

JIM CROW'S COUSINS: THE ARCHITECTURE OF RACIAL INEQUALITY

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ABSTRACT

Modern civil rights law confronts a profound mismatch between the forms of racial inequality it is asked to address and the legal tools it has available to do so. Contemporary racial inequality is increasingly produced not solely by specific actors within discrete domains, but through the design, construction, and operation of interlocking institutions, infrastructure, and public systems that organize, reproduce, and stabilize racial inequality across entire communities over time. These systems shape where people live, the schools they attend, the transportation they can access, the wealth they accumulate, the quality of their neighborhoods, and their ability to participate fully in civic and economic life. They are frequently described as neutral, efficient, or inevitable, yet their effects are deeply racialized.

The result is a troubling paradox. We live in a nation formally committed to equality, but that tolerates durable, predictable, and profound patterns of racial inequality. Many of the most consequential forms of racial harm remain legally invisible, even as they destabilize Black communities through exclusion, displacement, disinvestment, and the cumulative denial of opportunity. Modern civil rights doctrine remains largely oriented toward identifying discrete acts of intentional discrimination, individualized injuries, and retrospective remedies. As racial inequality has become increasingly architectural, the legal imagination available to confront it has narrowed.

This Article argues that this mismatch does not reflect the inherent limits of civil rights law, but the eclipse of one of its own longstanding traditions. American civil rights law has always contained both prohibitory and constructive traditions. The prohibitory tradition seeks to restrain

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discrimination and remedy unlawful exclusion after it occurs. The constructive tradition, by contrast, recognizes that equal citizenship requires more than the prohibition of discrimination. It requires the deliberate construction of the institutions, systems, and pathways that make democratic participation, equal opportunity, and belonging possible. Reconstruction and the Second Reconstruction both embraced this broader vision through institution-building, administrative enforcement, and public investment. Over the past half century, however, judicial retrenchment and political backlash have privileged the prohibitory tradition while narrowing, dismantling, or forgetting the constructive one.

Recovering this constructive tradition requires a reconceptualization of both racial inequality and civil rights law. The Article first develops the concept of the “interlocking architectures of inequality” to explain how contemporary racial inequality is produced through mutually reinforcing institutions and systems built to sustain racial inequality. It then advances a theory of “justice as construction,” arguing that if inequality is constructed through institutions, systems, and pathways that reproduce exclusion, justice must also be understood as a constructive project. Civil rights law should not only prohibit discrimination and remedy individual harms; it should build and sustain the infrastructure of civil rights—the institutions, systems, and pathways that translate legal promises into lived realities. This framework reorients civil rights analysis from isolated intent to structural design, from individual injury to community harm, and from retrospective remedies to the affirmative construction of the conditions necessary for equal citizenship. In doing so, the Article aims to recover a neglected tradition within American civil rights law and offers a framework for confronting the architectural forms of racial inequality that define the twenty-first century.

INTRODUCTION

Reverend William Barber has observed that “Jim Crow may be dead, but he has cousins.”¹ Rev. Barber captures a central truth about the trajectory of racial inequality in the United States. The forms of racial exclusion that once operated openly through law have not vanished; they have adapted.² Contemporary policies and institutions typically reproduce racial inequality without explicitly invoking race. Instead, they operate through facially-neutral systems that nevertheless distribute power,

¹ Rev. William J. Barber II, Remarks at the Brooklyn Academy of Music Dr. Martin Luther King Jr. Day Tribute (Jan. 19, 2026) (“Jim Crow may be dead, but he has cousins.”).

² See generally Elise C. Boddie, *Adaptive Discrimination*, 94 N.C. L. REV. 1235, 1239 (2016) (coining the theory of adaptive discrimination to describe how “racial discrimination adapts to the legal and social environment by mutating to evade prohibitions against intentional discrimination” to avoid “legal and social sanction.”).

opportunity, and vulnerability along well-worn racial lines.³ Today, Jim Crow's cousins wear the clothes of market logic, technical neutrality, and administrative efficiency. They are, for that reason, both harder to see and more difficult to challenge.

While the methodologies of racial inequality have evolved and expanded, the dominant doctrinal understanding of civil rights law have become increasingly constrained. Although earlier generations built institutions that sought to create the conditions of equal citizenship,⁴ subsequent judicial retrenchment narrowed civil rights doctrine.⁵ As a result, the law is increasingly asked to confront forms of racial inequality that it is doctrinally structured not to recognize.

For much of the twentieth century, civil rights law in the United States has largely framed the pursuit of racial justice as what this Article describes as a prohibitory or defensive project. Under this model, individuals or groups of individuals identify discriminatory conduct, seek to restrain that conduct, and pursue remedies only after harm has occurred.⁶

³ Eduardo Bonilla-Silva, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* 19 (5th ed. 2018) (“whites rationalize minorities’ contemporary status as the product of market dynamics, naturally occurring phenomena, and blacks’ imputed cultural limitations”); Amna Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. Rev. 405, 444 (2018) (“[A] core function of law is to make raced and gendered power distribution and social domination look rational, neutral, and just.”); see generally Boddie, *supra* note 2.

⁴ See generally Deborah N. Archer & Joseph R. Schottenfeld, *Civil Rights Administration*, 78 STANFORD L. REV. 1407, 1417 (2026) [hereinafter Archer & Schottenfeld, *Civil Rights Administration*]; *Trump v. Barbara*, 609 U.S. ___ (2026) (Jackson, J. Concurring) (“‘The Reconstruction Amendments were an anticaste, antisubordination reset for the Nation, not a mere spot treatment for the dark stain of slavery.’”)

⁵ See *infra*; see e.g., *Students for Fair Admissions Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023) (outlawing affirmative action on the grounds that they “lack sufficiently focused and measurable objectives warranting the use of race, unavoidably employ race in a negative manner, involve racial stereotyping, and lack meaningful end points”); see also Deborah N. Archer & Yuvraj Joshi, *Infrastructure Equality*, 120 NW. L. REV. 135, 139 (2025) (arguing that recent legal decisions “framed discrimination as individualistic, explicit, isolated, and short-term”).

⁶ See Khiara M. Bridges, *Race in the Roberts Court*, 136 HARV. L. REV. 23, 25 (2022) (“[W]hat ‘counts’ as racism against people of color is a strategy that the Court deploys to accomplish regressive ends. It permits the Court to do nothing to destabilize and disestablish the country’s existing racial hierarchy.”); Deborah N. Archer, *White Men’s Roads Through Black Men’s Homes: Advancing Racial Equity Through Highway Reconstruction*, 73 VANDERBILT L. REV. 1259, 1307-10 (2020) [hereinafter Archer, *White Men’s Roads Through Black Men’s Homes*] (discussing the limits of prevailing antidiscrimination law analytic frameworks in addressing place-based racial inequality). Of course, class action litigation and injunctions are available, by they are, standing alone, insufficient to address the full scope of the harm. See *Trump v. CASA, Inc.*, 606 U.S. 831

That framework has produced indispensable gains. It helped dismantle Jim Crow and end formal segregation;⁷ expanded access to schools, jobs, and economic opportunity;⁸ and affirmed the Constitution's commitment to equal citizenship.⁹

Yet the doctrinal architecture of modern civil rights law—particularly its emphasis on discriminatory intent, facial neutrality, constrained understanding of time, and individualized injury¹⁰—limits its ability to confront the processes through which inequality is largely produced and maintained.¹¹ The forms of inequality that dominate contemporary American life are architectural,¹² produced through institutions and systems that structure the conditions of everyday life. These systems shape where people live, how communities function, and who has access to stability, opportunity, and political power. The problem is not that discrimination has disappeared. It has not. Indeed, the United States continues to experience persistent and often rising forms of racial discrimination.¹³ Rather, the problem is that inequality increasingly

(2025) (prohibiting district court utilization of universal injunctions); Deborah N. Archer & Joseph R. Schottenfeld, *Defending Home: Toward a Theory of Community Equity*, 92 U. CHI. L. REV. 2199 (2025) [hereinafter Archer & Schottenfeld, *Defending Home*] (explaining that race-based civil rights protections, as currently construed “guarantee at most a thin version of equality” to Black people and communities).

⁷ See, e.g., *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

⁸ See, e.g., *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

⁹ See generally Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437; Michael Klarman, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* (2004).

¹⁰ See *Washington v. Davis*, 426 U.S. 229 (1976) (requiring proof discriminatory purpose for Equal Protection claims); Archer & Schottenfeld, *Defending Home*, *supra* note 6 at 2225-27 (discussing the limits on the ability of traditional civil rights laws to challenge racial inequality); Yuvraj Joshi, *Racial Time*, 90 U. CHI. L. REV. 1625 (2023); Elise C. Boddie, *The Contested Role of Time in Equal Protection*, 117 COLUM. L. REV. 1825, 1830 (2017) (“Courts invoke the remoteness of the original racial injury to justify conclusions that ongoing racial inequality is unrelated to prior discriminatory intent.”); Adam B. Cox, *The Temporal Dimension of Voting Rights*, 93 VA. L. REV. 361, 374-83 (2007) (discussing the time periods in which the constitutionality of voting regulations are evaluated); Olatunde Johnson, *Beyond the Private Attorney General: Equality Directives in American Law*, 87 N.Y.U. L. REV. 1339 (2012).

¹¹ Yuvraj Joshi, *Racial Transition*, 98 Wash. U. L. Rev. 1181, 1202-06 (2021); see also Archer & Joshi, *supra* note 5, at 138 (calling for comprehensive legal approaches to dismantling structural inequality); see Johnson, *supra* note 10, at 1354-57; Samuel Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1 (2006).

¹² By infrastructure this article is referring to the broad network of structures, systems, and rules that govern “the space of everyday life.” Keller Easterling, *EXTRASTATECRAFT: THE POWER OF INFRASTRUCTURE SPACE* (2016) at 11; see also Archer & Joshi, *supra* note 5, at 139 (2025); Sarah B. Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L. J. 1934, 1939 (2015).

¹³ See e.g., Samantha Artiga, Liz Hamel, Ana Gonzalez-Barrera, Alex Montero, Latoya Hill, Marley Presiado, Ashley Kirzinger, and Lunna Lopes, *Survey on Racism*,

operates through systems that rarely announce themselves as discriminatory, leaving many of the most significant threats to equality beyond the reach of traditional civil rights doctrine.

Consider displacement. Across the country, Black communities are being pushed out of neighborhoods they have called home for generations.¹⁴ Yet displacement is rarely framed as a civil rights challenge.¹⁵ Instead, it is attributed to neutral market forces or celebrated as the necessary byproduct of urban “revitalization.”¹⁶ But displacement is not an accident of the market. It is the foreseeable and predictable result of decisions about housing policy, land use, transit infrastructure, development incentives, and public investment.¹⁷ Those decisions quietly but powerfully determine which communities are protected, which are neglected, and whose presence is treated as expendable.

Or consider physical infrastructure: highways that cut through Black neighborhoods; transit systems that connect wealthier white areas while bypassing others; inadequate water management systems; and

Discrimination and Health: Experiences and Impacts Across Racial and Ethnic Groups, KFF (Dec 5, 2023); <https://www.kff.org/racial-equity-and-health-policy/survey-on-racism-discrimination-and-health/> (identifying social, economic, interpersonal, and health care racism in the United States).

¹⁴ See e.g., Adam Mahoney, “From Watts to D.C.: How 500 Black Neighborhoods Vanished in 45 Years,” *Capital B* (June 23, 2025); <https://capitalbnews.org/black-displacement-gentrification-watts-study/>.

¹⁵ Displacement has been framed as a racial justice issue, often framed as the result of gentrification or “colonization” of Black communities. But, this phenomenon is difficult to challenge legally as a civil rights issue.

¹⁶ See Dan Immergluck & Tharunya Balan, *Sustainable for Whom? Green Urban Development, Environmental Gentrification, and the Atlanta Beltline*, 39 *URB. GEOGRAPHY* 546, 546–49 (describing how urban development projects can positively change cities but treat social equity as “the ignored stepchild” in reinforcing social exclusion through the example of the Atlanta Beltline project); see also Bruce C. Mitchell et al., *Displaced by Design: Fifty years of gentrification and Black cultural displacement in US Cities* 7 (2025) (“Gentrification is a hotly debated issue with its impact viewed differently depending on one’s perspective. What one person sees as gentrification, another might view as needed revitalization.”).

¹⁷ Miriam Zuk et al., *Gentrification, Displacement, and the Role of Public Investment: A Literature Review*, 33 *J. PLAN. LITERATURE* 31, 32 (2015) (“Government and policy have played a key role in creating [displacement] patterns by directing public and private capital in ways that advantage some and disadvantage other neighborhoods.”); Malek Abduljaber & Retaj Aljadaan, *Government policy gentrification and displacement in the United States*, 13 *SOC. SCI. & HUMANITIES OPEN* 1, 2–3 (2026) (outlining how historic policy choices in zoning and property ownership have shaped displacement today alongside contempered practices that function to legitimize gentrification); Bethany Y. Li, *Now Is the Time!: Challenging Resegregation and Displacement in the Age of Hypergentrification*, 85 *Fordham L. Rev.* 1189, 1190–93 (2016) (arguing that gentrification in major U.S. cities is often simulated by “seemingly neutral government policies”).

environmental hazards concentrated where political power is weakest. These are not relics of a distant Jim Crow past. They are current exemplars of how physical systems distribute advantage and vulnerability across communities.¹⁸ Decisions on infrastructure investment and deployment are often treated as neutral or technical, but they reflect deeply consequential choices about which communities are connected to opportunity and which are isolated or exposed to harm.¹⁹ Decisions about transportation routes, transit access, environmental regulation, and disaster preparedness shape whether residents can reliably get to work, access schools and healthcare, escape environmental hazards, and remain in their homes as climate risks intensify.²⁰ These systems quietly structure the geography of opportunity and the conditions of daily life. When communities are cut off from the networks that sustain mobility, safety, and economic participation, the consequences are not merely logistical, they are democratic. Infrastructure determines who can access opportunity, whose communities are protected, and who is able to fully participate in civic life.

The result is a troubling paradox: we live in a nation formally committed to equality that nonetheless tolerates patterns of racial inequality that are durable, predictable, and profound. This Article identifies four interlocking architectures through which modern racial inequality is reproduced. The first is spatial exclusion, which determines the physical places community members can safely and reliably access and the neighborhoods where they can live. The second is economic dispossession, which governs whether communities can accumulate and protect wealth.

¹⁸ See e.g., Archer & Schottenfeld, *Defending Home*, *supra* note 6, at 2204 (discussing how physical markers such as highways, roads, railroads not only physically separate communities but where they demarcate the allocation of services and infrastructure); Archer, *White Men's Roads Through Black Men's Homes*, *supra* note 6, at 1290 – 91 (describing how “the intersection of transportation, housing, and education policy helped to create and sustain concentrated poverty and racial segregation that continues to impede economic mobility and access to opportunity”).

¹⁹ Deborah N. Archer, *DIVIDING LINES: HOW TRANSPORTATION INFRASTRUCTURE REINFORCES RACIAL INEQUALITY* 25 (2025) (“[I]n the early post-*Brown* era, many local, state, and federal highway builders now hid their intent behind nominally race-neutral criteria.”); Archer, *White Men's Roads Through Black Men's Homes*, *supra* note 6, at 1276 (“Although many local, state, and federal highway builders had a racial agenda, they often hid their intent behind nominally race-neutral criteria. The language of urban renewal--the promise to clear “blighted” areas and “slums”-- was the most common criterion.”)

²⁰ Archer, *DIVIDING LINES*, *supra* note 19, at 179 (reviewing how the intersection of climate change and spatial racism will result in “an increasing number of Black communities [that] will find themselves literally under water”); Thomas W. Sanchez, Rich Stolz & Jacinta S. Ma, *Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities* 24 – 26 (2003) (explaining that transportation equity intersects issues of environmental justice and access and mobility due to the connections between transportation policies and air pollution & personal safety); Sydney Simmons, *Turning Up the Heat: Disability, Race, and Environmental Justice in the South*, 19 S. J. Pol'y & Just. 59, 77 (“Planners frequently route highways, industrial corridors, and waste sites through Black neighborhoods while ignoring accessibility needs. These decisions isolate disabled residents from public transit, green space, and climate-resilient infrastructure.”).

The third is opportunity deprivation, which shapes access to education, mobility, and power. The fourth is civic subordination, which influences whether communities are permitted to live with dignity and participate fully in public life. Each architecture operates largely through formally neutral institutions, yet they systematically distribute advantage and vulnerability along racial lines. And each is designed to reinforce the others. The harms produced by any one of them are compounded by the rest, so interventions targeting one in isolation are unlikely to produce durable change. Understanding and challenging racial inequality therefore requires shifting more of our focus to the interlocking institutional architectures through which democratic belonging is structured and denied.

All of this reveals a deeper problem, not only with civil rights enforcement, but with how we understand justice itself. Too often justice is defined negatively, as the absence of discrimination. But a jurisprudence limited to remedying discrete harms obscures the nature of the problem. Justice is not merely the removal of harm; it is the creation of conditions that allow individuals and communities to live with dignity, stability, and opportunity.²¹ If inequality is architectural, justice must be architectural as well. The task, then, is not only to dismantle structures of exclusion, but to construct the institutional foundations of democratic belonging. We require systems that sustain communities, expand durable access to opportunity, protect against displacement and isolation, and enable people not merely to survive within unequal structures, but to participate fully in social, economic, and civic life.²² Justice, in other words, is not only a shield we

²¹ Martin Luther, Jr. *Stride Toward Freedom: The Montgomery Story*. 1958. Beacon Press, 2010 ("True peace is not merely the absence of tension; it is the presence of justice.")

²² The theories developed in this Article are closely related to, and informed by, anti-subordination scholarship, which has long emphasized that civil rights law should address structures of hierarchy rather than merely prohibit intentional discrimination. See e.g., Justin Driver, *The Strange Career of Antisubordination*, 91 U. Chi. L. Rev. (2024); Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown*, 117 Harv. L. Rev. 1470 (2004); Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 Stan. L. Rev. 1111 (1997); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331 (1988); Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 Phil. & Pub. Aff. 107 (1976). This Article embraces those insights. Its focus, however, is less on the normative content of equality than on the institutional mechanisms through which equality is produced. It asks not only what forms of subordination civil rights law should oppose, but what institutions, systems, and pathways government must construct—and continue to sustain—if anti-subordination is to become a durable feature of democratic life.

This Article also draws inspiration from scholarship on democratic experimentalism, new governance, and institutional design, which has emphasized the importance of administrative capacity, collaborative governance, iterative problem-solving, and public institutions in addressing complex social problems. See, e.g., Michael

raise to defend ourselves against harm. It should be blueprint for the society we are building. The implications for this shift are broad, implicating everything from voting rights; to education policy; to diversity, equity and inclusion initiatives in the workplace. If racial inequality is produced through interlocking architectures that organize opportunity, vulnerability, and belonging across domains, then the legal tools used to confront it must be capable of operating at that same level of design and complexity.

This approach is not a radical departure from our legal history, but a return to it. The constructive vision of civil rights law is deeply rooted in the nation's most ambitious moments of democratic reform—from Reconstruction through the long civil rights movement.²³ Indeed, in each of the nation's great moments of democratic progress, justice advanced not through restraint alone but through deliberate acts of institutional design. Reconstruction built public schools, voting protections, and federal enforcement of civil rights.²⁴ The New Deal reshaped the relationship between government and economic security through social insurance and large-scale public investment.²⁵ And the civil rights movement demanded

C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 Colum. L. Rev. 267 (1998); Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 Colum. L. Rev. 458 (2001); Charles F. Sabel & William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 Harv. L. Rev. 1015 (2004); Gillian E. Metzger, *Administrative Constitutionalism*, 91 Tex. L. Rev. 1897 (2013). That literature has persuasively challenged the limits of command-and-control regulation and highlighted the central role that institutions play in shaping public outcomes. The project here is related but distinct. Rather than asking primarily how institutions should govern, this Article asks what institutions, systems, and public investments civil rights law should build and sustain if equal citizenship is to become durable. Its concern is not institutional effectiveness in the abstract, but the construction of the democratic, economic, spatial, and administrative conditions that enable participation, belonging, and equal opportunity. Justice as construction therefore offers a normative account of institution-building within civil rights law—one that situates governance itself as a central mechanism through which equality is either produced or denied.

²³ See *infra*.

²⁴ See Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4 (discussing how the Freedmen's Bureau was a "radical reimagining" of government protection of individual rights through the Bureau's interventions in schools, the labor market, healthcare, and courts on behalf of newly freedmen); David Tyack & Robert Lowe, *The Constitutional Moment: Reconstruction and Black Education in the South*, 94 AM. J. EDUC. 236, 236–56 (1986) (describing how Black people in the Reconstruction South used their new political power to establish both Black and White schools creating a framework for free and universal public education); Eric Foner, *Rights and the Constitution in Black Life during the Civil War and Reconstruction*, 74 J. AM. HIST. 863, 878–80 (1987) (emphasizing Black involvement in electrical politics in the Reconstruction Support as well as the view of Black people that the "national government [was] the guarantor of their rights.").

²⁵ David M. Kennedy, *What the New Deal Did*, 124 POL. SCI. Q. 251 (2009) (discussing how the New Deal's creation of The Federal Deposit Insurance Corporation, the Securities and Exchange Commission, the Federal Housing Administration, the National Labor Relations Board, the Fair Labor Standards Act, and the Social Security transformed America's social and political landscape); Bradford A. Lee, *The New Deal Reconsidered*,

not only the end of segregation but meaningful access to jobs, housing, education, and political power.²⁶ In each of these moments, equality became more durable because it was embedded in the structures and systems of everyday life.

What is new is our forgetting. Judicial retrenchment and political backlash have obscured a tradition that once understood equality not merely as freedom from discrimination, but as the affirmative construction of the institutions, infrastructure, and conditions necessary for equal citizenship.²⁷ This Article seeks to recover that earlier tradition. It argues that the future of civil rights law lies not in abandoning the prohibitory or defensive project, which remains essential, but in reclaiming, recentering, and extending its constructive partner.

Part I develops the concept of architectural inequality as a framework for understanding institutional and structural racism, and explains its significance for antidiscrimination law. Part II examines the architecture that determines whether communities can belong, participate, and flourish, mapping the ways that facially neutral systems embed and reproduce racial inequality. Part III turns to the meaning of justice within this expanded understanding of architectural inequality and calls for a new era focused on constructing justice. And Part IV examines the strands of the constructive civil rights tradition reflected in the language and early deployment of civil rights legislation. It concludes by proposing an architectural approach to civil rights law with the potential to dismantle the systems that produce inequality and build the conditions necessary for equal opportunity and democratic inclusion.

This Article builds on and extends a line of inquiry I have pursued in earlier work on race, infrastructure, and the built environment. That work began by examining how highways, transportation systems, and other forms of public infrastructure do more than reflect existing racial inequality: they can construct it, shaping where people live, the opportunities they can reach,

WILSON Q. Spring 1982, 62, 62 (1982) (finding that the New Deal had mixed results but unmistakable impact in “reshap[ing] American institutions and [giving] material sustenance to millions of people who had been thrown out of jobs and into various states of misery by the Depression.”).

²⁶ David Brown & Clive Webb, *‘We Shall Overcome’: The Civil Rights Movement in RACE IN THE AMERICAN SOUTH: FROM SLAVERY TO CIVIL RIGHTS* 290 – 319 (2007) (discussing how 1950s and 1960s civil rights activists pursued broad reforms beyond the dismantling of segregation, including higher access to voting rights, educational equality, employment opportunity, and political participation). It is important to remember that although it is generally referred to as the March on Washington, it was officially the March on Washington for Jobs and Freedom.

