental Health Framework is transformative by aiming to change how governments, the media, and the public think about law and policy. It seeks to create a precedent for how preventive medicine can be embedded into mainstream law and policy-making towards the creation of supportive and flourishing mentally healthy societies as the norm. To this extent, it demonstrates that law can indeed be used as preventive medicine.

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CONFLICT OF INTEREST

None declared.