²⁷ See *infra*.

the wealth they can build, and the political power they can exercise.²⁸ Dividing Lines developed that argument through the history and continuing consequences of transportation infrastructure, tracing how infrastructure decisions helped build racial inequality into the physical and social landscape of historically Black communities. *Infrastructure Equality* built on that account by asking what equality requires of infrastructure policy itself, shifting the focus from identifying infrastructure's role in producing inequality to considering how infrastructure might instead be designed and governed to advance equality. A related strand of my work turned more directly to community, examining the ways civil rights law has often failed to recognize and protect the relationships, institutions, networks, and collective attachments that make communities places of belonging and sources of opportunity and power.²⁹ This Article brings these strands together and broadens the inquiry, moving beyond physical infrastructure to ask what happens when we understand racial inequality itself as architectural, produced through the interaction of legal rules, institutions, public systems, markets, spatial arrangements, and distributions of power that collectively structure both individual opportunity and the vitality of communities.

I. A Note on the Architecture of Inequality

In many meaningful ways, the concepts of institutional³⁰ and structural racism,³¹ along with the doctrinal framework of disparate impact

²⁸ See Deborah N. Archer, *DIVIDING LINES: HOW TRANSPORTATION INFRASTRUCTURE REINFORCES RACIAL INEQUALITY* (2025); Deborah N. Archer & Yuvraj Joshi, *Infrastructure Equality*, 120 NW. L. REV. 135, 139 (2025); Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125 (2021); Deborah N. Archer, *White Men's Roads Through Black Men's Homes: Advancing Racial Equity Through Highway Reconstruction*, 73 VANDERBILT L. REV. 1259 (2020).

²⁹ Deborah N. Archer & Joseph R. Schottenfeld, *Defending Home: Toward a Theory of Community Equity*, 92 U. CHI. L. REV. 2199 (2025).

³⁰ Erika K. Wilson, *Monopolizing Whiteness*, 134 HARV. L. REV. 2382, 2397-2400 [hereinafter Wilson, *Monopolizing Whiteness*].

³¹ Structural racism operates at a broader level. It refers to the interconnected network of institutions, laws, policies, markets, and historical forces that collectively reproduce racial inequality across society. Structural racism does not focus primarily on isolated policies or individual institutional failures. Rather, it describes how racial inequality is reproduced through the ordinary and interconnected operation of social systems themselves. Under a structural account, racial inequality is not produced by a series of unfortunate institutional choices that merely happen to cluster together. It is produced by laws, policies, economic arrangements, and social practices that interact in ways that ensure advantage and vulnerability remain distributed along racial lines. See John A. Powell, "Structural Racism: Building upon the Insights of John Calmore," 86 N.C. L. REV. 791 (2008); Wilson, *Monopolizing Whiteness*, *supra* note 30 at 2401 (describing the monopolization of quality schools by white students that occurs because of the confluence of past housing segregation, continued modern housing segregation, individual choice by white parents);

liability,³² capture important dimensions of the architectures of inequality. However, the concept of architectural racism that this Article proposes further illuminates the mechanics by which institutional and structural racism operate, and helps describe the scope of solutions necessary to support racial equality.

Institutional racism refers to racial inequality produced within particular institutions through policies, practices, and decision-making structures that generate racially disparate outcomes without explicitly invoking race.³³ The emphasis is on specific mechanisms embedded within specific institutional settings. A school district's funding structure, discriminatory lending practices by financial institutions, exclusionary zoning decisions, or racial disparities in policing practices all reflect forms of institutional racism. The focus is on how particular institutions operate and how seemingly race-neutral practices within those institutions reproduce inequality.

For example, if institutional racism is the problem, then the task is to identify the offending policy or practice, measure its discriminatory effects, and, where possible, require less discriminatory alternatives.³⁴ That work is critically important and is reflected in much disparate impact litigation and enforcement efforts in housing, employment, education, and policing.³⁵ But standing alone, that strategy is insufficient because it may leave intact the larger system that generates, reproduces and gives effect to those policies. Fair housing enforcement cannot fully succeed while economic dispossession strips Black families of the wealth necessary to access housing markets. Antidiscrimination law in employment cannot fully succeed while opportunity deprivation limits the educational and social

Erika K. Wilson, *The Legal Foundations of White Supremacy*, 11 DePaul J. for Soc. Just. 1 (2018) (arguing that facially neutral institutional arrangements reproduce racial hierarchy through the interlocking pillars of exclusion, subordination, and exploitation).

³² April J. Anderson, *What Is Disparate-Impact Discrimination?*, LIBRARY OF CONGRESS (April 28, 2026), <https://www.congress.gov/crs-product/IF13057> (“Disparate-impact discrimination occurs when a seemingly neutral policy or action causes a disproportionate and unjustified negative harm to a group, regardless of intent.”). *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) and *Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015) are both seminal cases establishing the doctrine of disparate impact.

³³ Wilson, *Monopolizing Whiteness*, *supra* note 30 at 2397-2400 (“discussing school district boundary lines as a form of institutional racism as school district boundary lines have a “racialized effect that produces similar exclusion as the de jure laws that facilitate first-order social closure.”).

³⁴ See *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

³⁵ Stephen Menendian, *STRUCTURAL RACISM: THE DYNAMICS OF OPPORTUNITY AND RACE IN AMERICA* (2025).

pathways through which employment is reached. Voting rights protections cannot fully succeed while civic and economic marginalization weaken the political power communities need to sustain those protections against erosion. Reform in one domain, without attention to the interlocking architecture of racial inequality as a whole, is often overwhelmed by the larger system that reproduces it.

Structural racism comes much closer to describing some of Jim Crow's most powerful cousins: systems that no longer require explicit racial classifications to produce deeply racialized outcomes. Institutional racism is one mechanism through which structural racism is enacted, but structural racism exceeds any single institution; it is the patterned interaction of institutions' policies, practices, and norms that over time creates durable racial hierarchies.³⁶

Structural racism refers to the interconnected network of institutions, laws, policies, markets, and historical forces that collectively reproduce racial inequality across society.³⁷ It describes how racial inequality is reproduced through the ordinary and interconnected operation of social systems themselves. Under a structural account, racial inequality is not produced by a series of unfortunate institutional choices that merely happen to cluster together. It is produced by laws, policies, economic arrangements, and social practices that interact in ways that ensure advantage and vulnerability remain distributed along racial lines.³⁸

The concept of architectural inequality³⁹ shares critical common ground with the structural racism framework. Both reject the fiction that racial disparities are the product of individual failing or natural difference.

³⁶ *Id.*

³⁷ Erika K. Wilson, Monopolizing Whiteness at 2401 (describing the monopolization of quality schools by white students that occurs because of the confluence of past housing segregation, continued modern housing segregation, individual choice by white parents); Erika K. Wilson, The Legal Foundations of White Supremacy, 11 DePaul J. for Soc. Just. 1 (2018) (arguing that facially neutral institutional arrangements reproduce racial hierarchy through the interlocking pillars of exclusion, subordination, and exploitation)

³⁸ See John A. Powell, "Structural Racism: Building upon the Insights of John Calmore," North Carolina Law Review; Stephen Menendian, STRUCTURAL RACISM: THE DYNAMICS OF OPPORTUNITY AND RACE IN AMERICA (2025).

³⁹ This Article uses the term architectural deliberately and expansively. Architecture, in the conventional sense, refers to the design of physical space — the roads, highways, and transit systems that, as I have explored elsewhere, have long been instruments of racial exclusion and control. See Deborah N. Archer, DIVIDING LINES: HOW TRANSPORTATION INFRASTRUCTURE REINFORCES RACIAL INEQUALITY (2025). But architecture in the sense that I am employing in this Article refers to something broader: the design of institutions, public systems, and legal frameworks that structure the conditions of community life. Like a building, these systems are planned and constructed. Like a building, they reflect the assumptions, priorities, and choices of their designers. And like a building, once built, they shape the behavior of everyone who moves through them. To call inequality architectural is to insist that it is not accidental, not natural, and not inevitable.

Both locate racial harm in systems and institutions rather than isolated acts of prejudice. And both insist that law must grapple with the structural dimensions of inequality if it is to have meaningful purchase on the problem.

But architectural inequality makes a specific claim with significant implications for how we understand racial harm, how inequality reproduces itself over time, and why existing legal frameworks so often fail to address it. Structural racism explains how interconnected institutions and systems interact to reproduce racial inequality. Architectural inequality focuses on the durable design features that organize, stabilize, and reproduce those systems across domains and over time. Thus, the concept of architectural racism that this Article proposes further illuminates the mechanics by which structural racism operates.

First, the concept of architectural inequality seeks to make clear how racism manifests through durable and self-executing systems that organize social and spatial life long after the original discriminatory choices that created them fade from view. These include interstate highway systems routed through Black communities, exclusionary zoning regimes that lock opportunity behind municipal borders; fragmented local government structures and property-tax-based school funding systems that isolate tax bases and public resources; transit networks that connect wealthy neighborhoods while bypassing under-resourced ones; and urban renewal frameworks that facilitate displacement.⁴⁰ These systems do not require discriminatory choices to be remade every day. They run, they compound, and they reproduce racially disparate outcomes precisely because they continue operating as designed and constructed. This durability is what makes architectural inequality both so consequential and so resistant to legal remedy. There is often no ongoing discriminatory decision to identify or discrete moment of bias to isolate. Instead, we confront facially neutral systems producing predictable patterns of racialized exclusion, isolation, vulnerability, and displacement.

Second, the architectural racism framework focuses on how systems of disadvantage are not merely parallel or incidentally related. Instead, their interlocking character is itself a design feature. The systems that determine where communities can live shape whether they can accumulate wealth.

⁴⁰ Lisa C. Young, *Breaking the Color Line: Zoning and Opportunity in America's Metropolitan Areas*, 8 J. Gender Race & Just. 667, 669 (2005); Wendy Q. Xiao, *The Road to Racial Justice: Resolving the Disproportional Health Burden Placed on Communities of Color by Highway Pollution*, 52 Colum. Hum. Rts. L. Rev. 911 (2021).

Wealth accumulation shapes access to educational opportunity.⁴¹ Educational inequality shapes political participation and civic power.⁴² Transportation systems shape access to employment, health care, and regional mobility.⁴³ Land use systems shape environmental exposure and public investment.⁴⁴ These systems reinforce one another in ways that make disadvantage durable, cumulative, and spatially concentrated. Architectural inequality does more than name the existence of racial disparities across domains. It elucidates the organized relationships among them and the ways they are built to reinforce one another over time. Structural racism sees the domains. Architectural inequality sees the architecture that connects them.

Third, architectural inequality supplies explicitly what structural racism literature has often left implicit: a theory of mechanism. Structural racism names the pervasive and compounding racial disadvantage, but does not always specify how systems produce and reproduce that disadvantage at the level of design. Architectural inequality focuses precisely on that question. It asks how systems are structured in ways that encode assumptions about who belongs, who deserves investment, whose communities are worth preserving, and who may be displaced, isolated, or rendered expendable in the name of growth, efficiency, or progress. Architectural inequality therefore is not a departure from structural racism but a way of explaining it—one with particular doctrinal significance because existing legal frameworks are largely designed to identify discriminatory actors, discriminatory decisions, or discriminatory policies, not discriminatory blueprints. Architectural inequality seeks to make visible the layer of design.

Finally, although structural racism focuses on systems, it nonetheless tends to rest on the experience of the individual.⁴⁵ It explains

⁴¹ See generally Richard Rothstein, *THE COLOR OF LAW* (2017); Melvin L. Oliver & Thomas M. Shapiro, *BLACK WEALTH/WHITE WEALTH* (2d ed. 2006); Thomas M. Shapiro, *THE HIDDEN COST OF BEING AFRICAN AMERICAN* (2004); Raj Chetty et al., *The Opportunity Atlas: Mapping the Childhood Roots of Social Mobility* (2018)

⁴² See generally Henry E. Brady, Sidney Verba & Kay Lehman Schlozman, *Beyond SES: A Resource Model of Political Participation*, 89 Am. Pol. Sci. Rev. 271 (1995); Sidney Verba, Nancy Burns & Kay Lehman Schlozman, *Unequal at the Starting Line: Creating Participatory Inequalities Across Generations and Among Groups*, 34 Am. Sociologist 45 (2003); Sidney Verba, Kay Lehman Schlozman & Henry E. Brady, *Voice and Equality: Civic Voluntarism in American Politics* (1995).

⁴³ See generally Archer, *DIVIDING LINES*; Robert D. Bullard, Glenn S. Johnson & Angel O. Torres, *HIGHWAY ROBBERY: TRANSPORTATION RACISM AND NEW ROUTES TO EQUITY* (2004).

⁴⁴ See generally Vicki Been, *Locally Undesirable Land Uses in Minority Neighborhoods: Disproportionate Siting or Market Dynamics?*, 103 Yale L.J. 1383 (1994); Vicki Been, *What's Fairness Got to Do with It? Environmental Justice and the Siting of Locally Undesirable Land Uses*, 78 Cornell L. Rev. 1001 (1993).

⁴⁵ Brian Jones, *Growing up black in America: here's my story of everyday racism*, THE GUARDIAN (June 6, 2018), <https://www.theguardian.com/us-news/2018/jun/06/growing-up-black-in-america-racism-education>

how systems disadvantage Black people as they move through institutions, denying access, imposing disparate burdens, or producing unequal outcomes that aggregate into broader patterns of racial inequality.⁴⁶ The harm, even if structural in origin, is ultimately experienced and measured at the level of the individual.

Architectural inequality operates at a different unit of analysis: the community itself. The systems this Article describes do more than disadvantage individuals moving through them. They destabilize, fragment, isolate, and hollow out communities as collective entities across time and space.⁴⁷ Exclusion, displacement, disinvestment, environmental burdening, and spatial isolation erode social infrastructure, weaken collective wealth, diminish political power, fracture social networks, and undermine the geographic and institutional coherence that make collective community life possible.⁴⁸

This distinction is not merely theoretical. Law remains poorly equipped to recognize community-level harm. Standing doctrine is organized around individualized injury.⁴⁹ Class actions offer scale without transformation: they multiply individual plaintiffs but leave intact the assumption that harm is only cognizable when it can be traced to a discrete, identifiable victim.⁵⁰ Disparate impact frameworks measure harm to identifiable persons or classes of persons.⁵¹ The cumulative and diffuse damage inflicted on a community's cohesion, institutions, political capacity, and ability to remain intact frequently falls outside the frame that antidiscrimination law is equipped to cognize and remedy.⁵²

⁴⁶ Shreya Atrey, *Structural Racism and Race Discrimination*, 74 CURRENT LEGAL PROBLEMS 1 (2021) (explaining how daily experiences of racism are rooted in systemic racism); see e.g. William M. Wiececk and Judy L. Hamilton, *Beyond the Civil Rights Act of 1964: Confronting Structural Racism in the Workplace*, 74 LA. L. REV. (2014) (highlighting how structural racism shows up in everyday workplace policies).

⁴⁷ See Archer & Schottenfeld, *Defending Home*.

⁴⁸ See Archer & Joshi, *supra* note 2, at 138 (2025) (Noting the collective dimensions to structural inequality); see also Yuvraj Joshi, *Racial Time*, 90 U. CHI. L. REV. 1625 (2023) (arguing that the use of time within traditional legal frameworks disproportionately burden marginalized communities).

⁴⁹ *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

⁵⁰ See Archer & Schottenfeld, *Defending Home* at 2205-06 (discussing the limited community remedies from aggregating individual claims).

⁵¹ *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Texas Dept. of Housing and Community Affairs v. The Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015).

⁵² Archer & Schottenfeld, *Defending Home* at 2205; see also Baher Azmy, *Taking Back the Streets: Impact Litigation as Movement Law*, NYU L. Rev. at 289 ("Ultimately, conceptions of rights are limited, narrow, and technical; dependent as they are on legal forms, rarely do they map fully onto a community's broader demands for accountability or freedom, nor are they designed to fully remedy structural problems of injustice . . .").

With architectural inequality, the harm begins in the design, not the individual decision-making current civil rights doctrine is aimed at addressing. By making the challenges clearer and the harms clearer, the concept of architectural racism offers a new pathway to understanding, and ultimately transforming, the limits of antidiscrimination law.

II. The Nature of Modern Racial Inequality

Understanding modern racial inequality begins with a simple observation: systems of racial hierarchy rarely disappear, they evolve.⁵³ Jim Crow was never solely a system of formal segregation. It was also the architecture of control designed to maintain white supremacy by keeping Black communities confined to particular places within the social, political, and economic order.⁵⁴ Over time, law, policy, infrastructure, and patterns of public investment have been used to embed that control into the physical, economic, and institutional landscape of American life. Laws dictated where Black people could live, work, travel, learn, and gather.⁵⁵ Segregation statutes, racially restrictive covenants, and discriminatory zoning rules structured physical space to maintain racial boundaries.⁵⁶

⁵³ See generally Elise Boddie, *Adaptive Discrimination*, 94 N.C. L. Rev. 1235 (2016) (describing how racial discrimination is fluid and adaptive); Reva B. Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 Stan. L. Rev. 1111 (1997) (describing how racial and gender hierarchies adapt); Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 20 (2010) (exploring how “racial caste in America . . . [has] merely [been] redesigned”); Lipsitz, George. “‘Swing Low, Sweet Cadillac’: White Supremacy, Antiblack Racism, and the New Historicism.” *American Literary History*, vol. 7, no. 4, 1995, pp. 700–25. *JSTOR*, <http://www.jstor.org/stable/490070> (analyzing the Malcolm X quote: “racism is like a Cadillac, every year there is a new model); Archer & Schottenfeld, *Defending Home* at 2213 (discussing “how persistent and create Americans have been in adapting and evolving the[] tools of segregation”).

⁵⁴ See generally Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime Free Housing Ordinances*, 118 MICH. L. REV. 173, 179 (2019) [hereinafter Archer, *The New Housing Segregation*] (highlighting how contemporary crime-free housing ordinance import “racial biases in policing and the criminal legal system are imported into the private housing market, furthering systemic racial exclusion and residential segregation”); Archer & Schottenfeld, *Defending Home* at 2213 (explaining how “both law and culture imposed strict limits on where and how Black people--free or enslaved--could move”); Tera Hunter, *To ‘Joy My Freedom: Southern Black Women’s Lives and Labors After the Civil War* (Cambridge: Harvard University Press, 1997); Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Vintage Books 1979); Justin S. Conroy, “‘Show Me Your Papers’: Race and Street Encounters,” *National Black Law Journal* 19, no. 2 (2007): 149; Eric Foner, *Nothing But Freedom: Emancipation and Its Legacy* (Baton Rouge: Louisiana State University Press, 2007).

⁵⁵ Archer & Schottenfeld, *Defending Home* at 2212.

⁵⁶ Carol M. Rose, *Property Law and Inequality: Lessons from Racially Restrictive Covenants*, 117 Nw. U. L. Rev. 225 (2022); Sarah J. Adams-Schoen, *The White*

Economic systems, including exclusion from credit markets and discriminatory labor practices, limited wealth accumulation and robbed communities of the means to build and sustain themselves.⁵⁷ Then, violence and state enforcement ensured compliance with these racial boundaries.⁵⁸ Together, these mechanisms worked to keep Black people and other people of color “in their place” physically, economically, and socially, preserving a racial hierarchy that governed not only opportunity but belonging itself.⁵⁹

Although the legal architecture of Jim Crow has been dismantled, the underlying logic of racial hierarchy has not disappeared. Markets, algorithms, public investment decisions, and public-private governance arrangements now perform the work of exclusion more effectively and more quietly than explicit racial classifications ever could. Where Jim Crow announced itself through the open language of segregation, contemporary systems operate under the banner of neutrality, efficiency, and innovation, producing predictably racialized outcomes while insulating those outcomes from legal challenge.

This Part examines four interlocking architectures through which these modern “cousins of Jim Crow” operate: spatial exclusion; economic dispossession; opportunity deprivation; and civic subordination. These four pillars are the structural beams of the architectural design: spatial exclusion is the architecture of place; economic dispossession is the architecture of wealth; opportunity deprivation is the architecture of mobility; and civic subordination is the architecture of power and self-determination.

Scholars and practitioners often use the term “built environment” to describe the physical spaces people create and inhabit, elements of their

Supremacist Structure of American Zoning Law, 88 Brook. L. Rev. 1225 (2023); Schindler, *supra* note 12.

⁵⁷ Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* 34 – 36 (3rd ed. 2019) (describing how Black Americans have faced racial discrimination in mortgage lending, regardless of income, resulting in disproportionate denials and higher interest rates); Daiquiri J. Steele, *Enduring Exclusion*, 120 MICH. L. REV. 1667, 1672 (2022) (describing how women and people of color have faced exclusions from labor protections and had uneven enforcement of protections); Lynnise E. Pantin, Financial Inclusion, Cryptocurrency, and Afrofuturism, 118 NW. U. L. REV. 621 (2023).

⁵⁸ Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); Gaynor, Tia Sherée, et al. “Segregated Spaces and Separated Races: The Relationship Between State-Sanctioned Violence, Place, and Black Identity.” RSF: The Russell Sage Foundation Journal of the Social Sciences, vol. 7 no. 1, 2021, p. 50-66.

⁵⁹ Deborah N. Archer & Devon Carbado *Reform and Retrenchment in the Architecture of American Citizenship*, U.Penn L. Rev. (forthcoming 2026); Archer & Schottenfeld, *Defending Home*, *supra* note 6, at 2205 – 06.

material landscape.⁶⁰ That understanding has been indispensable in revealing how physical infrastructure shapes health, mobility, economic opportunity, and environmental justice. But the built environment is more expansive than the physical landscape alone. It also encompasses the institutional, legal, administrative, and democratic arrangements that organize everyday life and determines how people move through society. Like roads and neighborhoods, these institutions do not arise naturally. They are designed, maintained, and continually remade through public choices.

Together, these physical and institutional arrangements constitute the larger ecosystem within which rights are exercised, opportunities are distributed, and citizenship is experienced. Understanding the built environment in this broader sense helps illuminate the power of interlocking architectures of inequality.⁶¹

A. Exclusion from Space and Place

"Home is where our stories begin."⁶² Most popular narratives of racism focus on the individual. But people and places are inextricably linked. As one scholar has observed, "it's hard to see where bigotry against people begins and where place-based injustice ends."⁶³ White supremacy has always been, in profound ways, about place. It is a project of ordering, of assigning people to a social position and then enforcing that position, often through space.⁶⁴ It demands not only that Black people and other

⁶⁰ Schindler, *supra* note 12.

⁶¹ Scholar Daria Roithmayr also offers a helpful framework. Roithmayr argues that racial hierarchy persists through network effects, in which early discriminatory choices generate self-reinforcing feedback loops that reproduce inequality automatically. Daria Roithmayr, *REPRODUCING RACISM*. Like the QWERTY keyboard, which became dominant not because it was superior but because widespread adoption made it difficult to replace, racial disadvantage becomes entrenched once embedded in housing markets, school district boundaries, lending systems, municipal governance, and infrastructure networks. Daria Roithmayr, *REPRODUCING RACISM*. Those systems then continue to produce racialized outcomes without requiring ongoing discriminatory intent. Architectural inequality offers the design-level account of these feedback loops. The four architectures are the domains in which Roithmayr's feedback loops and network effects operate.

⁶² Andre M. Perry, *KNOW YOUR PRICE: VALUING BLACK LIVES AND PROPERTY IN AMERICA'S BLACK CITIES 2* (2020).

⁶³ *Id.* at 53.

⁶⁴ Elizabeth Stordeur Pryor, *COLORED TRAVELERS: MOBILITY AND THE FIGHT FOR CITIZENSHIP BEFORE THE CIVIL WAR 46-47* (2016) (discussing "Black geographies": the spaces that reinforced Black people's subjugation and servitude during slavery); Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001); Tera Hunter, *To 'Joy My Freedom: Southern Black Women's Lives and Labors After the Civil War* (Cambridge: Harvard University Press, 1998); Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Vintage Books 1979); Justin S. Conroy, "'Show Me Your Papers': Race and Street

people of color accept a subordinate status, but that they remain within the boundaries of that status, both socially and physically. Place is so central to white supremacy because access to place structures access to nearly every other dimension of social and economic life. Where one lives shapes the quality of education available, exposure to environmental hazards, proximity to employment, access to mobility, and the safety and stability of daily life.⁶⁵ Control over space therefore functions as a central mechanism for distributing opportunity and vulnerability across entire communities. There simply is no more effective way to fix people in their social place than to lock them in place physically—to control where they can go, where they can live, and what opportunities they can access.

The systematic exclusion of Black people from valuable, safe, opportunity-rich spaces has been a central engine of racial inequality in the United States.⁶⁶ From the nation's founding through the twentieth century,

Encounters,” *National Black Law Journal* 19, no. 2 (2007): 149; Eric Foner, *Nothing But Freedom: Emancipation and Its Legacy* (Baton Rouge: Louisiana State University Press, 2007); Elise C. Boddie, *Racial Territoriality*, 58 *UCLA L. Rev.* 401, 435-43 (discussing how “racial meaning helps to instigate territorial behavior in which one racial group seeks to exclude another racial group from what it perceives to be its own space”).

⁶⁵ Sheryll D. Cashin, *Drifting Apart: How Wealth and Race Segregation are Reshaping the American Dream*, 47 *Vill. Rev.* 595 (2002); see e.g., Hillary Rosner, *Why Warblers Flock to Wealthier Neighborhoods*, *N.Y. Times* (Nov. 21, 2023) (the evolutionary effects of redlining are percolating through urban wildlife populations.”); Philip Tegeler & Michael Hilton, *Disrupting the Reciprocal Relationship Between Housing and School Segregation*, in *A SHARED FUTURE: FOSTERING COMMUNITIES OF INCLUSION IN AN ERA OF INEQUALITY* 436 (Christopher Herbert, Jonathan Spader, Jennifer Molinsky & Shannon Rieger eds., 2018), https://www.jchs.harvard.edu/sites/default/files/A%20Shared%20Future_Final_102918.pdf.

⁶⁶ Archer, *DIVIDING LINES*, *supra* note 19, at 105 (“Regardless of class, Black communities did not receive the infrastructure investments and maintenance, sanitation services, fire protection, or recreation spaces that white communities did. This disinvestment contributes to a vicious cycle.”); Archer & Schottenfeld, *Defending Home*, *supra* note 7, at 2212 (“The location and conditions of Black communities are, in part, a legacy of racial exclusion and discrimination related to place that has been built across generations”); Rothstein, *supra* note 59; Owen Fiss, *A WAY OUT: AMERICA’S GHETTOS AND THE LEGACY OF RACISM* at 6 (“Although our ghettos were never surrounded by the physical walls that often marked the European ones, a blend of economics and racial practices produced the same sense of confinement”).

The problem is not simply that Black people have been excluded from opportunity-rich spaces. It is that law and policy have long racialized space itself, coding whiteness as a marker of value, safety, and investment while coding Blackness as a signal of risk, disinvestment, and decline. So long as opportunity is attached to racialized conceptions of place, communities identified as white will continue to attract public and private investment, while communities identified as Black will continue to be deprived of the very conditions that produce opportunity. See generally Sheryll Cashin, *WHITE SPACE, BLACK HOOD* (2021); Audrey G. McFarlane, *The Properties of Instability: Markets,*

this spatial ordering was explicit and unapologetic. Slavery itself was a system of absolute spatial control. Black people were legally bound to the land and the master's will, their movement a privilege granted or violently revoked, never a right.⁶⁷ Jim Crow enforced rigid spatial boundaries, restricting where Black people could live, work, play, worship, and move.⁶⁸ These boundaries were maintained through a combination of private and public racial violence, state-sanctioned discrimination, and law and policy specifically designed to limit where Black communities could settle.⁶⁹ The result, accumulated over decades, was a systematic stripping away of the economic tools and opportunities necessary for stability and success; wealth, education, safety, and political power were each tethered to place, and Black communities were excluded from the places where those resources concentrated.⁷⁰

Predation, Racialized Geography, and Property Law, 2011 Wis. L. Rev. 855; Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 San Diego L. Rev. 295 (1999).

Affluent Black communities illustrate the point. Even where Black households possess substantial income and purchasing power, businesses frequently undervalue those markets and underinvest in them. The Washington metropolitan region, for example, has substantially fewer premium grocery stores serving high-income Black neighborhoods than similarly affluent white neighborhoods, reflecting the extent to which investment decisions continue to be shaped by the racial coding of place rather than by the market. D.W. Rowlands, Manann Donoghoe & Andre M. Perry, *What the Lack of Premium Grocery Stores Says About Disinvestment in Black Neighborhoods*, Brookings Inst. (Apr. 11, 2023), <https://www.brookings.edu/articles/what-the-lack-of-premium-grocery-stores-says-about-disinvestment-in-black-neighborhoods/>; Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 San Diego L. Rev. 295 (1999).⁶⁷ Dawinder S. Sidhu, *Threshold Liberty*, 37 CARDOZO L. REV. 503 (2015) (describing how slavery's "spatial control was comprehensive, encompassing rules on where a slave slept, where a slave worked, and whether the slave could travel beyond the territory of the plantation and, if so, on what terms. To the extent that a slave traveled away from the plantation, such movements were possible only with the permission of the master and even then were closely regulated.").

⁶⁸ Mitchell F. Crusto, *Enslaved Constitution: Obstructing the Freedom to Travel*, 70 U. PITT. L. REV. 233, 270 (2008) ("Jim Crow laws continued to restrict blacks' right to travel, which guaranteed a cheap labor pool for rich landowners... Throughout the first half of the twentieth century, travel restrictions in the form of vagrancy laws served Southern states as a legal vehicle to 're-enslave' African-Americans."); see also Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2131–34 (2021).

⁶⁹ Richard Rothstein, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

⁷⁰ Crusto, *supra* note 69, at 272 (arguing that historic travel regulations imposed on Black people have ramifications that continue modern day and persist even in emergencies such as Hurricane Katrina); Archer & Joshi, *supra* note 5, at 146 ("Black communities have faced systematic underinvestment that has devastated generations, stripping individuals and families of wealth, health, and opportunity. These resulting harms were then perversely used to justify further devastation of Black communities and continued exclusion of Black people.")

Although explicit tools of racial segregation like racially restrictive covenants and racial zoning laws have been outlawed, and overt housing discrimination against individuals is now formally prohibited,⁷¹ the spatial order it produced has not been undone and tools of exclusion have simply evolved. Law and policy operated directly on individuals and communities to structure racial geography: through exclusionary lending practices, urban renewal, highway and infrastructure construction, and the deliberate siting of environmental harms. These were not incidental byproducts of development; they were tools of racial governance, designed to segregate, isolate, and contain.⁷² Over time, explicit spatial exclusion was translated into the technocratic language of zoning, housing policy, and urban development — systems that continue to determine which communities are protected, which are neglected, and which are displaced, achieving through facially neutral mechanisms what Jim Crow achieved through open declaration.

Moreover, even as formal barriers have been dismantled, the spatial logic of racial exclusion has not disappeared. Today, the enabling mechanisms are often less visible but no less powerful. They are embedded in markets, institutions, and systems that appear neutral but operate in ways that reproduce segregation and inequality. Policies that appear facially neutral—restrictive land use regulations, crime-free housing ordinances, school zone boundaries and enrollment requirements, and anti-nuisance laws—frequently function as mechanisms of exclusion, limiting who can access neighborhoods with higher-performing schools, safer environments, and greater economic stability.⁷³ What was once accomplished through

⁷¹ Pub. L. No. 90-284, tit. VIII, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601–3619) (prohibiting discrimination based on race and other protected classes in housing transactions such as the renting or purchasing housing, financing of housing, and brokerage services); *but see* Boddie, *Adaptive Discrimination*, *supra* note 2, at 1249–56 (describing the evasive strategies that white communities have historically used to circumvent equality and anti-segregation mandates).

⁷² Archer, *DIVIDING LINES*, *supra* note 19, at 23 (“In the event, a disproportionate number of highways displaced Black people, were built through Black communities, or were constructed in ways that isolated those communities from other neighborhoods, entrenching racial inequality and protecting “white spaces” and privilege... Segregationists may have had to comply with new civil rights laws, but the highways became a new body of “laws” unto themselves.”) Archer, *supra* note 3, at 1274 (describing how transportation policy was designed to reinforce racial and class inequality and division).

⁷³ Archer, *The New Housing Segregation*, *supra* note 55, at 178–86 (“Seemingly race-neutral local laws have had a profound role in driving systemic racial exclusion and residential segregation.”); Sarah J. Adams-Schoen, *The White Supremacist Structure of American Zoning Law*, 88 BROOK. L. REV. 1225, 1231 (2023) (assessing the detrimental and continued impacts of the “federal government’s widespread promotion of facially neutral comprehensive zoning as an integral part of its twentieth century agenda to develop

explicit racial command is now accomplished through the architecture of facially neutral systems.

Crime-free housing ordinances offer a clear illustration. Adopted by thousands of municipalities across the country, these ordinances encourage or require landlords to deny housing, terminate leases, or evict tenants based on criminal legal system involvement, police contact, or alleged nuisance activity, often regardless of whether the tenant has been charged with or convicted of any offense.⁷⁴ Although framed as tools to promote public safety, they operate at the intersection of housing, policing, and local governance in ways that predictably burden Black people and communities, which have long been subjected to disproportionate police surveillance and enforcement.⁷⁵ The consequence is that patterns of racialized policing are translated into patterns of housing instability and residential exclusion. Entire neighborhoods become less accessible to those already overrepresented in the criminal legal system, reinforcing segregation while limiting access to schools, employment opportunities, transportation, and community resources.⁷⁶

Markets reinforce this architecture. Insurance markets, lending practices, and real estate valuation systems have long sustained racialized patterns of neighborhood investment and disinvestment.⁷⁷ More recently, these patterns have been encoded into algorithmic systems, including tenant-screening tools, automated underwriting, and algorithmic credit scoring that replicate historical discrimination by embedding past inequalities into digital decision-making.⁷⁸ Scholars have described this as

and entrench a separate and unequal dual housing system.”); Wilson, *Monopolizing Whiteness*, *supra* note 30, at 2424–32 (describing how school district boundary lines serve as a mechanism for maintaining whiteness by operating as impermeable borders); *NYCLU Data: Nuisance Laws Often Hit Communities of Color and Poor Hardest*, N.Y.

C.L. UNION (Aug. 8, 2018), <https://www.nyclu.org/press-release/nyclu-data-nuisance-laws-often-hit-communities-color-and-poor-hardest>.

⁷⁴ See generally Archer, *The New Housing Segregation*, *supra* note 55; Deborah N. Archer, *Exile from Main Street*, 55 HARV. C.R.-C.L. L. REV. 788, 804–09 (2020) [hereinafter, Archer, *Exile from Main Street*].

⁷⁵ Archer, *The New Housing Segregation*, *supra* note 55, at 203–08; Archer, *Exile from Main Street*, *supra* note 75, at 809–12.

⁷⁶ Archer, *The New Housing Segregation*, *supra* note 55, at 208–12; Archer, *Exile from Main Street*, *supra* note 75, at 824–34.

⁷⁷ Aleatra P. Williams, *Lending Discrimination, the Foreclosure Crisis and the Perpetuation of Racial and Ethnic Disparities in Homeownership in the U.S.*, 6 WM. & MARY BUS. L. REV. 601, 607–10 (2015); Heather R. Abraham, *Appraisal Discrimination: Five Lessons for Litigators*, 76 S. Methodist U. L. Rev. 205, 208–09 (2023) (explaining how housing appraisals reinforce housing segregation and undermine generational wealth).

⁷⁸ Olga Akselrod, *How Artificial Intelligence Can Deepen Racial and Economic Inequities*, ACLU (July 13, 2021), <https://www.aclu.org/news/privacy-technology/how-artificial-intelligence-can-deepen-racial-and-economic-inequities>.

digital or technological redlining: the reproduction of racial exclusion through ostensibly neutral, data-driven tools.⁷⁹

Recent litigation challenging State Farm's home-owners insurance claims-processing system illustrates how contemporary market institutions can reproduce racial inequality even after formal access to housing and insurance has been secured. The lawsuit alleges that State Farm relied on algorithmic decision-making tools to determine which homeowners insurance claims would receive heightened scrutiny.⁸⁰ The result was that claims submitted by Black homeowners were disproportionately flagged for additional investigation, documentation, and delay.⁸¹ Rather than functioning as a neutral administrative innovation, the automated claims system allegedly translated historical patterns of racial bias embedded in data and predictive models into present-day disparities in the delivery of insurance benefits.⁸² Black homeowners were required to navigate more burdensome administrative processes, wait longer for payment, and endure prolonged periods in damaged homes while necessary repairs remained uncompleted.⁸³ The consequence was not simply procedural inconvenience. Delayed repairs exposed homes to additional deterioration, reduced property values, disrupted family life, and impaired one of the principal mechanisms through which American families build and preserve wealth.⁸⁴ The algorithmic administration of insurance claims converted historical patterns of racial disadvantage into contemporary disparities in neighborhood stability, home preservation, and wealth accumulation.

The significance of this example lies not merely in discriminatory access to a market, but in discriminatory administration within it. Architectural inequality is reproduced not only through decisions about who may enter institutions, but also through the ostensibly neutral systems that

⁷⁹ Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (NYU Press 2018) (coining the term "technological redlining" to describe how algorithms replicate racial and gender exclusion); Nadiyah J. Humber, *A Home for Digital Equity: Algorithmic Redlining and Property Technology*, 111 Cal. L. Rev. (2023); James A. Allen, *The Color of Algorithms: An Analysis and Proposed Research Agenda for Deterring Algorithmic Redlining*, 46 Fordham Urb. L.J. 219 (2019).

⁸⁰ See Complaint, *Huskey v. State Farm Fire & Casualty Co.*, No. 22-cv-7014 (N.D. Ill. Dec. 14, 2022), Dkt. No. 1 [hereinafter, *Husky Complaint*]; Emily Flitter, *New Suit Uses Data to Back Racial Bias Claims Against State Farm*, N.Y. TIMES (Dec. 14, 2022), <https://www.nytimes.com/2022/12/14/business/state-farm-racial-bias-lawsuit.html>. In the interest of full disclosure, it should be noted that I serve as one of the counsel to the plaintiffs in this litigation.

⁸¹ See *Huskey Complaint*, *supra* note 78, at 17–20; Flitter, *supra* note 78.

⁸² See *Huskey Complaint*, *supra* note 78, at 17–20; Flitter, *supra* note 78.

⁸³ See *Huskey Complaint*, *supra* note 78, at 2–4, 19; Flitter, *supra* note 78.

⁸⁴ See *Huskey Complaint*, *supra* note 78, at 4–6, 19; Flitter, *supra* note 78.

govern how those institutions deliver protection, allocate resources, and preserve opportunity once entry has been achieved.

Environmental decision-making operates similarly. Zoning and siting decisions have long concentrated environmental hazards such as industrial facilities, highways, waste infrastructure, and polluting land uses in communities with the least political power.⁸⁵ Justified as rational land-use planning or necessary economic development,⁸⁶ these decisions impose disproportionate health, environmental, and economic burdens on communities of color. Spatial governance thus determines not only where opportunity is located, but where harm is concentrated.

Increasingly, these systems operate not only through exclusion, but through displacement. Communities that have long been denied investment are suddenly made newly valuable only to have the people who sustained them pushed out in the name of progress, development, or revitalization. In this way, the boundaries of belonging are redrawn again and again, ensuring that access to opportunity remains racially stratified even as its geographic location shifts. Displacement operates as a complementary and increasingly central mechanism of spatial exclusion. Unlike the walls, fences, and explicit restrictions that have historically marked Black communities as places to be kept out, displacement works in the opposite direction: it empties those communities from within, removing long-term residents not through formal prohibition but through economic pressure, speculative investment, and the logic of the market.⁸⁷ The result is the same: Black people are moved from the places they have built and called home. But, the mechanism is harder to see, and the law has been slower to name it as the injustice it is.

The transformation of Washington, D.C.'s Shaw neighborhood is a helpful illustration. For much of the twentieth century, Shaw was one of the nation's most important Black neighborhoods: a center of Black commerce, culture, education, political life, and civic leadership anchored by Howard University, churches, neighborhood institutions, and the businesses of the U Street corridor.⁸⁸ Following decades of disinvestment after the 1968

⁸⁵ Robert D. Bullard, *Environmental Racism and Invisible Communities*, 96 W. VA. L. REV. 1037, 1041–42 (1994).

⁸⁶ Schindler, *supra* note 12, at 1984 (“[L]ocal governments make land-use decisions pursuant to their police powers, which have been interpreted quite broadly; it is not difficult to find legitimate, rational justifications—typically relating to health, safety, or welfare—for most zoning ordinances.”)

⁸⁷ Mitchell et al., *supra* note 16.

⁸⁸ Derek Hyra, *The Back-to-the-City Movement: Neighborhood Redevelopment and Processes of Political and Cultural Displacement*, 52 Urb. Stud. 1753, 1757 (2015) (“No community symbolizes Washington, DC’s pattern of demographic shift better than Shaw/U Street ... Shaw/U Street was once the ‘Harlem of DC’ and in the early part of the 20th

uprising, the neighborhood became the subject of significant public and private reinvestment.⁸⁹ New transit investments, redevelopment incentives, changing land use policies, expanding real estate markets, and shifting patterns of capital investment transformed Shaw into one of the country's fastest-gentrifying neighborhoods.⁹⁰

No single decision required the displacement of long-standing Black residents or the erosion of the community's institutional life. Instead, the interaction of transportation planning, zoning decisions, housing markets, public investment, and municipal governance steadily increased housing costs, altered the neighborhood's commercial landscape, and weakened many of the social institutions that had long sustained Black community life. The resulting harm cannot be understood simply as the aggregation of individual housing losses. As families departed, churches lost congregants, neighborhood businesses lost customers, civic organizations lost members, political influence shifted, and the dense networks of trust, mutual support, and collective identity that had defined Shaw were fractured. The architecture did not merely relocate individuals; it reorganized an entire community. Patterns of redevelopment redistributed opportunity while displacing the very communities that created the neighborhood's social and cultural foundation.⁹¹

Traditional antidiscrimination law would struggle to identify a single discriminatory act or actor responsible for Shaw's transformation. Yet the cumulative reorganization of the neighborhood reveals precisely the kind of community-level injury that architectural inequality brings into

century the community was the centre of black business, entertainment, education and religion in DC.”); Robert L. Cosby, *Gentrification and the History of Power and Oppression of Older African Americans in Washington, DC*, in *SOCIAL WORK, WHITE SUPREMACY, AND RACIAL JUSTICE: RECKONING WITH OUR HISTORY, INTERROGATING OUR PRESENT, REIMAGINING OUR FUTURE* (Laura Abrams et al. ed., 2023) (explaining that Shaw used to be the home of D.C.'s Black working and middle class and the site of a rich Black culture).

⁸⁹ See *Shaw Roots*, SHAW MAIN STREETS, (last visited July 10, 2026), https://www.shawmainstreets.org/who_we_are/historic_shaw (“The 1990s foreshadowed a grand, new era for the neighborhood. In 1991, after years of construction, Metro completed construction of the Green Line and accompanying stations in the core of the neighborhood. The long-planned, \$850 million convention center broke ground in 1997 on what were acres of surface parking lots.”)

⁹⁰ *Id.*; Cosby, *supra* note 89.

⁹¹ See An Oral History of Gentrification in Shaw and U Street, NW, Wash. City Paper, <https://washingtoncitypaper.com/article/1820/an-oral-history-of-gentrification-in-shaw-and-u-street-nw/> (last visited Aug. 22, 2026) (reporting that the neighborhood's Black population share fell from approximately 80% in 1980 to 30% by 2010).

view: the erosion of a community's ability to remain intact, exercise collective power, preserve its institutions, and flourish across generations.

In cities across the country, public and private development initiatives have destabilized historically Black communities, transforming neighborhoods in ways that remove long-term residents while concentrating new wealth in the hands of investors and newcomers.⁹² These are not random market fluctuations. They are the predictable outcomes of deliberate policy choices: infrastructure investments that increase land values without protecting existing residents, urban redevelopment projects that demolish affordable housing in the name of modernization, and tax incentive regimes that direct capital into low-income communities while generating few demonstrable benefits for the people who live there.⁹³ In each case, public resources and legal tools do the work of displacement, even as they operate under the banner of revitalization and economic development.

The choice of language does a lot of work to conceal the impact. "Revitalization" implies that something was lifeless before, that the community being transformed lacked vitality, value, or worth. But the communities being displaced are not vacant lots or abstract geographies. They are places with deep roots: churches, small businesses, block associations, and multi-generational households that have sustained Black life through decades of disinvestment and exclusion.⁹⁴ When rising rents push out long-term tenants, when property tax increases force homeowners to sell, when speculative investors purchase and flip properties faster than residents can organize or respond, what is lost is not merely affordable housing, it is the infrastructure of community itself.

The political economy of displacement reveals something deeper about how spatial exclusion works. The tools are formally race-neutral. Opportunity Zones do not mention race.⁹⁵ Zoning variances and tax

⁹² Mitchell et al., *supra* note 16.

⁹³ Abduljaber & Retaj Aljadaan, *supra* note 17, at 2 ("Government policies have strengthened the harmful effects of gentrification on displacement. On the one hand, the supply of affordable housing through governmentally funded programs decreased while the number of residents eligible for such services increased. State policies tend to favor landlords over tenants leading to a high number of evictions.").

⁹⁴ See e.g., Archer & Schottenfeld, *Defending Home*, *supra* note 7, at 2202 (describing Sandridge, South Carolina where the predominately Black neighbors deem home as the broader community, including the "roads, cemetery, and church named after their ancestors").

⁹⁵ See Olugbenga Ajilore, *The Harvest of American Racism*, CTR. FOR AM. PROGRESS (Sept. 17, 2019) (assessing the penalties of facially race-neutral policies in opportunity zones), <https://www.americanprogress.org/article/harvest-american-racism/>; Lorena Roque, *Opportunity Zones Bolster Investors' Bottom Lines Rather than Economic or Racial Equity*, INST. ON TAX'N AND ECON. POL'Y (Dec. 12, 2019),

increment financing districts do not specify who will be displaced.⁹⁶ But the communities they target, and the communities most harmed by their effects, are identifiable and not accidental. Decades of racially motivated disinvestment—redlining, urban renewal, highway construction through Black neighborhoods—created the very conditions of concentrated poverty and undervalued land that now make these communities attractive targets for capital.⁹⁷ Displacement, in this sense, is not the opposite of historical exclusion. It is its continuation by other means.

Forced relocations have played a particularly significant role in this history and understanding their full scope requires seeing them not as isolated episodes but as a recurring structure. Urban renewal programs demolished Black neighborhoods in the name of slum clearance, displacing an estimated 300,000 to 500,000 families between the 1950s and 1970s, with Black communities bearing a disproportionate share of the losses.⁹⁸ Highway construction carved through the heart of thriving Black commercial and residential districts—Overtown in Miami, Tremé in New Orleans, Rondo in Saint Paul—not because those routes were geographically necessary, but because those communities lacked the political power to redirect them elsewhere.⁹⁹ Eminent domain, nominally a

<https://itep.org/opportunity-zones-bolster-investors-bottom-lines-rather-than-economic-or-racial-equity/>.

⁹⁶ Anthony Flint, *The Hidden Costs of TIF*, Lincoln Institute of Land Policy (Oct. 29, 2018), <https://www.lincolnst.edu/es/publications/articles/hidden-costs-tif/>; see, e.g. Jared Knight, Note, *Is Tax Increment Financing Racist? Chicago's Racially Disparate TIF Spending*, 101 IOWA L. REV. 1681 (2016).

⁹⁷ Jason Richardson et al., SHIFTING NEIGHBORHOODS: GENTRIFICATION AND CULTURAL DISPLACEMENT IN AMERICAN CITIES, NATIONAL COMMUNITY REINVESTMENT COALITION 6 (2019) (“Disinvestment in low- and moderate-income communities results from a long history of discrimination in lending, housing and the exclusionary, racialized practice known as redlining... This history set the stage for gentrification and displacement.”); Brent Cebul, *Tearing Down Black America*, Boston Review (July 22, 2020), <https://www.bostonreview.net/articles/brent-cebul-tearing-down-black-america/> (“Like redlining, profit—in this case, returns derived from boosting property taxes—continues to define the state’s interest in destabilizing Black neighborhoods.”)

⁹⁸ Archer, DIVIDING LINES; Greg Miller, *Maps Show How Tearing Down City Slums Displaced Thousands*, National Geographic (Dec. 15, 2017), <https://www.nationalgeographic.com/history/article/urban-renewal-projects-maps-united-states>; Jason Bladen & Peter Mateyka, *50 Years of PD&R's Gentrification Research*, HUD (Sept. 5, 2023), <https://coascenters.howard.edu/50-years-pdrs-gentrification-research>.

⁹⁹ Archer, DIVIDING LINES, *supra* note 19, at 64 (“Neighborhoods play a central role in Black America. Sugar Hill in Harlem, Tremé in New Orleans, Baldwin Hills in Los Angeles, The Hill in Pittsburgh, and other similar communities are where the stories of Black identity, Black life, and Black independence played out. Facing racial violence and oppression, these neighborhoods became storied places where many Black people felt safe and respected, where they could express themselves without judgment or fear. In many cases, highway construction robbed them of that feeling. It wasn’t just that the highways

tool of public benefit, was deployed in ways that systematically transferred land from Black owners and tenants to developers, urban authorities, and institutions that would use it for other purposes.¹⁰⁰ Disaster recovery, as Hurricane Katrina made devastatingly visible, has operated as a mechanism of demographic transformation, with rebuilding timelines, insurance practices, and policy choices determining who gets to return and who does not.¹⁰¹ And gentrification, which can appear as a purely private market phenomenon, frequently unfolds against a backdrop of public investment decisions, zoning changes, and code enforcement patterns that make displacement not merely foreseeable but planned.¹⁰²

What connects these mechanisms is not only their racial impact but their relationship to power. In each instance, communities with limited political voice were made to absorb the costs of projects whose benefits flowed elsewhere. The losses were rationalized as necessary—for progress, for public safety, for economic development—in language that rendered the displaced communities as obstacles rather than stakeholders. Indeed, that rhetorical move is itself part of the injury.

reinforced segregation. It is that the highways destroyed Black communities.”); Archer, *White Men’s Roads Through Black Men’s Homes*, *supra* note 3, at 1279 – 80, 1295 – 98, (describing the destructions of Rondo and Overtown as a result of the creation of highways through the neighborhoods).

¹⁰⁰ THE CIVIL RIGHTS IMPLICATIONS OF EMINENT DOMAIN ABUSE: A BRIEFING BEFORE THE UNITED STATES COMMISSION ON CIVIL RIGHTS iii-iv (2014), https://www.usccr.gov/pubs/docs/FINAL_FY14_Eminent-Domain-Report.pdf (discussing how government’s use of eminent domain to improve “blighted” areas has targeted racial and ethnic minorities); Eminent domain condemnations have also been used intentionally to prevent the integration of white neighborhoods. See e.g., Angela C. Carmella, *Envisioning the Beloved Community: Racial Justice, Property Law, and the Social Mortgage*, 39 J.L. & RELIGION 377, 391 (2024) (“One particularly striking example involved Howard Venable, an African American ophthalmologist, who in 1956 purchased land in a white neighborhood in Creve Coeur, Missouri, where he began to build a home. Local racism was so virulent that the town simply took Dr. Venable’s property by eminent domain for use as a public park.”)

¹⁰¹ Christina Finch et al., *Disaster Disparities and Differential Recovery in New Orleans*, 31 *Population and Environment* 180-81 (2010) (“[W]orking class households, mainly African American, are the ‘forgotten casualties’ of Katrina, residents who are shouldering much of the disaster’s impact in the long-term.”); Susan L. Cutter et al., *The Long Road Home: Race, Class, and Recovery From Hurricane Katrina*, 48(2) *Env’t. Sci. and Pol’y for Sustainable Dev.* 8, 16 (2006) (explaining why different counties impacted by Katrina would experience differential recovery rates due to pre-existing vulnerabilities, insurance, and differences in the availability of capital).

¹⁰² Zuk et al., *supra* note 17, at 39 (2017) (explaining how publicly financed transit interventions can play a role in spurring gentrification and residential displacement); see, e.g., Scott Cummings & Edmond Snider, *Municipal Code Enforcement and Urban Redevelopment: Private Decisions and Public Policy in an American City*, 16 *R. of Radical Political Econ.* 129, 130 (using Dallas, Texas as an example of how code enforcement was used to transform land use patterns from one class of users to another).

These policies do more than move people. They dismantle the institutions that anchor community life: the churches that served as civic centers, the locally owned businesses that recycled wealth within the neighborhood, the schools and social clubs and block associations that constituted the connective tissue of collective life.¹⁰³ They sever the social networks through which people find jobs, share childcare, navigate emergencies, and build the trust that makes collective action possible.¹⁰⁴ And they destroy the local economies—the small businesses, the informal economies, the property equity—that provide the material foundation for stability across generations.¹⁰⁵ The result goes beyond merely requiring residential mobility. These policies drive neighborhood destabilization and the deliberate unmaking of the social infrastructure that makes community and collective power possible. That distinction matters enormously for how we understand the purpose and the remedy. Residential mobility implies a kind of fungibility: that one neighborhood is as good as another, that the harm is primarily logistical, that the solution is simply replacement housing somewhere else. Community destabilization names something different and deeper—a loss of place, of institution, of network, of shared memory, of power—that cannot be repaired by housing vouchers or relocation assistance alone.

What makes these forms of spatial exclusion particularly difficult to confront is the assumption that they are the natural result of markets or technical governance; that they are nobody's fault. Zoning laws are framed as rational planning: the neutral application of technical expertise to questions of land use, density, and neighborhood character.¹⁰⁶ Infrastructure investments are cast as economic development: the efficient allocation of public resources toward maximum community benefit.¹⁰⁷ Algorithmic tools in credit scoring, tenant screening, predictive policing, and automated appraisal are presented as objective and efficient, their outputs insulated

¹⁰³ Archer & Schottenfeld, *Defending Home*, *supra* note 6, at 2237–38.

¹⁰⁴ *Id.* at 2237 (“Strong communities forge the conditions where members can thrive. They jointly develop and give life to formal institutions-- churches, parks, recreational centers-- as well as informal networks and fictive kinship--such as friendship groups and nosy neighbors who keep an eye on things and each other--that support community members and provide meaning to community.”)

¹⁰⁵ Mitchell et al., *supra* note 16, at 7 (“As wealthier, sometimes more homogeneous groups move in, local businesses, cultural landmarks and community gathering spaces that have served the original residents may be replaced with more generic, ‘high-end’ alternatives (e.g. the local lunch counter becomes Panera Bread).”).

¹⁰⁶ Adams-Schoen, *supra* note 74, at 1231; Schindler, *supra* note 12, at 1980.

¹⁰⁷ Archer, *DIVIDING LINES*, *supra* note 19 at 25, 105.

from challenge by the apparent impartiality of the machine.¹⁰⁸ In each case, the racial architecture driving the outcome is obscured by the procedural legitimacy of the process. Yet each of these systems quietly maintains racialized boundaries around who can live in certain neighborhoods, who can access safe environments and good schools, who can build wealth through homeownership, and who can remain in place as communities change. And, by laundering historically produced racial inequality through the language of markets, planning, and technical optimization, these systems reproduce inequality by making the sediment of explicit discrimination look like the natural output of neutral systems.

B. Opportunity Deprivation

One result of centuries of racial oppression is that Black people are poorer and have access to fewer of the tools and opportunities necessary for economic security and advancement.¹⁰⁹ Any strategy for racial justice that focuses primarily on creating access to predominantly white communities, or that treats predominantly Black communities as problems to be escaped rather than places worthy of investment, will fail the people it claims to serve.¹¹⁰ The task is not simply to open the doors of opportunity-rich spaces

¹⁰⁸ Vincent M. Southerland, *The Intersection of Race and Algorithmic Tools in the Criminal Legal System*, 80 Md. L. Rev 487, 508 (2021) (“Given the racialized nature of policing, it should come as no surprise that law enforcement practices have generated biased data. Reliance on biased data by predictive policing tools has the potential to produce devastating consequences.”); Sandra G. Mayson, *Bias In, Bias Out*, 128 Yale L.J. 2218 (2019) (arguing that algorithmic risk-assessment tools in criminal justice produce disparate racial impacts, and that the problem runs deeper than biased inputs and it is structural to the nature of prediction itself); Rashida Richardson, Jason Schultz & Kate Crawford, *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice*, 94 N.Y.U. L. Rev. Online 192 (2019) (demonstrating how police data generated through civil rights violations feeds algorithmic systems and launders past discrimination as objective prediction leading to flawed predictions that create additional criminal legal harms).

¹⁰⁹ Manning Marable, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA* 56 (2000) (“Black families throughout the U.S., in every region and city, assume the unequal burden of poverty”); P.E. Moskowitz, *HOW TO KILL A CITY: GENTRIFICATION, INEQUALITY, AND THE FIGHT FOR THE NEIGHBORHOOD* 115 (2018); Patrick Sharkey, *STUCK IN PLACE* 117 – 35 (2013) (explaining that “disadvantages faced during childhood in one generation may linger on to affect the life chances of the next generation” essentially forming “a legacy of disadvantage.”); see generally William Darity & M. Nicholson, *Racial Wealth Inequality and the Black Family*, in *AFRICAN AMERICAN FAMILY LIFE: ECOLOGICAL AND CULTURAL DIVERSITY* 78 (Vonnice C. McLoyd et al. eds., 2005) (discussing the various factors that contribute to wealth inequality in Black neighborhoods, opportunity, and future life chances); Alford A. Young, on the Outside Looking In: Low-Income Black Men’s Conceptions of Work Opportunity and the Good Job, in *Coping with Poverty* (2000) (collecting case studies that demonstrate the lack of education access and employment opportunities in Black neighborhoods).

¹¹⁰ Archer & Schottenfeld, *Defending Home*, supra note 7 at 2206 (“we cannot find new communities for everyone impacted by racialized targeting and neglect, nor can we recreate

to individual Black people. It is to confront and dismantle the systems that determine which communities receive opportunity and which are systematically denied it, and to build something different in their place.

Spatial exclusion and opportunity deprivation are not separate problems. You cannot separate the places people have access to from the opportunities they have access to: where people are permitted to live shapes what schools their children attend, what jobs they can reach, the social networks they can tap into, what credit they can access, and what wealth they can build. The spatial exclusion described in Part II.A produces cascading material disadvantages that follow individuals and communities across generations. While exclusion from space determines where people can live and move, exclusion from opportunity determines whether they can translate their labor, talent, and aspirations into stability and long-term security wherever they are.

Access to opportunity in the United States has never been evenly distributed. For much of the nation's history, law explicitly restricted access to education, employment, credit, and political participation along racial lines.¹¹¹ Although many of those formal barriers have been dismantled, the systems that structure access to opportunity have not been rebuilt to produce different outcomes.¹¹² They continue to sort people and communities in ways that reproduce racial hierarchy, operating through financial markets, education systems, tax structures, and technological platforms that reinforce existing patterns of advantage and disadvantage. Formal equality before the law has not altered the underlying architecture of inequality.

1. *Asset Accumulation and the Racial Wealth Gap*

everything they would leave behind”); see also James R. Elliott, Phylcia Lee Brown & Kevin Loughran, *Racial Inequities in the Federal Buyout of Flood-Prone Homes: A Nationwide Assessment of Environmental Adaptation*, 6 *SOCIUS* 1, 11-12 (2020) (describing the federal government response to climate change by funding the purchase of flood-prone homes by local governments).

¹¹¹ See generally Archer, *DIVIDING LINES*, *supra* note 18 (discussing various tools of spatial exclusion); Keeanga-Yamahtta Taylor, *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOME OWNERSHIP* (2019) (exploring discriminatory and exploitative banking and real estate practices); Mehrsa Baradaran, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* (2017) (exploring discriminatory credit policies); Margery Austin Turner & Solomon Greene, *Causes and Consequences of Separate and Unequal Neighborhoods*, Urb. Inst. (discussing how “policies and practice systematically denied Black people access to well-resourced and opportunity-rich neighborhoods . . . leaving them with failing schools, inadequate services, physical and environmental blight, and high levels of crime and violence.”).

¹¹² See Archer & Joshi, *supra* note 2, at 138 (2025) (arguing that law has largely ignored deep structural inequities that shape access to opportunity).

One central mechanism of opportunity exclusion lies in barriers to asset accumulation. Wealth-building in America has historically run through homeownership, the primary vehicle through which American families have built equity, passed assets to their children, and cushioned themselves against economic shocks.¹¹³ Black families were systematically excluded from that vehicle. Redlining, racially restrictive covenants, discriminatory appraisals, and the deliberate exclusion of Black veterans from New Deal and postwar housing programs denied Black households access to the subsidized homeownership that built the white middle class.¹¹⁴ The racial wealth gap that persists today is not a residue of the distant past. It is the compounded result of those exclusions, transmitted across generations through the ordinary mechanics of inheritance.

Although explicit redlining has been outlawed, contemporary financial systems continue to reproduce its logic. Creditworthiness models and algorithmic lending tools rely on historical financial data that reflects decades of discrimination, penalizing communities that were previously denied access to credit and reinforcing the barriers they were built to create.¹¹⁵ Unequal property tax systems and exclusionary zoning rules further constrain wealth-building by limiting homeownership opportunities and suppressing property values in communities of color, ensuring that even where Black families own homes, those homes are systematically undervalued.¹¹⁶

Wealth transfer rules compound these disadvantages across time. Heirs' property arrangements, common in communities where families lacked access to estate planning services, leave property ownership legally vulnerable, making it easier for outside investors to acquire land and harder for families to use property as collateral or pass it intact to the next generation.¹¹⁷ Estate planning and tax structures that favor already-wealthy

¹¹³ Rothstein, *supra* note 59.

¹¹⁴ *Id.*

¹¹⁵ Allen, *supra* note 80, at 235 – 41 (“Today, the consequences of the era of redlining have stained the ‘big data’ that determines conditions for housing financing. For example, ... there have been racist practices in the credit reporting industry, which produces metrics that evaluate a person’s ever-important credit score... similarly, race -based evaluations play a role in determining mortgage rates for borrowers of-color, an industry that heavily relies on credit scores.”)

¹¹⁶ See generally Rothstein, *THE COLOR OF LAW*; Dorothy A. Brown, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021); Andre M. Perry, Jonathan Rothwell & David Harshbarger, *THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY*, Brookings Institution (2018); Lee Anne Fennell, *Homes Rule*, 112 Yale L.J. 617 (2002).

¹¹⁷ Raksha Khadka et al., *A Review Analysis of Heirs’ Property Challenges in Sustainable Land Use*, 14(10) Land 2070, 2070 (2025) (Heir ownership is “especially prevalent among African Americans in the Southern states, where systemic barriers to legal services,

families further limit the intergenerational transmission of assets in communities that have had the least time and the fewest resources to accumulate them.¹¹⁸ These are all systems that quietly determine whose wealth survives the generations and whose does not.

But homeownership is not the only driver of asset deprivation. The same logic of systematic exclusion from wealth-building instruments, and systematic routing toward wealth-depleting ones, has operated across multiple domains of economic life. Access to financial assets beyond real estate has long been shaped by race. Discriminatory exclusion from well-paying unionized and white-collar employment historically limited Black workers' ability to invest in stocks, bonds, and retirement accounts, the instruments through which financial wealth compounds over time.¹¹⁹ Where mainstream financial institutions were unavailable or unwilling, predatory alternatives filled the gap: high-fee check cashing services, payday lenders, and subprime credit products that extracted wealth from Black communities in ways that directly parallel the wealth extraction of redlining.¹²⁰ The architecture is the same: not merely exclusion, but the deliberate channeling of Black families away from wealth-building and toward wealth-depleting financial products, enforced through institutional practice and, at times, through law.

historical dispossession, and distrust in the legal system have prevented many families from formalizing land titles.”); see also Melvin L. Oliver & Thomas M. Shapiro, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 19–20 (2nd ed. 2006) (highlighting the “racialization of state policy,” which is how “state policy has impaired the ability of many black Americans to accumulate wealth—and discouraged them from doing so—from the beginning of slavery throughout American history”).

¹¹⁸ Goldburn P. Maynard Jr., *Perpetuating Inequality by Taxing Wealth*, 84 *FORDHAM L. REV.* 2429, 2431–39 (2016) (providing a historic overview of federal estate tax and common estate planning techniques); Nathan Sosner, Joseph Liberman & Steven Liu, *Integration of Income and Estate Tax Planning*, 24(1) *J. OF WEALTH MGMT.* 78 (explaining how high-net-worth families preserve and transfer wealth to future generations to keep wealth in the family).

¹¹⁹ See generally Eric Arnesen, *Up From Exclusion: Black and White Workers, Race, and the State of Labor History*, 26 *Rev. in Am. Hist.* 146 (1998) (providing the history of Black Americans in unions); Dorothy A. Brown, *Pensions, Risk, and Race*, 61 *Wash. & Lee L. Rev.* 1501, 1514, 1526–29 (2004) (explaining that Social Security is relatively more relied on by American of Color who have been excluded from pensions and other retirement plans).

¹²⁰ See H. J. Karger, *Scamming the Poor: The Modern Fringe Economy*, 3 *SOCIAL POL’Y J.* 39, 40 (2004); Patricia D. Posey, *A Race and Capitalism Framework to Study Financial Access*, 58 (1) *POLITY* 156, 163 (2026) (explaining that historic practice such as redlining “persist today through practices like geographic banking deserts, discriminatory loan approvals, and structural barriers to mainstream financial products, ensuring that racialized groups remain disproportionately marginalized from access to capital.”)

Business ownership has been subject to the same dynamic. Black entrepreneurs have historically faced higher loan denial rates, higher interest rates, and lower loan amounts than comparable white applicants, limiting not only business formation but the ability to grow enterprises and transfer business wealth across generations.¹²¹ Federal contracting exclusions and discriminatory licensing regimes compounded these barriers, closing off additional pathways through which business ownership might have translated into durable family wealth.¹²² The result is a persistent gap in business equity that the racial wealth literature has only recently begun to treat with the same seriousness as the homeownership gap.¹²³

2. Educational Stratification

Exclusion from opportunity also operates through educational systems that determine access to knowledge, credentials, networks, and professional mobility. Public school funding structures that depend heavily on local property taxes translate the geography of residential segregation directly into educational inequality: the communities that have been most systematically excluded from wealth accumulation have the least to spend on the schools their children attend.¹²⁴ The result is a system in which zip

¹²¹ See Lynne Phillips Pantin, *Financial Inclusion, Cryptocurrency, and Afrofuturism*, 118 NW. L. REV. 621, 635 (2023) (“The relegation of Black-owned businesses to Black neighborhoods, the destruction of vibrant Black local economies in the name of “slum clearance,” and the systemic denial of capital and business opportunities to Black entrepreneurs evince patterns of structural racism occurring over time. These patterns negatively affected Black entrepreneurs and carryover to the present day.”) In one example, the failure to enforce antitrust laws has a devastating effect on Black businesses and is an example of institutional racism through which structural racism is enacted. Brian S. Feldman, *The Decline of Black Business*, Washington Monthly, March/April/May 2017 - <https://www.congress.gov/116/meeting/house/109793/documents/HHRG-116-JU05-20190716-SD018.pdf>. (how failure to enforce antitrust impacts black businesses due to market concentration); Bennet Capers & Gregory Day, *Race-ing Antitrust*, 121 Mich. L. Rev. 523 (2023); Hiba Hafiz, *Antitrust and Race*, 100 Wash. U. L. Rev. 1471 (2023).

¹²² Brett Theodos, Sophie McManus & Tomi Rajninger, *Removing Barriers to Participation in Local and State Government Procurement and Contracting for Entrepreneurs of Color*, Urban Institute (2024); American Civil Liberties Union, *Promoting Opportunity and Equality in America* (2011).

¹²³ See Melvin L. Oliver & Thomas M. Shapiro, *BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* (2d ed. 2006) (discussing business assets as one component of wealth and acknowledging that Black families are substantially less likely to own businesses or derive wealth from them).

¹²⁴ See generally Roland Benabou, *Education, Income Distribution and Growth: The Local Connection*, (Nat’l Bureau of Econ. Rsch., Working Paper No. 4798, 1994) (concluding that “stratification makes inequality in education and income more persistent across generations” while assessing the polarization and stratification of low-income urban areas); Alexandra Tilsley, *School Funding: Do Poor Kids Get Their Fair Share?*, Urban Inst. (2017), <https://apps.urban.org/features/school-funding-do-poor-kids-get-fair-share/> (“A district with a large population of nonpoor students, for example, will be able to raise more in property taxes because the families paying those taxes have greater property wealth. In high-poverty districts, the opposite is true.”).

code functions as educational destiny, not because of anything inherent to those communities, but because of the policy choices that link school resources to property wealth.¹²⁵

These structural inequalities are compounded by the increasing privatization of education and the proliferation of selective enrollment mechanisms that create new stratification within public systems. “Gifted and talented” programs, selective high schools, and magnet programs concentrate resources and credentialed peers in ways that often track existing racial and economic hierarchies, while leaving neighborhood schools with fewer resources and less institutional support.¹²⁶ High-quality early childhood education—among the most evidence-supported investments in long-term economic mobility—remains inaccessible to many families for whom cost is prohibitive.¹²⁷ At each stage of the educational pipeline, the children who begin with the least are given the fewest resources to move forward, a compounding disadvantage that falls with particular force on Black children, whose starting point was itself the product of intentional exclusion.

3. *Exclusion from Emerging Economic Sectors*

Beyond traditional institutions, the distribution of opportunity is increasingly shaped by emerging economic sectors—technology, finance, green energy, and the platform economy—that are becoming the primary

¹²⁵ Lora Kelley, *Without fixing inequality, the schools are always going to struggle*, N.Y. Times, <https://www.nytimes.com/interactive/2020/05/14/opinion/inequality-schools-teachers.html> (May 14, 2020) (documenting educators’ accounts of “challenges that students in low-income schools face that students in wealthy ZIP codes do not.”); Lauren A. Webb, Note, *Educational Opportunity for All: Reducing Intradistrict Funding Disparities*, 92 N.Y.U. L. Rev. 2169 (2017).

¹²⁶ Elia V. Gallardo, *Hierarchy and Discrimination: Tracking in Public Schools*, 15 Chicana-Latina L. Rev. 74, 77 (1994) (assessing the racial and social economic access to gifted and talented programs).

¹²⁷ Robert Lynch and Kavya Vaghul, *The benefits and costs of investing in early childhood education*, WASH. CTR. FOR EQUITABLE GROWTH (Dec 2, 2015); <https://equitablegrowth.org/research-paper/the-benefits-and-costs-of-investing-in-early-childhood-education/?longform=true&download=conclusion> (“Research demonstrates that investment in early childhood education is one of the best ways to improve child well-being and increase the educational achievement and productivity of children and adults. Such investment is also one of the best ways to help us attain numerous other socioeconomic goals.”); Taryn Morrissey, *Addressing the need for affordable, high-quality early childhood care and education for all in the United States*, WASH. CTR. FOR EQUITABLE GROWTH (Feb. 18, 2020); <https://equitablegrowth.org/addressing-the-need-for-affordable-high-quality-early-childhood-care-and-education-for-all-in-the-united-states/> (“High-quality early care and education promotes children’s development and learning, and narrows socioeconomic and racial/ethnic inequalities. Reliable, affordable childcare promotes parental employment and family self-sufficiency.”)

engines of wealth creation in the twenty-first century. These sectors are not passive reflections of market demand. They are structured by deliberate choices about investment, hiring, credentialing, and network formation.¹²⁸ And those choices, left unexamined, have reproduced familiar patterns of racial exclusion.

Access to high-growth economic sectors frequently depends on educational pathways, professional networks, and startup capital that remain unevenly distributed along racial and economic lines.¹²⁹ The technology industry, despite decades of public investment in the research infrastructure on which it depends, has remained strikingly homogeneous.¹³⁰ Green energy transitions, if structured without deliberate inclusion policies, risk replicating the exclusions of the fossil fuel economy even as they promise environmental benefit.¹³¹ Without proactive intervention in hiring, contracting, investment, and regulatory design, these emerging systems will concentrate new forms of wealth and influence in communities that are already advantaged, while leaving behind communities that have the most to gain from an economy structured differently.

Taken together, these systems demonstrate that opportunity exclusion is not simply the absence of resources. It is the product of institutional arrangements that actively structure who can accumulate wealth, gain credentials, enter high-growth sectors, and participate fully in the economic life of the nation. Like spatial exclusion, opportunity exclusion operates through systems that are presented as neutral, efficient,

¹²⁸ Jennifer Hernandez, *Green Jim Crow: How California's Climate Policies Undermine Civil Rights and Racial Equity*, THE BREAKTHROUGH INSTIT. (Aug. 16, 2021); <https://thebreakthrough.org/journal/no-14-summer-2021/green-jim-crow> (racialized harms of green energy economic investments); Chika O. Okafor, *Un-Erasing Race: Introducing Social Network Discrimination to the Law*, 102 N.C. L. REV. 1517, 1537 (2024) (defining “social network discrimination” as the “phenomenon in which members of a social group experience differential treatment in how opportunity is distributed due to distortions from social network dynamics.”); Lisa D. Cook, *Racism Impoverishes the Whole Economy*, N.Y. TIMES, (Nov. 18, 2020); <https://www.nytimes.com/2020/11/18/business/racism-impoverishes-the-whole-economy.html>.

¹²⁹ See Okafor, *supra* note 128, at 1540–45 (showing how the concept of homophily explains how jobs are filled with referrals and dictate who gains access to jobs – often on racial and economic lines).

¹³⁰ Megan Tobias Neely et al. *Social Inequality in High Tech: How Gender, Race, and Ethnicity Structure the World's Most Powerful Industry*, 49 Ann. Rev. Sociology 319, 320 (2023) (on the tech industry being dominated by white, Asian American, and Asian men); Safiya Umoja Noble & Sarah T. Roberts, *Technological Elites, the Meritocracy, and Postracial Myths in Silicon Valley*, in RACISM POSTRACE 113–30 (Roopali Mukherjee, Sarah Banet-Weiser & Herman Gray eds., 2019) (on Silicon Valley’s postracial myths).

¹³¹ See, e.g., Hernandez, *supra* note 128 (“The low-VMT planning maps for the Bay Area also replicate the racially exclusionary and displacement/gentrification patterns proposed by SCAG staff in Southern California.”).

or market-driven. The neutrality is, again, part of the mechanism: by attributing unequal outcomes to individual choices or cultural deficits rather than to institutional design, these framings make the status quo appear natural and the question of reconstruction appear unnecessary.

C. Economic Dispossession

Exclusion tells only part of the story. In many cases, racial inequality is not simply the result of limited access to opportunity, but of the active extraction of resources from communities that have managed, despite everything, to build something. Even where Black communities have established thriving neighborhoods, accumulated property, or developed local economies, those gains have repeatedly been undermined through policies and practices that strip communities of land, capital, and economic security. Understanding the architecture of modern racial inequality therefore requires attention not only to how opportunities are restricted, but to how wealth and resources are systematically removed. This process of economic dispossession represents another central mechanism through which racial hierarchy is constructed and reproduced.

Economic dispossession refers to the loss, extraction, or denial of economic resources through legal, policy, and institutional mechanisms that strip communities of the tools necessary for stability and mobility.¹³² It is not simply poverty or inequality, it is a process through which law and policy actively prevent wealth accumulation, extract value from marginalized communities, and entrench precarity across generations. Understanding economic dispossession requires rejecting the assumption that contemporary economic inequality is the natural result of neutral market forces. The economic harms that many communities experience, including foreclosures, displacement, disinvestment, forced migration, are not the inevitable byproducts of economic change. They are the predictable consequences of policy choices, legal frameworks, and institutional practices that structure how resources are distributed and whose communities are protected.

¹³² Sherally Munshi, *Dispossession: An American Property Law Tradition*, 110 Geo. L.J. 1021, 1030 (2022) (Using dispossession to “refer[] to property’s record in the United States, the pattern of involuntary transfer—usurpation, expropriation, deprivation, and devaluation—that has propelled American expansion since the time of conquest to the “insatiable predatory relation” that continues to structure racial capitalism. Dispossession describes the disavowed purpose and effects of property law.”); see also Jodi A. Byrd et al., *Predatory Value: Economies of Dispossession and Disturbed Relationalities*, 36 Social Text 519 (2018).

1. *Displacement from Land and Housing*

The most direct form of economic dispossession is displacement, the removal of people from the land and homes through which most American families build generational wealth. Urban renewal programs demolished Black neighborhoods in the name of slum clearance;¹³³ highway construction cut through thriving commercial and residential districts;¹³⁴ eminent domain transferred land from Black owners to developers and institutions;¹³⁵ disaster recovery policies determined who could return and who could not.¹³⁶ Each of these mechanisms has been described elsewhere in this Article. What deserves emphasis here is their economic dimension: displacement does not merely move people. It destroys the primary asset through which wealth is accumulated and passed to children, severs the community institutions and networks through which economic life is sustained, and eliminates the local businesses and organizations that circulate resources within a neighborhood rather than extracting them from it.

These dynamics are not purely in the past. Contemporary gentrification, driven by a combination of private investment and public policy choices about infrastructure, zoning, and tax incentives, continues to displace Black residents from neighborhoods where rising land values generate wealth, wealth that too often flows not to long-term residents but to investors and newcomers who arrive after the hard work of community-building has been done.¹³⁷ Large-scale infrastructure and development

¹³³ Mindy Thompson Fullilove, *Root Shock: The Consequences of African American Dispossession*, 78(1) J. Urban Health: Bulletin of the N.Y. Acad. Of Med. 72, 72 (2001). ; Archer, *DIVIDING LINES*, *supra* note 19, at 26, 65 (describing federal calls to replace “slums” with new housing and Miami developments use of “slum clearance” as a call to remove Black families from city limits); dissent in *Kelo v. City of New London*

¹³⁴ See e.g. Archer, *DIVIDING LINES*, *supra* note 19, at 53, 69 (“In Syracuse, New York, Interstate 81 cut through the center of the city, decimating a primarily Black and Jewish neighborhood, the Fifteenth Ward.”) (Describing how construction of two highways in Indianapolis, Indiana “displaced 8,000 businesses and homes and 17,000 people. Most of the residents who were forced out were Black, and the displaced businesses were predominantly Black- and immigrant-owned.”)

¹³⁵ See Matthew Wills, *Segregation by Eminent Domain*, JSTOR Daily (June 2, 2023), <https://daily.jstor.org/segregation-by-eminant-domain/>; see e.g. Nancy Perry, *Eminent Domain Destroys a Community: Leveling East Arlington to Make Way for the Pentagon*, 37 (1) Urb. Geography 141, (2015) (examining federal government taking 411 acres of land – destroying a Black community – to build the Pentagon).

¹³⁶ Moskowitz, *supra* note 109, at 6 (arguing that New Orleans used “the opportunity presented by [Hurricane Katrina]’s destruction of poor and African American neighborhoods to attract white people and investment.”); *Id.* at 25 (asserting that after the Mississippi River flooded in 1927 and after Hurricane Betsy in 1965, predominantly Black neighborhoods in New Orleans were intentionally flooded to protect predominantly white neighborhoods, resulting in displacement and economic harm.)

¹³⁷ Mitchell et al., *supra* note 16; Cosby, *supra* note 89 (drawing a structural parallel between historic Jim Crow laws and modern day gentrification of Black communities).

projects increase land values in ways that long-term residents, renters especially, cannot capture.¹³⁸ Opportunity Zone investments, as described above, direct capital into low-income communities of color with few protections ensuring that existing residents share in the returns.

This pattern is compounded by zoning and land-use decisions, both historical and ongoing, that have placed Black communities in the least desirable and most environmentally vulnerable locations. Racial zoning laws situated Black neighborhoods near industrial facilities, flood plains, and environmental hazards.¹³⁹ More recent decisions about infrastructure maintenance, flood control investment, and climate resilience funding have continued to concentrate physical and economic vulnerability in the same communities.¹⁴⁰ When those vulnerabilities materialize in hurricanes, floods, or industrial disasters the response has sometimes been not investment and protection but buyout: offering long-term homeowners below-market prices for damaged or threatened properties, converting Black homeowners into renters or displaced persons, and dissolving the community that remains.¹⁴¹ Rather than committing the resources necessary

¹³⁸ Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and A Path Toward Community Oriented Reform*, 2019 Wis. L. Rev. 745, 771 (2019) (“[P]lace-based investment tax incentives are presented by lawmakers--and regarded by watchdog groups--as a possible solution to problems faced by poor communities. On the other hand, the spatially oriented investment tax incentives that dominate the current legal landscape are limited, both in theory and practice, in their ability to benefit poor communities.”); Li, *supra* note 17, at 1191 (discussing how government policies promoting gentrification have spiked neighborhood populations and allowed more luxury development but decreased housing opportunities for low-income people)

¹³⁹ See Ken Ward Jr., *How Black Communities Become “Sacrifice Zones” for Industrial Air Pollution*, PRO PUBLICA (December 21, 2021) <https://www.propublica.org/article/how-black-communities-become-sacrifice-zones-for-industrial-air-pollution>; Kevin T Smiley, *Social inequalities in flooding inside and outside of floodplains during Hurricane Harvey*, 15 ENV. RSCH. LETTERS 1, 2 (2020) (identifying racial inequality as a major factor of how communities experience natural hazards); *Black neighborhoods burdened by industrial air pollution will finally get answers*, HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, <https://hsph.harvard.edu/news/black-neighborhoods-burdened-by-industrial-air-pollution-will-finally-get-answers/> (November 22, 2024).

¹⁴⁰ Lev E. Breydo, *Inequitable Infrastructure: An Empirical Assessment of Federalism, Climate Change, and Environmental Racism*, 102 N.C. L. Rev. 1035, 1070 (2024) (“The depth of America’s infrastructure inequity is difficult to appreciate without discussing the compounding effects of past injustice. Much of U.S. history was characterized by measures to confine Black Americans and other minority groups to specifically undesirable areas while denying them essential resources. The resulting disparities in access to basic human needs--water, heat, and light--reflect a pervasive race and class divide incompatible with moral norms and a nation’s responsibility to provide for all citizens.”).

¹⁴¹ Archer & Schottenfeld, *Defending Home*, *supra* note 7, at 2239 (“Homeowners in a neighborhood subject to climate buyouts are asked to apply to one of various local and federal agencies and then go through the process alone; they are never informed whether

to protect Black communities in place, public policy has too often treated their removal as the path of least resistance.¹⁴²

2. *Barriers to Asset Accumulation and the Devaluation of Black Wealth*

Economic dispossession also operates through the systematic devaluation of the wealth Black communities have managed to build. The racial wealth gap that persists today is the compounded result of deliberate policy choices transmitted across generations. Those exclusions were not merely failures of access. They were acts of dispossession: the removal of Black families from the subsidized homeownership that built the white middle class, and the consequent suppression of the wealth that homeownership was supposed to generate.

The devaluation of Black-owned property continues. Owner-occupied homes in majority-Black neighborhoods are worth 23 percent less than comparable homes in neighborhoods with few or no Black residents, even after controlling for housing quality and neighborhood characteristics.¹⁴³ Some have argued that lower entry prices benefit Black homebuyers.¹⁴⁴ But this framing inverts the actual dynamic. Suppressed home values rob Black homeowners of equity, limit their access to credit, reduce the assets available to pass to their children, and drain the tax base

their neighbors opted to do the same. When one homeowner accepts an offer, the pressure builds on everyone else to do the same. Neighboring residents opposed to the infrastructure project worry whether they should throw in the towel, whether they are being compensated enough for what is being taken from them, whether their neighbors are abandoning them, and what power, if any, they have to resist.”).

¹⁴² Archer & Schottenfeld, *Defending Home*, *supra* note 7, at 2216 (“With segregation locked in, government officials could go about the work of tearing apart and destroying Black communities like Sandridge, South Carolina, through all too familiar patterns of marginalization, neglect, and destruction.”).

¹⁴³ Andre Perry, Jonathan Rothwell & David Harshbarger, *The Devaluation of Assets in Black Neighborhoods*, Brookings Institution (Nov. 2018) (\$48,000 per home on average, amounting to \$156 billion in cumulative losses), <https://www.brookings.edu/articles/devaluation-of-assets-in-black-neighborhoods/>.

“Black-majority neighborhoods do exhibit features associated with lower property values, including . . . longer commute times, and less access to high-scoring schools and well-rated restaurants. And these factors do have a negative impact on price. Yet, these factors explain only roughly half of the undervaluation of homes in Black neighborhoods.” Perry, *supra* note 63, at 56 (2020).

¹⁴⁴ See, e.g., Howard Husock, *Sorry, Mayor Adams: Gentrification is nothing like slavery — in fact, it’s about freedom*, N.Y. POST, (June 20, 2022); <https://nypost.com/2022/06/20/gentrification-is-nothing-like-slavery-in-fact-its-about-freedom/>; see also Andrew T. Hayashi, *Dynamic Property Taxes and Racial Gentrification*, 96 NOTRE DAME L. REV. 1517, 1529 (2021) (“[I]f markets are forward-looking—and they generally are—then only very rapid gentrification will result in white homeowners having lower ETRs than black homeowners. When home prices reflect anticipated gentrification, more of the beneficiaries of dynamic property taxes are the black homeowners who have not yet been displaced.”).

that funds schools, infrastructure, and public services in their communities. This devaluation causes these communities to hemorrhage vital tax revenues and equity.¹⁴⁵ The result is a self-reinforcing cycle: devaluation leads to disinvestment, disinvestment leads to population loss, and population loss leads to further devaluation. Each turn of the cycle making it harder for residents to build or retain the wealth that would allow them to shape their communities' futures.¹⁴⁶

This dynamic is not limited to housing. Systemic denial of loans, credit, and investment capital has long constrained economic mobility in communities of color through banking discrimination, underinvestment, and unequal property valuation.¹⁴⁷ As previously described, what makes these barriers particularly difficult to challenge under contemporary law is that they frequently operate through facially neutral mechanisms—creditworthiness models, automated underwriting systems, algorithmic appraisal tools—that rely on historical financial data reflecting decades of discrimination. These systems do not say they will not lend to Black borrowers. They say they follow the data. But when the data reflects centuries of redlining, launders it. This makes algorithmic dispossession both more difficult to litigate under existing civil rights frameworks and more dangerous in its reach, as it scales discrimination across entire markets at speeds no individual plaintiff can match.

3. *The Instability of Ownership*

Civil rights law has focused primarily on access—access to housing, credit, employment, opportunity.¹⁴⁸ It has paid far less attention to whether individuals and communities can retain and sustain those gains over time.

¹⁴⁵ Perry, *supra* note 143, at 13.

¹⁴⁶ *Id.* at 57 (“Devaluation also means municipalities with a significant percentage of African Americans lose tax revenue that could be put toward government services and infrastructure. This is a vicious cycle: Devaluation leads to divestment, which leads to people moving out of the community; social services decline and crime and unemployment rise.”).

¹⁴⁷ *Id.* at 13, 42 (finding that homes in Black neighborhoods were priced significantly less than homes of similar quality and similar neighborhood amenities in white neighborhoods and limits the choices many Black people have); *Id.* at 61 (discussing the impact of the lack of availability of small-dollar mortgages in Black communities).

¹⁴⁸ See generally Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4; 42 U.S.C. § 2000e (providing access to legal protection against workplace discrimination); 42 U.S.C. §§ 3601–3619 (prohibiting discrimination based on race and other protected classes in housing); U.S. Department of Education Office for Civil Rights: *Ensuring Equal Access To High-Quality, Office for Civil Rights (OCR)*, (January 15, 2025); <https://www.ed.gov/laws-and-policy/civil-rights-laws/ensuring-equal-access/us-department-of-education-office-for-civil-rights-ensuring-equal-access-to-high-quality-education--pg-2>.

Yet some of the most consequential forms of racial inequality operate not by denying entry, but by destabilizing ownership after the fact. The distinction matters enormously. There is a difference between winning and being positioned to keep winning. There is a difference between entry and the ability to remain. Formal access to homeownership, land, or capital means little if the legal structures governing that ownership are designed—or left unreformed—in ways that make it chronically vulnerable to loss.

Heirs' property arrangements offer one of the clearest illustrations. When Black families acquired land during and after Reconstruction, many lacked access to the legal infrastructure—lawyers, title companies, estate planning services—that would have allowed them to formalize ownership and plan for its transfer.¹⁴⁹ The result was heirs' property: land held informally by multiple descendants, without clear title, under tenancy-in-common arrangements that leave any co-owner legally entitled to force a partition sale.¹⁵⁰ This fractured ownership structure has made Black-owned land across the South and elsewhere disproportionately vulnerable to forced partition sales—often initiated by outside investors who acquire a small fractional interest and then use the legal system to compel a sale at below-market prices.¹⁵¹ Across generations, this has facilitated the massive and largely invisible loss of Black-owned land: wealth that was built, transmitted, and then legally extracted through rules that were facially neutral but operated with devastating effect on communities that lacked the resources to navigate around them.

Predatory mortgage lending operates through the same logic. Ownership is granted, but under conditions—balloon payments, adjustable rates, prepayment penalties, inadequate underwriting—that do not make that ownership durable. The targeting of Black homeowners for subprime products during the 2000s was not, for most lenders, a matter of wanting to exclude Black families from homeownership. It was a matter of structuring ownership in ways that maximized extraction before the inevitable foreclosure. The result was the same as outright exclusion in its economic

¹⁴⁹ Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001) [hereinafter Mitchell, *From Reconstruction to Deconstruction*]; Thomas W. Mitchell, *Forced Sale Risk: Class, Race, and the Double Discount*, 37 FLA. ST. U. L. REV. 589 (2010) [hereinafter Mitchell, *Forced Sale Risk*]; Ryan Cook, *Splitting Heirs: How Heirs' Property Continues the Legacy of Challenges to the Accumulation of Wealth for Black Americans*, 32 UNIV. OF FLA. J. OF L. & PUB. POL'Y 573 (2022).

¹⁵⁰ See generally Mitchell, *From Reconstruction to Deconstruction*, *supra* note 149; Mitchell, *Forced Sale Risk*, *supra* note 149; Cook, *supra* note 146.

¹⁵¹ Mitchell, *From Reconstruction to Deconstruction*, *supra* note 146; Mitchell, *Forced Sale Risk*, *supra* note 149; Cook, *supra* note 146.

effects, but harder to see and challenge because it operated through the language of expanded access.

4. *Extraction Through Public Systems*

Economic dispossession is also reinforced through the extraction or withholding of public resources. Decisions about where to build infrastructure, how to allocate public investment, and which communities receive environmental protection or climate resilience funding shape the economic trajectories of neighborhoods for generations. When governments consistently bypass certain communities in infrastructure investment, they effectively entrench economic marginalization while directing opportunity elsewhere.¹⁵² These are not passive omissions. They are choices—made through the ordinary processes of legislative appropriation, administrative discretion, and regulatory design—with compounding discriminatory effects over time.

Government-funded buyout programs illustrate how public investment decisions can reinforce architectural inequality even when they are framed as benevolent responses to environmental risk. As climate change, flooding, and other environmental hazards increasingly threaten predominantly Black neighborhoods, governments frequently offer homeowners the opportunity to sell their properties and relocate rather than investing in flood mitigation, resilient infrastructure, drainage improvements, or other measures that would allow communities to remain intact.¹⁵³ Although voluntary buyouts may provide an important option for some homeowners, they also reflect a broader policy choice about where public resources will be directed. Too often, the state proves willing to

¹⁵² K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, 39 Cardozo L. Rev. 1621, 1652 (2018); see generally, Morgan Ricks, Ganesh Sitaraman, Shelley Welton, and Lev Menand, *Networks, Platforms, and Utilities: Law and Policy* (2022). Relatedly, meaningful improvements that come to communities after the economic dispossession and displacement process has happened—"tree-lined streetscapes, bike lanes, and even pothole repair"—are "also signs that the people who lived there before the improvements are worth less to governments than new residents." Moskowitz, *supra* note 109, at 2.

¹⁵³ James R. Elliot, Phylicia Lee Brown & Kevin Loughran, *Racial Inequities in the Federal Buyout of Flood-Prone Homes: A Nationwide Assessment of Environmental Adaptation*, 6 SOCIUS: SOCIO. RSCH. FOR A DYNAMIC WORLD 1 (2020); Shruti Punjabi, *Unequal Ground: The Racialized Landscape of Land Ownership and Federal Buyouts in the United States*, PROGRESS & POVERTY INST. (last visited July 10, 2026), <https://progressandpovertyinstitute.org/unequal-ground-the-racialized-landscape-of-land-ownership-and-federal-buyouts-in-the-united-states/>.

finance the dismantling of Black communities but unwilling to make the investments necessary to preserve them.

The consequences extend far beyond the sale of individual homes. Buyout offers often fail to compensate families for the full social and economic value of what is lost, particularly where generations of wealth, community institutions, churches, businesses, and social networks have been built over decades.¹⁵⁴ Homeowners who once possessed an appreciating asset often find themselves unable to purchase comparable housing elsewhere, instead becoming renters or relocating to neighborhoods with fewer opportunities and weaker community ties.¹⁵⁵ As more residents leave, the institutions that sustain community life—schools, small businesses, civic organizations, and places of worship—become increasingly difficult to maintain, accelerating the decline of the neighborhoods left behind.¹⁵⁶ The result is not merely the relocation of individual households but the dissolution of communities as collective entities. Architectural inequality is reproduced not because residents are formally excluded from assistance, but because the architecture of public investment privileges retreat over repair, displacement over preservation, and relocation over the construction of conditions that would allow historically marginalized communities to remain and flourish where they are.

At the local level, systems of fines, fees, and civil asset forfeiture have also functioned as mechanisms of resource extraction that disproportionately burden communities of color.¹⁵⁷ The Department of Justice's investigation of Ferguson, Missouri documented in precise detail

¹⁵⁴ See generally Archer & Schottenfeld, *Defending Home*, *supra* note 6; Kelly McGee, Comment, *A Place Worth Protecting: Rethinking Cost-Benefit Analysis Under FEMA's Flood-Mitigation Programs*, 88 U. CHI. L. REV. 1925 (2021) (“FEMA's cost-benefit methodology conceptualizes flood risk primarily in terms of property damage, leading the agency to neglect the social costs of disasters.”).

¹⁵⁵ Megan Evans, *The Unequal Housing and Neighborhood Outcomes of Displaced Movers*, 43(9) J. URB. AFF. 1214, 1215 (2020) (finding that “a displaced household may be more likely to move into poorer quality housing, especially compared to a household whose move is a result of their own volition”); see also *Buyout Programs Leave Homeowners and Renters at a Loss*, SEA GRANT RHODE ISLAND (Mar. 23, 2020), <https://seagrants.gso.uri.edu/buyout-programs-leave-homeowners-and-renters-at-a-loss/>.

¹⁵⁶ See Amanda Whittemore Martin & Mai Thi Nguyen, *Neighborhood Change During Managed Retreat: Buyouts, Housing Loss, and White Flight*, 11 J. ENV. STUDIES AND SCI. 434 (2021) (finding that post hurricane buyouts lowered 20-year housing growth in a neighborhood and that racial effects were most evident in neighborhoods near large scale buyouts); Robert Freudenberg et al., *Buy-In for Buyouts: The Case for Managed Retreat from Flood Zones*, LINCOLN INSTIT. OF LAND POL'Y 41 (2016), <https://www.lincolnst.edu/app/uploads/legacy-files/pubfiles/buy-in-for-buyouts-full.pdf> (“A community’s social capital is particularly valuable when it has less economic capital, making the breakdown of social networks more devastating.”)

¹⁵⁷ See, e.g., Daniel S. Harawa, *How Much Is Too Much? A Test to Protect Against Excessive Fines*, 81 OHIO ST. L. J. 65, 73-74 (2020).

how municipal finance had come to depend on revenue generated by targeting Black residents with fines and fees—for minor code violations, traffic infractions, and failures to pay earlier fines—creating cycles of debt and legal vulnerability that limited economic mobility and reinforced broader patterns of economic precarity.¹⁵⁸ Ferguson was not an anomaly. Researchers have documented similar fine-and-fee extraction systems across dozens of municipalities, disproportionately concentrated in communities of color.¹⁵⁹

5. *The Design of Dispossession*

Economic dispossession therefore functions as both a mechanism and a consequence of structural racial inequality. It demonstrates how racial hierarchy is reproduced not primarily through overt discrimination but through systems of governance that extract value from marginalized communities while insulating the mechanisms of harm from legal scrutiny. Dispossession is not the absence of inclusion. It is something more aggressive: the active removal of what communities have built, through tools that are lawful, bureaucratic, and often invisible until their effects have already accumulated.

D. Civic Subordination

A fourth architecture of structural racial inequality operates through what might be understood as civic subordination—systems of governance that subject marginalized communities to heightened surveillance, regulation, and criminalization while simultaneously denying them the public goods, political power, and social recognition necessary to live with dignity, exercise autonomy, and participate fully in democratic life. If spatial exclusion determines where communities can live, opportunity

¹⁵⁸ *Investigation of the Ferguson Police Department*, U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

¹⁵⁹ Lisa Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 1, 5 – 10 (2020) (“New Jersey, for example, assesses a fee on all traffic tickets to fund autism research. Arizona funds statewide elections through a surcharge imposed on all civil and criminal fines and penalties. California provides a particularly egregious example. The fine for a red-light violation is \$100. But that \$100 fine carries with it \$390 in additional fees. The state assesses a \$40 court operations fees; a \$35 criminal conviction fee; a \$4 emergency medical air transportation penalty; a \$1 night court fee; and, a \$310 penalty assessment and surcharge. The latter fee funds eight different state programs, including the Fish and Game Preservation Fund, the Office of Emergency Services, and the Traumatic Brain Injury Fund.”); *see also* Lisa Foster, *Building a Movement: The Lessons of Fines and Fees*, 87 FORDHAM L. REV. ONLINE 176 (2018).

exclusion shapes access to mobility and resources, and economic dispossession strips communities of the wealth they manage to build, civic subordination governs the conditions under which communities are permitted to exist in public space, organize collectively, and exercise power over the decisions that shape their lives.¹⁶⁰

Civic subordination is, in this sense, the architecture that holds the others in place. It is about the construction of a kind of second-class citizenship; a condition in which formal legal equality coexists with the practical experience of conditional belonging. Black communities are permitted to exist, but under terms they did not set and cannot easily change: subject to enforcement regimes that other communities do not face, denied the public investment that other communities receive, and stripped of political power whenever they manage to accumulate enough of it to matter. The result is neither slavery nor formal segregation, but something else that shares their essential structures: a system in which the terms of belonging are set by others and enforced through law.¹⁶¹

1. Disinvestment and Criminalization

One of the most consequential mechanisms of civic subordination is the substitution of enforcement for investment. Communities that are denied sustained public resources—in schools, transportation, healthcare, housing, and economic opportunity—frequently become the targets of intensified policing and surveillance.¹⁶² Rather than addressing the structural conditions that produce instability, government institutions often respond to the consequences of disinvestment through enforcement regimes that treat poverty, unemployment, and inadequate housing as problems of disorder to be managed rather than failures of policy to be remedied. Policing, incarceration, and administrative enforcement thus function as substitutes for public investment, governing through punishment the communities that governance has failed.¹⁶³

The expansion of algorithmic enforcement systems has extended this dynamic while making it harder to see and challenge. Predictive

¹⁶⁰ See Pamela S. Karlan, *Rights to Vote: Some Pessimism about Formalism*, 71 Tex. L. Rev. 1705, 1710 (1993) (arguing that a primary value underlying the right to vote is “civic inclusion: a sense of connectedness to the community and of equal political dignity”)

¹⁶¹ Archer & Carbado, *supra* note 57.

¹⁶² Archer, *DIVIDING LINES*, *supra* note 19, at 144 (describing the spatial racism inherent in the 2014 murder of Michael Brown, which led the U.S. Department of Justice to find that the Ferguson Police Department often enforced an overly vague sidewalk walking law “almost exclusively as part of a practice of discriminatory policing, in order to fill holes in the city’s budget by extracting fines and fees from Black residents.”).

¹⁶³ See Archer, *The New Housing Segregation*, *supra* note 47, at 182 – 83 (“Local control includes the power to exclude. Too frequently the authority invested in local governments has been used to exclude residents deemed “undesirable.” Unfortunately, that undesirability is often defined along racial lines”).

policing technologies, data-driven crime mapping, and risk assessment tools disproportionately target neighborhoods already shaped by historical segregation and economic disadvantage.¹⁶⁴ These systems do not always introduce racial bias into enforcement; but they consistently import and automate the biases already embedded in historical policing data, producing self-fulfilling cycles in which over-policed communities generate more arrest data, which generates more policing.¹⁶⁵ Smart city surveillance infrastructure—camera networks, license plate readers, facial recognition systems, and location tracking tools deployed through public-private partnerships—has intensified monitoring of public life in the same communities, creating a permanent condition of visibility and vulnerability that residents of less surveilled neighborhoods do not experience and rarely consider.¹⁶⁶ These systems do more than detect crime. They structure how communities are perceived and governed, reinforcing narratives that equate racialized spaces with disorder and risk, and making those narratives self-perpetuating.

2. *The Criminalization of Everyday Life*

Civic subordination also operates through the shrinking and privatization of public space and the criminalization of ordinary behavior within it. As parks, sidewalks, plazas, and transit hubs are increasingly

¹⁶⁴ Akselrod, *supra* note 179, Southerland, *supra* note 108; Vincent M. Southerland, *The Master's Tools and A Mission: Using Community Control and Oversight Laws to Resist and Abolish Police Surveillance Technologies*, 70 UCLA L. REV. 2, 17 – 18 (2023) (“For the communities who have been targeted and harmed by the police, technological innovations serve nefarious ends. Those communities experience policing and police technologies as tools of racial control.”)

¹⁶⁵ Southerland, *supra* note 108, at 502 – 03 (“In 2016, the Human Rights Data Analysis Group (“HRDAG”) reproduced the algorithm utilized by PredPol, a predictive policing software that dozens of police departments nationwide have adopted PredPol’s software consults historical crime data to forecast particular areas--so-called hotspots--that officers should target on a given day. The HRDAG researchers inputted crime data from Oakland, California in order to use the PredPol software to forecast potential drug crime.”).

¹⁶⁶ See generally Barry Friedman, *Lawless Surveillance*, 97 N.Y.U. L. REV. 1143 (2022) (discussing unregulated surveillance technologies utilized by police such as license plate readers, mobile forensics data terminals, CCTV, and Artificial intelligence used for storage); see also Margaret Hu, *Facial Recognition AI*, 103 N.C. L. REV. 1535, 1570 (2025) (describing “the unfolding trajectory from one-dimensional identification in urban settings--for example, law enforcement requesting to review someone’s driver’s license during a traffic stop--to multidimensional identification systems facilitated by algorithmic-driven AI embedded within urban settings--for example, scanning crowds or city streets with facial recognition technology then algorithmically assessing the individuals for threat risk.”).

governed through public-private partnerships,¹⁶⁷ security regimes,¹⁶⁸ and restrictive ordinances,¹⁶⁹ the ability to exist freely in public space becomes unevenly distributed. Crime-free housing and nuisance ordinances, loitering restrictions, curfews, and aggressive trespass enforcement regimes can transform routine activities like standing with friends or sitting on a stoop into potential grounds for surveillance or arrest.¹⁷⁰

For Black youth, this dynamic produces a particular kind of spatial trap. Heavily policed public spaces and privately managed commercial environments leave young people with nowhere to be that is not also a site of legal vulnerability. When simply being present in public space is treated as suspicious, the question becomes not what young people are doing but whether they are permitted to exist anywhere at all.¹⁷¹ Many are forced to exist in a legal and spatial environment in which the ordinary social behavior of adolescence—gathering, moving, occupying space—carries consequences that fall overwhelmingly on Black young people and not on their white peers.

3. *Underinvestment and the Regulation of Black Movement*

Another form of civic subordination is the deliberate construction and management of public space in ways that stigmatize, marginalize, and constrain the communities that inhabit it. Examples include the design of streets, sidewalks, and neighborhood boundaries; decisions about where to invest and where to neglect; and the selective enforcement of laws against people whose mobility has already been made precarious by public disinvestment. Each of these is a mechanism of civic exclusion, and each

¹⁶⁷ Sarah Schindler, *The “Publicization” of Private Space*, 103 IOWA L. REV. 1093, 1096 (2018) (focusing on the new phoneme of privately owned public spaces, or “POPOS” which are created when “POPOS are typically created in one of two ways: “offered by a private developer in exchange for a density bonus, which allows the developer to build a taller or bulkier building than would otherwise be permitted under the zoning” or “they are required as a condition of development approval.”)

¹⁶⁸ Ángel Díaz, *The Public Harms of Private Surveillance*, 72 U.C.L.A. L. REV. 906 (2025) (describing how public surveillance technology governs public spaces); Friedman, *supra* note 166.

¹⁶⁹ Marisa Bono, *Don't You Be My Neighbor: Restrictive Housing Ordinances As the New Jim Crow*, 3 MOD. AM. 29, 30–32 (2007) (describing how modern day restrictive housing ordinances reinforce racial stratification and keep minority groups out of communities).

¹⁷⁰ Archer, *Exile from Main Street*, *supra* note 75, at 809–11; Alexis Karteron, *When Stop and Frisk Comes Home: Policing Public and Patrolled Housing*, 69 CASE WESTERN RESERVE L. REV. 669, 693–94 and 697 (2019).

¹⁷¹ See *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013). The litigation revealed how New York City’s stop-and-frisk regime effectively treated Black and Latino youth as presumptively suspicious in the very public spaces they inhabited. By subjecting ordinary acts of movement, gathering, and waiting to constant police scrutiny, the city’s policing practices narrowed the places where young people could exist without fear of state intervention, illustrating how law enforcement can function as part of the broader architecture that structures unequal access to public space.

operates through the ordinary, unremarkable machinery of municipal governance.

The Supreme Court's decision in *Memphis v. Greene*¹⁷² offers a precise illustration of how that machinery works, and of how much it can accomplish without ever naming race. When the City of Memphis closed a street running through a Black neighborhood at the request of an adjacent white neighborhood seeking protection from "undesirable traffic," the Court upheld the closure, finding no constitutional violation despite its transparent racial meaning.¹⁷³ Justice Marshall's dissent cut to the heart of what the majority refused to see: that the closure placed a barrier between the Black and white communities, and that the small, mean message it sent, that Black residents' access to public space was subordinate to white residents' comfort, was inseparable from the history of racial subordination the Constitution was meant to remedy.¹⁷⁴

Inadequate pedestrian infrastructure extends these dynamics in ways that are rarely recognized as civil rights harms. Decisions about sidewalk placement, street lighting, transit access, and safe crossings shape who can move through urban space safely and freely. In many communities of color, the absence of sidewalks, poorly maintained pedestrian routes, and dangerous street design limit mobility and increase vulnerability both to injury and to police enforcement.¹⁷⁵ The pretextual traffic stop, now documented across dozens of jurisdictions, frequently begins with a pedestrian or vehicular infraction that is widespread but selectively enforced, converting the ordinary experience of moving through space into an encounter with state power.¹⁷⁶ Driving while Black, walking while

¹⁷² 451 U.S. 100 (1981).

¹⁷³ *Id.* at 115, 129 (upholding the closure and finding no violation of the Thirteenth Amendment).

¹⁷⁴ *Id.* at 155 (Marshall, J., dissenting) ("But the evidence in this case, combined with a dab of common sense, paints a far different picture from the one emerging from the majority's opinion. In this picture a group of white citizens has decided to act to keep Negro citizens from traveling through their urban "utopia," and the city has placed its seal of approval on the scheme.").

¹⁷⁵ Archer, *DIVIDING LINES*, *supra* note 19, at 112, 145 (describing Beavercreek, Ohio and Ferguson, Missouri - two areas where "unusable or nonexistent pedestrian infrastructure" such as a lack of sidewalks - is common despite laws that punish for walking in the street even if you have nowhere else to walk); Archer & Joshi, *supra* note 5, at 140 ("Decisions about where to build roads or invest in public transportation can determine whether people in certain communities must travel far to reach good jobs, buy healthy groceries, or attend quality schools.").

¹⁷⁶ Angela J. Davis, *Race, Cops, and Traffic Stops*, 51 U. MIAMI L. REV. 425 (1997) (discussing how pre-textual traffic stops are a vehicle for racial discrimination); Magnus Lofstrom et al., *Racial Disparities in Traffic Stops*, PUB. POL'Y INST. OF CAL. (October 2022), <https://www.pplic.org/publication/racial-disparities-in-traffic-stops/>.

Black, standing while Black: each phrase names the same underlying condition, in which physical mobility carries legal risk distributed along racial lines.

The killing of Michael Brown in Ferguson, Missouri in August 2014 began with an order to use a sidewalk.¹⁷⁷ Mr. Brown and a friend were walking in the road when a police officer stopped them and directed them onto the sidewalk. This was an encounter that escalated and ended with Mr. Brown's death.¹⁷⁸ What that order revealed, and what the subsequent Department of Justice investigation documented in detail, was how public disinvestment and selective enforcement operate together as instruments of racial subordination. Ferguson allocated a mere three thousand dollars out of its twenty-one million dollar municipal budget to sidewalk maintenance that year.¹⁷⁹ The sidewalks were cracked, disconnected, and in many places nonexistent. Residents walked in the road because there was nowhere else to walk. The city's response to that disinvestment was not investment, it was enforcement. In the two years before Mr. Brown's death, Black residents accounted for ninety-five percent of charges for walking in the road, part of what the Department of Justice found to be a deliberate departmental practice of using pedestrian and traffic infractions to extract fines and fees from Black residents and fill municipal budget gaps.¹⁸⁰

Ferguson is not an anomaly. It is a pattern with a consistent internal logic: public infrastructure fails in Black neighborhoods, and then the law is deployed against the people that failure most harms.¹⁸¹ It is civic subordination accomplished through the architecture of spatial control, the same dynamic *Memphis v. Greene* refused to name, and the same logic that

¹⁷⁷ Ishmael Sistrunk, *Walking while Black: Michael Brown, Black men and White Police Officers*, THE ST. LOUIS AMERICAN (Aug. 13, 2014); <https://www.stlamerican.com/remembering-michael-brown/walking-while-black-michael-brown-black-men-and-white-police-officers/> (discussing the murder of Michael Brown and critiquing the Ferguson police because “The reasons given for the bogus stops were numerous. Driving While Black (DWB) is real. For Brown, so was Walking While Black.”); *Investigation of the Ferguson Police Department*, *supra* note 158, at 5.

¹⁷⁸ *Investigation of the Ferguson Police Department*, *supra* note 158, at 6 (describing Michael Brown walking with a friend and the cops ordering them to walk on the sidewalk).

¹⁷⁹ Aubrey Bryon, *In Much of Ferguson, Walking in the Street Remains the Only Option*, STRONG TOWNS (Feb. 20, 2018), <https://archive.strongtowns.org/journal/2018/2/19/ferguson-sidewalks-mike-brown-decline>.

¹⁸⁰ *Investigation of the Ferguson Police Department*, *supra* note 158.

¹⁸¹ In New York City, ninety percent of jaywalking citations issued in 2019 went to Black and Latino residents, who together comprise approximately fifty-five percent of the population. In Jacksonville, Florida, Black residents received fifty-five percent of jaywalking tickets while making up twenty-nine percent of the population. In Champaign-Urbana, nearly ninety percent of jaywalking arrestees were Black. In Sacramento, Black residents received nearly half of all pedestrian citations in a city where they represent thirteen percent of the population.

has governed the relationship between Black communities and public space across generations.

4. *Extraction, Environmental Harm, and the Sacrifice Zone*

Civic subordination is further reinforced through systems that extract resources from communities of color rather than investing in them. As described above, fine-and-fee regimes and civil asset forfeiture practices burden economically vulnerable communities with cycles of debt and legal jeopardy that limit mobility and drain resources. These systems are not incidental to local governance, they have functioned as primary revenue mechanisms, the fiscal structure of the municipality built on the extraction of money from its most vulnerable residents through the apparatus of law enforcement.

Environmental harms compound this picture. Communities of color have been disproportionately sited near industrial facilities, waste disposal sites, highways, and other sources of environmental burden not through the operation of an anonymous market, but through decades of zoning decisions, regulatory choices, and siting processes in which those communities lacked the political power to protect themselves.¹⁸² The result is what environmental justice advocates call sacrifice zones: places where the environmental costs of economic activity are concentrated in communities deemed, by the implicit logic of policy, expendable.¹⁸³ Long-term exposure to air pollution, contaminated water, and toxic waste imposes health burdens, including elevated rates of asthma, cardiovascular disease, cognitive impairment, cancer, that limit educational and economic achievement, shorten lives, and impose care burdens. Climate change intensifies these vulnerabilities, as communities in environmentally marginal locations face the greatest risks from flooding, heat, and extreme weather events, and receive the least public investment in resilience and adaptation. To live in a sacrifice zone is to receive the clearest possible message about the terms of one's belonging.

¹⁸² See Robert D. Bullard, *DUMPING IN DIXIE: RACE, CLASS, AND ENVIRONMENTAL QUALITY* (3rd ed. 2018).

¹⁸³ Archer, *DIVIDING LINES*, *supra* note 19, at 69 (“And once the highways were built, many of the affected communities became so-called sacrifice zones, forced to accept transportation hubs, landfills, power plants, and oil and gas refineries, with further impacts on physical and socioeconomic well-being.”); Ryan Juskus, *Sacrifice Zones: A Genealogy and Analysis of an Environmental Justice Concept*, 15 *Environmental Humanities* 3-24 (2023).

5. *Voting Rights, Political Power, and the Suppression of Black Governance*

Underlying all of these mechanisms is a systematic effort to limit the political power through which communities might otherwise contest and change the conditions under which they live. Voting restrictions, including voter ID requirements, polling place closures, purges of voter rolls, and felony disenfranchisement, have disproportionately burdened Black voters and limited their ability to translate demographic presence into electoral power.¹⁸⁴ These are not merely procedural inconveniences, but mechanisms of civic subordination operating through the structures of democratic governance to ensure that the communities most harmed by existing arrangements have the least capacity to change them. Legislative redistricting has fragmented Black communities across multiple districts, reducing their ability to elect representatives accountable to their interests.

But voting rights, as critical as they are, tell only part of the story. Civic subordination also operates through the suppression and dismantling of Black political power once it is achieved. When Black communities have built the political coalitions necessary to govern, electing Black mayors, city councils, and school board, they often find that power pre-empted, stripped, or constrained by state legislatures.¹⁸⁵ State preemption laws that override local minimum wage ordinances, tenant protection measures, or police accountability rules frequently target the policy agendas of majority-Black cities, ensuring that Black political majorities cannot translate electoral success into governance.¹⁸⁶ Annexation has been used in some jurisdictions

¹⁸⁴ See Pamela S. Karlan, *Rights to Vote: Some Pessimism about Formalism*, 71 TEX. L. REV. 1705, 1712 (1993) (“The primary function of voting . . . is to combine individual preferences to reach some collective decisions”). See *The Impact of Voter Suppression on Communities of Color*, BRENNAN CTR. FOR JUST (last updated Mar. 26, 2026), <https://www.brennancenter.org/our-work/research-reports/impact-voter-suppression-communities-color>.

¹⁸⁵ Sandhya Kajeepeta, *When the State Takes Over: How state officials usurping local control threatens local Black political power*, LDF THURGOOD MARSHALL INSTIT. 3 (Feb. 2024), <https://tminstituteldf.org/wp-content/uploads/2024/02/When-the-state-takes-over.pdf> (“State takeovers of local governmental authorities are increasingly being used in majority-Black cities across the United States to seize control from local Black elected leaders and deny the will of Black voters.”); Hunter Blair et al., *Preempting Progress*, ECON. POL’Y INSTIT., (Sep. 30, 2020), <https://www.epi.org/publication/preemption-in-the-south/>.

¹⁸⁶ *What The Practice Of State Preemption Means For Our Democracy*, NPR (May 6, 2026), <https://www.npr.org/2026/05/06/nx-s1-5813727/what-the-practice-of-state-preemption-means-for-our-democracy>; Resha T. Swanson, *Still Fighting: The Relationship Between Contemporary Preemption in the South and the Continued Struggle for Black Worker Rights*, 19 COLUM. SOC. WORK REV. 63 (discussing how state preemption laws override minimum wage ordinances); see also Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1999, 2003, 2010 – 14 (2018) (discussing the impact of preemption on minimum wage protections, police accountability rules, and voting).

to dilute Black political power by absorbing Black-majority municipalities into larger white-majority political units.¹⁸⁷

State legislatures have also moved to strip majority-Black cities of authority over core institutions of local governance. In Hinds County, which includes Jackson, Mississippi, for example, the legislature expanded the jurisdiction of a state-controlled police force while creating a parallel court staffed by state-appointed judges and prosecutors, ensuring that even where Black communities hold electoral majorities, the institutions that govern daily life answer to someone else.¹⁸⁸ This move followed decades of financial neglect of the County's criminal justice system by the Mississippi State Legislature which "[i]nstead of addressing this situation by providing needed support for prosecutors and judges—and police managed by Black officials, the State has compounded the problem. It has singled out Hinds County as the only place in Mississippi whose residents are subject to new special judges and prosecutors appointed by White statewide officers whom, because of racially polarized voting, they cannot hold democratically accountable."¹⁸⁹ The state redesigned the institutional architecture of a city so that democratic power exercised by Black voters no longer determined who polices, prosecutes, or judges them.¹⁹⁰

The destruction and displacement of thriving Black communities also functions as a mechanism of political suppression. The 1921 massacre that destroyed Greenwood in Tulsa did not only erase Black Wall Street, the prosperous commercial district that represented the economic and civic infrastructure of Black life in that community, it annihilated a concentrated base of Black political power, scattering a community whose economic independence had enabled autonomous civic organization and electoral influence.

The violence and legal machinery that dismantled reconstructed Black political communities across the South during and after

¹⁸⁷ Perry, *supra* note 63, at 40 ("If Black-majority cities are a problem, making them less Black through annexation becomes the solution.").

¹⁸⁸ H.B. 1020, Reg. Sess., 2023 Miss. Laws ch. 546; see also *National Association for the Advancement of Colored People Reeves*, 3:23-cv-272 (2023) (challenging H.B. 1020 and alleging that the law denies "the Black residents of Hinds County the rights of self-government and local control over local institutions enjoyed by all other Mississippian").

¹⁸⁹ *National Association for the Advancement of Colored People and the United States v. Reeves*, 3:23-cv-272 (2023) at para 1-2.

¹⁹⁰ See also Mo. Rev. Stat. §§ 84.010–84.340 (repealed 2012) (providing for state control of the St. Louis Metropolitan Police Department for more than 150 years before local control was restored); Richard C. Schragger, *The Attack on American Cities*, 96 Tex. L. Rev. 1163 (2018); Erin Adele Scharff, *Hyper Preemption: A Reordering of the State–Local Relationship?*, 106 Geo. L.J. 1469 (2018).

Reconstruction did not only end Black governance, but it also destroyed the organizational infrastructure, the leadership networks, and the institutional memory that had made Black political participation possible, ensuring that the suppression would outlast the immediate violence. In New Orleans, Hurricane Katrina was used as an opportunity to permanently demolish the city's public housing and redevelop Black neighborhoods, displacing tens of thousands of residents and dismantling the organizational infrastructure of some of the city's most politically cohesive Black communities.¹⁹¹ These were acts of organizational destruction, the deliberate elimination of the newspapers, civic associations, churches, commercial networks, and political clubs through which communities build and sustain collective power.¹⁹² They destroyed the institutions through which power is exercised and transmitted across generations. The result is that Black communities have been treated, repeatedly and across domains, as the path of least resistance—the communities whose objections can be overridden, whose political power can be contained, whose neighborhoods can absorb the costs that more powerful communities deflect.

6. *The Conditionality of Belonging*

What connects the mechanisms described in this section—criminalization, surveillance, neglect, the restriction of public space, environmental sacrifice, extraction, and the suppression of political power—is the conditionality of belonging they collectively produce. They bring forth the idea of Black people living in “civil slavery” as “second-class citizens.”¹⁹³ They are included on terms that are set by others, enforced through law, and subject to revision whenever the accumulation of Black power becomes inconvenient or threatening. Real civic inclusion means something beyond formal legal membership.¹⁹⁴ It means that

¹⁹¹ Pam Fessler, *After Katrina, New Orleans' Public Housing Is A Mix Of Pastel And Promises*, NPR (Aug. 17, 2015); <https://www.npr.org/2015/08/17/431267040/after-katrina-new-orleans-public-housing-is-a-mix-of-pastel-and-promises>; Dani McClain, *Former Residents of New Orleans's Demolished Housing Projects Tell Their Stories*, THE NATION (Aug. 28, 2015); <https://www.thenation.com/article/archive/former-residents-of-new-orleans-demolished-housing-projects-tell-their-stories/>.

¹⁹² Deborah N. Archer, *The Greatest Tragedy of Hurricane Katrina Was Man-Made*, ROLLING STONE (Aug. 29, 2025); <https://www.rollingstone.com/politics/political-commentary/hurricane-katrina-racial-justice-tragedy-1235417568/>; Taunya L. Banks, *Post-Katrina Suppression of Black Working-Class Political Expression*, 22 (2) J. OF PUB. MGMT. & SOC. POL'Y (Sep. 2015) (arguing that “argues that the post-Katrina regulation of second line parades [communal street parades] is a continuation of long-standing practices that regulate and suppress the expressive social, cultural and political activities of working class black New Orleans residents by limiting their access to public spaces and restricting their ability to associate with other black working class resident.”)

¹⁹³ Dylan C. Penningroth, *BEFORE THE MOVEMENT: THE HIDDEN HISTORY OF BLACK CIVIL RIGHTS* 258 (2023).

¹⁹⁴ Michele Lamont et al., *Membership without Social Citizenship? Deservingness & Redistribution as Grounds for Equality*, 2019 DAEDALUS J. OF THE AM. ACAD. OF ARTS

communities have the power to shape decisions across multiple arenas, over time, and on multiple issues, not as supplicants requesting consideration, but as co-architects of the systems that govern them.¹⁹⁵ It means that belonging is not conditional on deference, that political power is not dismantled when it becomes effective, and that the communities that have borne the greatest costs of American development are treated as stakeholders in its future rather than obstacles to its progress. Civic subordination is the architecture that prevents that kind of inclusion from materializing.

III. A Third Era of Construction

One thing that unites the four architectures of inequality discussed in Part II is the relationship between formal legality and substantive harm. In each area, the law has proven ineffective at intervening at the level of system design and has instead either authorized the dispossession, failed to prevent it, or provided inadequate remedies after the fact. In each area, communities that lacked political power were made to absorb costs that flowed from deliberate design choices. And in each area, the framing of those choices as neutral, market-driven, natural, or rational has made them harder to see, harder to name, and harder to challenge. Each of these architectures has also evolved, shedding its explicitly racial character while preserving its racially disparate effects, converting the blunt instruments of exclusion into the technical language of planning, markets, and administrative discretion. If the mechanisms of racial inequality have evolved, our understanding of justice must keep up.

A. Towards an Expansive Meaning of Justice

A more expansive conception of justice, one with the potential to rise to the level of the challenges facing Black people and Black communities, asks what conditions must exist for individuals and communities to truly belong and thrive in a democratic society? This is not a new question. It was, in fact, central to what historians call the long civil

AND SCI. 73, 73 – 74 (addressing what it really means to belong beyond the confines of formal citizenship); Crenshaw, *supra* note 22, at 1331 – 34 (1988) (discussing the insufficiency of formal equality in the face of the racist nature of supposedly neutral legal forms).

¹⁹⁵ Archer & Schottenfeld, *Defending Home*, *supra* note 6 at 2239 – 40 (explaining that true civic inclusion would “offer space for group negotiations and decision-making, such as over the nature and type of any mitigation efforts that are to be implemented alongside the infrastructure program.”; *see also* Matthew J. Parlow, *Civic Republicanism, Public Choice Theory, and Neighborhood Councils: A New Model for Civic Engagement*, 79 U. COLO. L. REV. 137 (2008).

rights movement, the decades-long struggle, from the 1930s through the 1980s, in which Black communities fought not only against discrimination but for full citizenship, economic justice, and genuine grassroots democracy.¹⁹⁶ Long-movement activists understood that dismantling Jim Crow was necessary but insufficient on its own. The deeper work required transforming the underlying structures that kept most Black people poor, politically weak, undereducated, and subject to state violence.¹⁹⁷ Our legal and political frameworks have not kept pace with that vision. They have largely been reduced the idea of justice to accountability. While accountability remains essential, that framework narrows our collective imagination and obscures what durable equality actually requires.

Durable equality requires safety, dignity, and the material conditions necessary to exercise formal rights meaningfully. It requires building the institutions, systems, and public investments that sustain belonging, stability, and shared opportunity. It requires moving from systems, institutions, and communities designed to control and punish toward systems, institutions, and communities designed to repair and build. The antidote to structural inequality is not the prohibition of discrimination alone, it is the deliberate design of institutions, policies, and public investments that expand belonging and opportunity for communities that have been systematically excluded from both.

B. Justice as Construction

At its core, the project of civil rights has never been solely about defending rights from infringement.¹⁹⁸ Civil rights law contains two traditions. One seeks primarily to prohibit discrimination and remedy individual injury.¹⁹⁹ The other seeks to build the institutional conditions necessary for equal citizenship and constructing the conditions under which

¹⁹⁶ Penningroth, *supra* note 193, at xvii; *see also* Tom Sugrue, *SWEET LAND OF LIBERTY: THE FORGOTTEN STRUGGLE FOR CIVIL RIGHTS IN THE NORTH* xvi-xvii (Random House 2008); Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, JAH 91 (March 2005), 1233-63.

¹⁹⁷ Penningroth, *supra* note 193, at 256 (“In 1866, ‘civil rights’ had meant rights of contract and property, the right to go to court. By 1954, civil rights meant ending racial discrimination on the job, at school, in voting, and an end to lynching”); *see also* Sugrue, *supra* note 196 at, xvi-xvii; Jacquelyn Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, JAH 91 (March 2005), 1233-63.

¹⁹⁸ *See* Johnson, *supra* note 10, at 1345 (2012) (identifying a regulatory model of “equality directives” that “do more than combat discrimination and bias” but “seek to promote economic and other opportunities, full participation in government-funded programs, and social inclusion for excluded groups”); *see* Bagenstos, *supra* note 11, at 2 (noting that although the enacted Civil Rights Act “fell short” of its drafters’ structural ambitions, “hints of a structural approach to discrimination live on” in doctrines such as disparate impact).

¹⁹⁹ *See* Johnson, *supra* note 10, at 1343 (describing strains on the private and individual enforcement of civil rights in the courts); Bagenstos, *supra* note 11; Archer & Schottenfeld, Civil Rights Administration, *supra* note 4.

rights can be meaningfully exercised.²⁰⁰ The latter tradition has been eclipsed by decades of judicial and political retrenchment that have pushed it to the margins of our legal imagination.²⁰¹ Now, contemporary civil rights discourse often obscures this second dimension. We focus on justice as a defensive enterprise rather than a project of construction. A constructive model of civil rights law begins from the premise that rights are not self-executing, democracy is not self-perpetuating, and equality does not naturally emerge once formal barriers are removed.²⁰² All three depend upon infrastructure: institutions, enforcement mechanisms, public policies, and systems of participation that translate legal guarantees into lived realities.²⁰³ If justice is to endure and the hold of the interlocking architectures of inequality to be broken, these conditions must be intentionally built, maintained, and renewed over time.

To conceive of justice as construction is to understand civil rights law as more than a body of prohibitions or a mechanism for remedying individual harms.²⁰⁴ It is to recognize that equality is built. The constructive

²⁰⁰ Brandon Hasbrouck, *The Antiracist Constitution*, 102 B.U. L. REV. 87 (2022); K. Sabeel Rahman, *Constructing Citizenship: Exclusion and Inclusion Through the Governance of Basic Necessities*, 118 COLUM. L. REV. 2447 (2018) (arguing that true citizenship requires institutional frameworks that reliably and equitably provide foundational public goods such as housing, healthcare, and water).

²⁰¹ See e.g., *Washington v. Davis*, 426 U.S. 229 (1976); *Milliken v. Bradley*, 418 U.S. 717 (1974); *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973); *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023); *Shelby County v. Holder*, 570 U.S. 529 (2013); *Louisiana v. Callais*, 608 U.S. ____ (2026).

²⁰² See Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4; Johnson, *supra* note 7, at 1343 (asserting that other tools, equality directs, give the state affirmative duties to enforce civil rights).

²⁰³ See Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4.

²⁰⁴ This conception of constructive justice should not be understood as a call simply to expand positive rights or constitutionalize additional substantive entitlements. Although access to housing, education, transportation, health care, or other essential goods may often be indispensable to achieving racial equality, the argument here is different. Architectural inequality demonstrates that racial hierarchy is reproduced through the design of interconnected legal, political, economic, and spatial systems. As a result, justice requires more than recognizing additional rights; it requires redesigning the institutional arrangements that allocate opportunity, power, and belonging in the first place. Indeed, positive rights alone may leave intact the very architectures that continue to generate racial inequality. The constructive tradition reflected in measures such as the Voting Rights Act of 1965 illustrates this distinction. Rather than merely prohibiting discrimination after it occurs, the Act employed affirmative institutional mechanisms—including federal preclearance, federal examiners, and targeted federal oversight—to prevent discriminatory systems from taking root and to restructure the conditions under which democratic participation occurred. The broader claim advanced here is that civil rights law should similarly develop preventive and institutional mechanisms in other domains, including

project of civil rights has always involved at least three interrelated forms of public action. It requires building institutions capable of implementing and enforcing rights—from schools and universities to administrative agencies, courts, and community organizations.²⁰⁵ It requires building systems that structure democratic participation and distribute opportunity, including voting systems, housing markets, transportation networks, funding regimes, and the administrative processes through which government allocates resources and power. And it requires building pathways that connect historically marginalized communities to education, employment, housing, wealth, political participation, and civic leadership. These institutions, systems, and pathways constitute the infrastructure of civil rights. They are the means by which legal guarantees become lived realities and by which equal citizenship moves from constitutional aspiration to everyday experience.

housing, education, transportation, environmental protection, and economic development, that address the design of systems before discriminatory outcomes become entrenched.

This account also engages longstanding Critical Legal Studies critiques of rights discourse. Scholars in this area have argued that rights frameworks often individualize injury, obscure structural relations of power, legitimate existing institutional arrangements by treating them as neutral, and ultimately leave racial hierarchy intact. See, e.g., Mark Tushnet, *An Essay on Rights*, 62 TEX. L. REV. 1364 (1984); Duncan Kennedy, *The Critique of Rights in Critical Legal Studies*, in LEFT LEGALISM/LEFT CRITIQUE (Janet Halley & Wendy Brown eds., 2002); Patricia J. Williams, *THE ALCHEMY OF RACE AND RIGHTS* (1991). This Article accepts much of that critique insofar as conventional antidiscrimination doctrine remains largely oriented toward identifying discriminatory actors, decisions, or intent while leaving untouched the institutional architecture that produces inequality. But it differs in the conclusion that rights themselves are incapable of transformative work. Instead, consistent with scholars who have sought to reconstruct rather than abandon rights, this Article argues that civil rights law is most effective when understood as an institutional project of construction as well as prohibition. See, e.g., Crenshaw, *supra* note 22. Civil rights as constructive justice, therefore, does not seek simply to multiply rights claims. It seeks to redesign the systems that generate racial inequality, shifting civil rights law from adjudicating isolated instances of discrimination toward constructing the institutional and infrastructural conditions necessary for equal citizenship.

²⁰⁵ See Suzanne B. Goldberg & Olatunde C.A. Johnson, *Campus Crises and the Limits of Title VI*, 126 COLUM. L. REV. F. 1,1 (2026) (asserting that “schools have a responsibility to carry out Title VI compliance within broader efforts to build community citizenship, including conflict deescalation and informal conflict-resolution processes”); Michael Sant’Ambrogio & Adam S. Zimmerman, *Inside the Agency Class Action*, 126 YALE L.J. 1634, 1645 (2017) (calling on agencies to use class actions to “form an integral part of public regulation and the adjudicatory process itself.”); see also Gurjot Kaur & Dana Sussman, *Unlocking the Power and Possibility of Local Enforcement of Human and Civil Rights: Lessons Learned from the NYC Commission on Human Rights*, 51 COLUM. HUM. R. L. REV. 582, 583 (2020) (“This article proposes that local and state human rights agencies can and should prominently step forward to push the limits of their mandates, including: adopting a holistic and highly visible approach to combat discrimination in their jurisdictions; building relationships with advocates; steering the national conversation on civil rights; and continuing to create powerful legal precedents to protect society’s most vulnerable.”).

This understanding reveals a connection between what can otherwise appear to be distinct civil rights battles. The struggle for voting rights is not simply about preventing discrimination at the ballot box; it is about constructing the conditions for meaningful democratic participation and collective political power. Civil rights administration is not merely an exercise in bureaucratic governance; it is the creation and maintenance of an enforcement infrastructure that makes rights real in everyday life.²⁰⁶ Community equity is not simply an anti-displacement project; it is an effort to build pathways to opportunity, strengthen community capacity, and ensure that all people can remain, thrive, and participate in the places they call home.²⁰⁷ Essential infrastructure is not simply a public good to be delivered; it is also a civil rights institution that structures access to opportunity, shapes belonging, and determines who can fully participate in American life.²⁰⁸ Even transportation infrastructure, long understood as a matter of mobility or economic development,²⁰⁹ reveals this constructive dimension. Roads, highways, transit systems, and neighborhood design are not neutral public works projects. They structure access to jobs, schools, wealth, social networks, and political power. They build communities of opportunity or entrench communities of disadvantage.²¹⁰

Taken together, these projects suggest that civil rights law should be understood not only as a body of anti-discrimination principles but also as a project of democratic construction. The central question is not only what forms of discrimination government must prohibit, but also what institutions it must create, what systems it must design, and what pathways it must open if freedom, equality, and democratic participation are to endure. This shift in orientation carries important implications for how we understand the role of government. Under a predominantly defensive model, government acts primarily as a referee—intervening when rules are broken and responding to individual complaints. Under a constructive model, government becomes a steward of democratic conditions,

²⁰⁶ See generally Archer & Schottenfeld, *Civil Rights Administration*.

²⁰⁷ See generally Archer & Schottenfeld, *Defending Home*.

²⁰⁸ See generally Archer & Joshi, *supra* note 5.

²⁰⁹ Archer, *DIVIDING LINES* *supra* note 19, at 178 (“The lines that separate us—the barriers between communities where opportunities are rampant and those where oppression is the norm—can often be traced to highways, railroads, roads, and other transportation features that seemingly made permanent the centuries of unequal treatment.”)

²¹⁰ *Id.* at 5 (“The lines that separate us—the barriers between communities where opportunities are rampant and those where oppression is the norm—can often be traced to highways, railroads, roads, and other transportation features that seemingly made permanent the centuries of unequal treatment.”)

responsible for building and sustaining the infrastructure that makes participation, opportunity, and belonging possible.²¹¹

A constructive approach also reorients the relationship between rights and power. Dominant civil rights frameworks often emphasize individual access: the right to vote, the right to attend a school, the right to obtain housing, the right to be free from discrimination.²¹² Those rights remain indispensable, but equal citizenship requires more than formal access. It requires collective power. It requires institutions that enable communities to shape the decisions that govern their lives and to participate meaningfully in the political, economic, and social structures that determine their futures.

Through this lens, many of the contemporary debates that appear disconnected are, in fact, struggles over the same underlying question. Battles over voting rights, birthright citizenship, fair housing, public education, transportation, DEI initiatives, and civil rights administration are all contests over the infrastructure of belonging.²¹³ They are disputes over whether government will build and sustain the conditions necessary for equal citizenship or retreat from that responsibility.

A constructive model of civil rights law begins from the premise that government has an affirmative responsibility to create and sustain the infrastructure of civil rights.²¹⁴ That infrastructure should encompass the institutions, enforcement mechanisms, policies, and public commitments that translate rights on paper into lived realities. It must include the systems that facilitate democratic participation, the agencies that enforce rights, the policies that expand opportunity, and the structures that enable communities to exercise collective power. Without this infrastructure, rights become fragile, vulnerable to retrenchment, and dependent upon the extraordinary efforts of those who have historically been excluded.

Such a model differs from a purely defensive conception of civil rights law in at least three important respects. First, it prioritizes prevention over remediation. Rather than waiting for discrimination to occur and then attempting to remedy it after the fact, it seeks to build systems that prevent exclusion from taking root in the first place. Second, it focuses not only on

²¹¹ See Bagenstos, *supra* note 11; Johnson, *supra* note 4; Archer & Schottenfeld, *Civil Rights Administration*.

²¹² See Johnson, *supra* note 4, at 1342 (describing the dominant understanding of civil rights statutes as “delegating private parties to serve as enforcers through individual litigation”).

²¹³ Archer & Carbado, *supra* note 57.

²¹⁴ Hasbrouk, *supra* note 201; David H. Gans, *Court Reform and the Promise of Justice: Lessons from Reconstruction*, 27 LEWIS & CLARK L. REV. 825 (2023); see Johnson, *supra* note 4, at 1343 (arguing that American civil rights regulation also operates “by placing positive duties on state actors to promote equality and inclusion”).

individual access but on collective power, recognizing that equal citizenship requires communities to possess meaningful opportunities to shape the decisions that govern their lives. Third, it recognizes an affirmative governmental responsibility to create and maintain the conditions necessary for democratic participation and equal opportunity. Under this approach, government is not merely a neutral arbiter responding to private complaints; it is an active participant in constructing and sustaining the conditions under which democracy can thrive.

IV. Reclaiming The Constructive Tradition

The constructive tradition of civil rights has deep roots in American law. The Reconstruction Amendments did more than abolish slavery and prohibit discrimination; they fundamentally reimagined the relationship between government and citizenship.²¹⁵ Rather than treating freedom as something secured simply by removing legal restraints, they recognized that emancipation required an affirmative governmental commitment to securing the conditions of liberty, equality, and democratic participation. The Thirteenth, Fourteenth, and Fifteenth Amendments not only established new constitutional guarantees but also vested Congress with broad enforcement authority, reflecting a recognition that equal citizenship would require sustained institutional commitment rather than constitutional declaration alone.²¹⁶

The Bureau of Refugees, Freedmen, and Abandoned Lands,²¹⁷ commonly referred to as the Freedmen's Bureau, embodied this vision.²¹⁸ It was not merely a relief agency, but one of the nation's first comprehensive

²¹⁵ *Trump v. Barbara*, 609 U.S. ____ (2026) (J. Jackson concurring); Gans, *supra* note 214; Hasbrouk, *supra* note 201.

²¹⁶ Alexander Tsesis, *Enforcement of the Reconstruction Amendments*, 78 WASH. & LEE L. REV. 849, 851 (2021) ("The Thirteenth and Fourteenth Amendments empowered Congress to enforce national civil rights policies. They broke with the protections of slavery that had been built into the original Constitution, which the Supreme Court had upheld. The Fifteenth Amendment, in turn, advanced anti-racist civic participation."); Jack M. Balkin, *The Reconstruction Power*, 85 N.Y.U. L. REV. 1801 (2010).

²¹⁷ Act of Mar. 3, 1865, ch. 90, 13 Stat. 507 (creating the Bureau of Refugees, Freedmen, and Abandoned Lands).

²¹⁸ The broad and ambitious vision and plan for the Freedmen's Bureau did not always match reality on the ground. See Archer & Schottenfeld, *Civil Rights Administration* at 1415 ("As a result of sustained political opposition, the Bureau remained chronically underfunded and understaffed"); Karen M. Tani, *Administrative Constitutionalism at the "Borders of Belonging": Drawing on History to Expand the Archive and Change the Lens*, 167 U. PA. L. REV. 1603, 1614 (2019) ("Bureau agents strongly encouraged freed persons—especially men—to enter labor contracts, in a context in which the balance of power favored employers and in which many employers were eager to replicate the conditions of slavery.")

civil rights institutions.²¹⁹ It established schools and hospitals, supervised labor contracts, provided food and medical care, operated courts where state institutions refused to administer justice fairly, assisted formerly enslaved people in securing land and family reunification, and helped build the civic and educational infrastructure necessary for participation in a free society.²²⁰ Reconstruction governments likewise invested in public education, expanded democratic participation, and sought to construct institutions capable of transforming emancipation into meaningful citizenship.²²¹ The goal was not simply to end slavery; it was to build the legal, political, and social foundations of freedom.

Although Reconstruction was violently overthrown before many of these efforts could take root, it established an enduring vision. Freedom was understood not merely as the absence of domination but as the presence of institutions, systems, and public commitments capable of sustaining equal citizenship. In this sense, Reconstruction represented the nation's first great experiment in constructing the infrastructure of civil rights.

A century later, the Second Reconstruction similarly extended beyond prohibition to embrace a constructive vision of civil rights law. Congress did not simply declare discrimination unlawful; it undertook an ambitious project of institution-building and systems-building designed to transform the conditions under which citizenship was experienced.²²² Law became not merely a means of restraining exclusion but a mechanism for constructing a more inclusive democracy.

The Civil Rights Act of 1964 prohibited discrimination in employment, education, and federally funded programs, but it also recognized that legal rights would remain largely aspirational without institutions capable of implementing them.²²³ Through Titles VI and VII,

²¹⁹ Archer & Schottenfeld, *Civil Rights Administration* at 1414.

²²⁰ Eric Foner, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877*, at 68-70 (1988); Brooks D. Simpson, Ulysses S. Grant and the Freedmen's Bureau, in *THE FREEDMEN'S BUREAU AND RECONSTRUCTION: RECONSIDERATIONS*; W.E. Burghardt Du Bois, *BLACK RECONSTRUCTION IN AMERICA: AN ESSAY TOWARD A HISTORY OF THE PART WHICH BLACK FOLK PLAYED IN THE ATTEMPT TO RECONSTRUCT DEMOCRACY IN AMERICA, 1860-1880*, at 219 (World Publ'g Co. 1964) (1935) ("The Freedmen's Bureau was the most extraordinary and far-reaching institution of social uplift that America has ever attempted."); George R. Bentley, *A HISTORY OF THE FREEDMEN'S BUREAU* 174 (2017) (noting that Oliver Howard, commissioner of the Freedmen's Bureau, "refused to spend Bureau money on [school] buildings unless they were on sites secured by deed for [Black] education forever").

²²¹ Tyack & Lowe, *supra* note 24, at 236-56; Foner, *Rights and the Constitution in Black Life during the Civil War and Reconstruction*, *supra* note 24, 878 - 80.

²²² Eric Foner, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* (2019).

²²³ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4; Foner, *THE SECOND FOUNDING*, *supra* note 226.

Congress built an administrative infrastructure for equality.²²⁴ The Equal Employment Opportunity Commission, the Office for Civil Rights, and Title VI enforcement offices throughout the federal government were charged not simply with adjudicating complaints, but with monitoring compliance, shaping institutional behavior, and ensuring that schools, universities, hospitals, employers, and recipients of federal funds became engines of equal opportunity rather than instruments of exclusion.²²⁵ The Fair Housing Act similarly reflected an understanding that dismantling residential segregation required more than prohibiting discriminatory transactions.²²⁶ Through HUD and its affirmative obligation to further fair housing, Congress sought to reshape the systems that produced segregated communities and unequal access to schools, transportation, employment, and wealth.²²⁷

Affirmative action is often treated as a defining feature of the constructive project of the Second Reconstruction.²²⁸ More recently, diversity, equity, and inclusion initiatives have become the primary focus of public debate.²²⁹ But both are better understood as parts of a much larger

²²⁴ George Rutherglen, *Private Rights and Private Actions: The Legacy of Civil Rights in the Enforcement of Title VII*, 95 B.U. L. REV. 733, 744 (2015); Johnson, *supra* note 10, at 1315-16 (highlighting how agencies have expanded their capacity to enforce Title VI).

²²⁵ Archer & Schottenfeld, *Civil Rights Administration*, *supra* note 4, at 1431 – 40; Johnson, *supra* note 10, 1362 – 69.

²²⁶ Noah M. Kazis, *The Radical Fair Housing Act*, 111 Va. L. Rev. 491, 493 – 94 (2025) (“The FHA has always been understood as structural. The Act’s distinct theory of discrimination is written into the text of the statute and has been consistently implemented by courts. Nor does the Article rely on the FHA’s unique but poorly enforced mandate for governments “affirmatively to further” fair housing, a provision on which many scholars have pinned hopes for a more ambitious approach to fair housing. Its focus is on the Act’s cor antidiscrimination provisions. The FHA’s breadth is in its basics, not just at its frontiers.”).

²²⁷ *Id.* at 550 – 551 (discussing how HUD has previously “how community assets like transportation, employment, and education were distributed across racially and ethnically concentrated neighborhoods” because homes do not live in a vacuum).

²²⁸ Eric K. Yamamoto et. al., *Dismantling Civil Rights: Multiracial Resistance and Reconstruction*, 31 CUMB. L. REV. 523, 531 (2001) (“The new laws included Title VII (employment), Title VI (federal contractors), Title II (public accommodations) and Title IX (gender) of the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act. These new laws also supported affirmative action in order to begin to level a grossly unequal playing field. A Second Reconstruction, and real progress for African Americans, began to take hold.”).

²²⁹ See e.g., Exec. Order No. 14,173, 90 Fed. Reg. 8633, 8634 (Jan. 31, 2025), *reprinted in Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, White House (Jan. 21, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/>; Exec. Order No. 14,398, 91 Fed. Reg. 16147, 16147-48 (Mar. 26, 2026), *reprinted in Addressing DEI Discrimination by Federal Contractors*, White House (Mar. 26, 2026),

enterprise. At its core, the constructive tradition seeks to build capacity for individuals, institutions, and communities long denied the resources and opportunities necessary for full participation in American life. Affirmative action reflected a commitment to opening institutions that had long been closed to historically marginalized communities, expanding pathways to higher education, professional employment, public contracting, and positions of leadership.²³⁰ Yet it operated alongside a broader ecosystem of institution-building and systems-building. Governments, universities, employers, and community organizations developed pipeline programs, targeted recruitment initiatives, mentorship and fellowship programs, leadership development opportunities, and workforce development strategies designed to cultivate talent and expand access to professions and institutions from which Black Americans had long been excluded.²³¹ These efforts reflected a recognition that equal opportunity requires more than removing barriers at the point of entry; it requires investing in the development of the people who have historically been denied access to those opportunities.

The constructive project extended beyond individuals to communities themselves. Federal, state, and local governments invested in affordable housing, community health centers, minority business development, neighborhood revitalization, educational institutions, and economic development initiatives intended to strengthen the physical, economic, and civic foundations of Black communities.²³² These investments reflected an understanding that centuries of exclusion had

<https://www.whitehouse.gov/presidential-actions/2026/03/addressing-dei-discrimination-by-federal-contractors/>; Exec. Order No. 14,281, 90 Fed. Reg. 17537, 17538 (Apr. 28, 2025), reprinted in *Restoring Equality of Opportunity and Meritocracy*, White House (Apr. 23, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

²³⁰ Devon W. Carbado, Kate M. Turetsky, and Valerie Purdie-Vaughns, *Privileged or Mismatched: The Lose-Lose Position of African Americans in the Affirmative Action Debate*, 64 UCLA L. Rev. 174 (2016) (framing affirmative action as leveling the playing field); See Cara McClellan, *Evading a Race-Conscious Constitution*, 25 U. PA. J. CONST. L. ONLINE 1, 13 (2023).

²³¹ See e.g. Steven W. Bender, *Pathways to a Diverse Legal Academy: Pipeline Programs After SFFA*, 48 Seattle U. L. Rev. Online 43 (2024); *President Biden Announces Actions to Promote Educational Opportunity and Diversity in Colleges and Universities*, The White House (June 29, 2023) <https://perma.cc/Z33U-DLRZ>.

²³² See, e.g. *On Juneteenth, Treasury Department Releases Fact Sheet Detailing Investments in Black Communities*, U.S. DEP'T OF THE TREASURY (June 19, 2023), <https://home.treasury.gov/news/press-releases/jy1551>; *Building a Legacy of Health and Wellness*, BLACK INFANT HEALTH (last visited July 10, 2026), <https://blackinfanthealth.org/> (“The California Black Infant Health (BIH) Program aims to improve health among Black mothers and babies by empowering pregnant and mothering Black women to make healthy choices for a brighter future.”); Ariama C. Long, *NYS Black Legislative Task Force works to secure \$30M for Black and Brown organizations*, N.Y. AMSTERDAM NEWS (April 2, 2026), <https://amsterdamnews.com/news/2026/04/02/nys-black-legislative-task-force-works-to-secure-30-m/>.

produced structural deficits in opportunity and that equal citizenship required building the institutional and community infrastructure necessary for people and places to thrive.

Diversity, equity, and inclusion initiatives emerged from this same tradition. At their best, they recognized that organizations are not passive settings in which equality simply emerges once discrimination is prohibited. Rather, they are institutions that shape opportunity through their structures, cultures, policies, and decision-making processes.²³³ Achieving equal opportunity therefore requires more than formal neutrality. It often demands intentional efforts to identify and dismantle embedded barriers, widen pathways into education and employment, cultivate inclusive institutional cultures, and ensure that talent can emerge from every community. Like affirmative action, these initiatives were not departures from the constructive tradition of civil rights law but contemporary expressions of it. Together, they reflected a broader commitment to building the human, institutional, and community capacity necessary for equal citizenship to become a lived reality rather than an abstract legal promise. Seen through the lens of justice as construction, affirmative action, pipeline programs, community development initiatives, and diversity efforts are not isolated policy interventions. They are investments in democratic capacity and efforts to cultivate the human, institutional, and community resources necessary for a multiracial democracy in which every person has a meaningful opportunity to participate and thrive.

Taken together, these initiatives reflected an understanding that civil rights law was not simply a body of prohibitions backed by judicial remedies. Instead, it was a project of democratic construction. It sought to build institutions that expanded participation, administrative systems that translated legal rights into everyday practice, and pathways that connected historically excluded communities to education, employment, housing, political power, and civic life. The aim was not merely to remedy discrimination after it occurred, but to construct the infrastructure of civil rights—the interlocking institutions, systems, and public investments through which equal citizenship could flourish.

The Voting Rights Act of 1965 (“VRA”), provides a robust expression of this constructive vision in American civil rights law. The VRA built an affirmative infrastructure for democratic participation. Individuals and communities did not need to wait for discrimination to occur and then respond through litigation. The law treated racial exclusion

²³³ Devon W. Carbado, Patrick S. Shin, Mitu Gulati, *The Diversity Feedback Loop*, 2014 University of Chicago Legal Forum 345 (2014).

from the political process as predictable and systemic, and it designed federal mechanisms with the potential to address that exclusion before it could take root.²³⁴ Through mechanisms like preclearance,²³⁵ federal oversight,²³⁶ and a reallocation of the burden of proof,²³⁷ the Act sought to build the conditions under which equal political participation could flourish.²³⁸

Several features of the Act illuminate its constructive character. First, the Act relied on prophylactic intervention rather than proof of discriminatory intent. Congress recognized that racial exclusion in voting was not episodic but structural and adaptive — capable of evolving faster than individual litigation could address it.²³⁹ The Act therefore targeted

²³⁴ See Samuel Issacharoff, *Beyond the Discrimination Model on Voting*, 127 Harv. L. Rev. 95, 114–15 (2013) (contrasting the Voting Rights Act’s ex ante preclearance regime screening electoral changes before they take effect, with the ex post “discrimination model” that addresses harms after they occur).

²³⁵ Michael Li, *Preclearance Under the Voting Rights Act*, Brennan Center for Justice (March 11, 2024), <https://www.brennancenter.org/our-work/research-reports/preclearance-under-voting-rights-act> (“The purpose of preclearance was to ensure that any changes in these ‘covered jurisdictions’ did not discriminate against voters of color, either in their purpose or in effect.”); see also Paige E. Richardson, *Preclearance and Politics: The Future of the Voting Rights Act*, 89 U. CIN. L. REV. 1089, 1090 – 92 (2021).

²³⁶ Sam R. Garrett, R47520, *The Voting Rights Act: Historical Development and Policy Background*, LIBRARY OF CONGRESS (June 3, 2026), <https://www.congress.gov/crs-product/R47520> (discussing Congressional debates on “whether state-level voting and elections changes post-Shelby County need additional federal oversight or enforcement.”); Andrea Bernini et al., *Sixty Years of the Voting Rights Act: Progress and Pitfalls*, OXFORD REV. OF ECON. POL’Y (February 2024).

²³⁷ Kareem Crayton, *The Voting Rights Act, Explained*, BRENNAN CTR. FOR JUST. (Apr. 29, 2026), <https://www.brennancenter.org/our-work/research-reports/voting-rights-act-explained> (describing the VRA as a “comprehensive tool meant to undo the political hold of Jim Crow policies in the South and related discriminatory structures nationwide”).

²³⁸ See Issacharoff, *supra* note 238, at 95 (describing the Voting Rights Act as “a superstatute amid a world of ordinary legislation” that operated at a different constitutional register than ordinary antidiscrimination law); see also Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077, 1082–85 (1991) (arguing that with the passage of the Voting Rights Act, many “Black activists saw political empowerment as a vehicle for mobilizing the black community, articulating a black social and economic agenda, and electing both authentic black and responsive white officials”).

²³⁹ Maureen Edozor, *The Unmaking of Section Two*, 110 MINN. L. REV. 2631, 2638 (2026) (“The statute was a response not merely to episodic instances of voter suppression, but also to the structural failure of traditional litigation and the Court’s own abdication in cases like *Giles and Lassiter v. Northampton County Board of Elections*, in which the Court acknowledged entrenched racial exclusion in democracy, while disclaiming both the authority and responsibility to provide an effective remedy); Annesha Hardy, *The Voting Rights Act didn’t fail—the country abandoned its moral commitment to it*, AFRO THE BLACK MEDIA AUTHORITY (June 27, 2026), <https://afro.com/voting-rights-act-threatened-2/> (“The Voting Rights Act did not fail. The country abandoned its moral commitment to it. That distinction matters because framing the current crisis as a “failure” of the Voting Rights

jurisdictions with documented histories of discrimination and imposed federal oversight of all changes to voting rules through the preclearance requirement of Section 5.²⁴⁰ Rather than requiring Black voters to prove, case by case, that a new rule was designed to harm them, Section 5 reversed the presumption entirely. Covered jurisdictions had to demonstrate that proposed changes would not diminish minority voting power before those changes could take effect.²⁴¹ The burden of proof moved from the excluded to the excluder.

Second, the Act focused not merely on individual access, but on the construction of collective political power. Voting was understood not simply as a personal right to cast a ballot, but as the foundation of democratic participation, community self-determination, and equal citizenship.²⁴² This understanding animated Section 2's effects-based standard, which gave courts the authority to remedy voting practices that produced racially unequal political outcomes—regardless of whether discriminatory intent could be proven. Under Section 2, advocates could challenge at-large election systems, racially gerrymandered districts, and other structural arrangements that diluted Black political representation. The provision empowered courts to require electoral systems that translated Black political presence into meaningful political power. It asked not what was in the minds of legislators or mapmakers, but whether the systems they constructed produced unequal opportunities to participate in and influence

Act obscures what actually happened. For decades, the law worked exactly as intended because it recognized an uncomfortable truth America still struggles to confront: when left unchecked, political systems and those who benefit from unequal power structures adapt in order to preserve that power.”).

²⁴⁰ Edobor, *supra* note 243, at 2639 (asserting that Section 2 and 5 collectively revealed Congress's broad lawmaking vision: a statutory architecture meant both to dismantle existing barriers and to preempt new ones); Hardy, *supra* note 243.

²⁴¹ Crayton, *supra* note 241 (explaining that Section 5 of the law requires jurisdictions with a history of discrimination to obtain approval from the Department of Justice or a court before changing voting rules, a process known as “preclearance.” Section 2 of the law allows people to sue — either on their own behalf or with the assistance of the Justice Department — to undo existing laws and procedures that would deny equal political opportunity to voters to elect their candidates of choice.”)

²⁴² See Issacharoff, *supra* note 238, at 97 (describing how voting rights “moved into the domain of political power, not simply access to the franchise”); Guinier, *The Triumph of Tokenism: The Voting Rights Act and the Theory of Black Electoral Success*, 89 Mich. L. Rev. 1077, 1090–91 (1991) (arguing the movement's unifying objective was to empower the Black community, “achieving recognition of group identity and [] providing a mechanism for channeling group solidarity”); Nicholas Pedriana & Robin Stryker, *From Legal Doctrine to Social Transformation? Comparing U.S. Voting Rights, Equal Employment Opportunity, and Fair Housing Legislation*, 123 Am. J. Socio. 86, 88 (2017) (describing the VRA's “group-centered effects” framework which focuses on “systemic group disadvantage rather than individual harm” and “substantive, remedial group results rather than formal procedural justice for individual victims or alleged wrongdoers”).

democratic life. In doing so, the Act reflected a constructive vision of civil rights law: one that recognized that democracy is not merely the absence of exclusion, but the presence of structures that enable communities to exercise collective political power and shape the decisions that govern their lives.

Third, the Act recognized an affirmative federal responsibility for creating and sustaining the conditions necessary for democratic participation. Rather than placing the burden solely on injured individuals to vindicate their rights through costly and protracted litigation, the Act charged the federal government with actively monitoring, protecting, and strengthening the democratic process itself.²⁴³ Democracy was not treated as something that would naturally emerge once formal barriers were removed, but as something that had to be intentionally built and continuously maintained. The VRA tasked the federal government with constructing an infrastructure of voting rights that would prevent exclusion before it occurred rather than merely remedy it afterward. In doing so, it embraced a broader understanding of civil rights enforcement: government was not simply a neutral arbiter responding to individual complaints, but an active participant in creating the conditions under which equal citizenship could flourish.²⁴⁴ The Act recognized that democracy is not self-executing. It depends upon institutions, enforcement mechanisms, and public commitments that make participation possible and durable over time.

Fourth, and underlying all three of these features, the VRA embraced a theory of community as the relevant unit of democratic protection. The core question was not whether any individual voter had been denied the right to cast a ballot, but whether Black communities retained the collective capacity to elect candidates of their choice, shape the policies that governed their lives, and exercise meaningful political voice in the institutions that affected them.²⁴⁵ This communal understanding of democratic participation recognized that the harm of racial exclusion from

²⁴³ See Issacharoff, *supra* note 238, at 116 (quoting Guy-Uriel Charles and Luis Fuentes-Rohwer that Congress “identifies both violators and violations” and “uses the courts to closely monitor violators and prevent or remedy violations”); see Guinier, *supra*, at 1093 n.75 (noting that the VRA’s initial structure deployed federal registrars and “federal administrative review of local registration procedures in covered jurisdictions” rather than leaving enforcement to individual suits).

²⁴⁴ Eunice Hyon Min Rho & Laughlin McDonald, *Why The Voting Rights Act Matters*, ACLU (Feb. 26, 2013), <https://www.aclu.org/news/voting-rights/why-voting-rights-act-matters>; Carrie Johnson, *How The Voting Rights Act Came To Be And How It's Changed*, NPR (Aug. 26, 2021), <https://www.npr.org/2021/08/26/1026457264/1965-voting-rights-act-supreme-court-john-lewis> (“What history shows is that sort of federal intervention was the main thing that could affect systemic change to the problem of racial discrimination in voting”).

²⁴⁵ Nicholas Pedriana & Robin Stryker, *From Legal Doctrine to Social Transformation? Comparing U.S. Voting Rights, Equal Employment Opportunity, and Fair Housing Legislation*, 123 Am. J. Soc. 86 (2017).

politics was not merely personal — it was structural, distributional, and cumulative. A community systematically denied political power cannot be made whole by counting individual ballots.

Taken together, these features reveal a distinctive vision of what law can do. But the infrastructure of affirmative mechanisms designed to build and sustain political participation and political power, along with the broader legal philosophy that drove the adoption of those provisions, is now being systematically dismantled. The Supreme Court's decision in *Shelby County v. Holder*²⁴⁶ gutted the preclearance regime, removing the Act's most effective prophylactic mechanism and leaving jurisdictions free to implement voting changes that would previously have required federal approval.²⁴⁷ More recently, the Court's decisions in *Louisiana v. Callais*²⁴⁸ and *Milligan*²⁴⁹ substantially narrowed the reach of Section 2, raising the evidentiary bar for plaintiffs and constricting the remedies available.²⁵⁰ By limiting what Section 2 can reach and what courts can order in response, *these cases* do not merely constrain a statute, they undermine the premise that law can and should be used to affirmatively build the conditions of political equality. What is being lost is not only a set of procedural tools, but a theory of what law is for. The erosion of the VRA exemplifies the broader retreat from the constructive model this Article has traced. One of the most consequential civil rights laws in American history succeeded not only because it prohibited injustice, but because it helped build the conditions under which justice could endure. Reclaiming that constructive vision and developing the legal and institutional tools to advance it is what justice demands.

It is important to note that this constructive vision did not originate in law. Long before legislatures enacted preclearance requirements or courts ordered the drawing of majority-minority districts, organizers were doing the work of building democratic power from the ground up, registering voters, mapping communities, forging coalitions, cultivating local leadership, and creating the institutional infrastructure through which

²⁴⁶ 570 U.S. 529 (2013).

²⁴⁷ *Id.* at 530 (“Section 4 of the Voting Rights Act is unconstitutional; its formula can no longer be used as a basis for subjecting jurisdictions to preclearance.”)

²⁴⁸ 608 U.S. ____ (2026).

²⁴⁹ *Allen v. Milligan*, 599 U.S. 1 (2023).

²⁵⁰ Hayley Durudogan & Devon Ombres, *The Supreme Court's Callais Decisions Undermine the Voting Rights Act and Sow Election Chaos*, CTR. FOR AM. PROGRESS (May 6, 2025), <https://www.americanprogress.org/article/the-supreme-courts-callais-decisions-undermine-the-voting-rights-act-and-sow-election-chaos/>.

excluded people could begin to govern their own lives.²⁵¹ The legal architecture of the VRA did not precede that organizing; it followed it, codified it, and at its best, extended and protected what organizers and communities were building.²⁵² And when the legal ground shifted and decades of retrenchment eroded the tools that courts and Congress had constructed, organizers and local advocates did not stop. They absorbed the losses and kept building: sustaining voter registration infrastructure, challenging suppressive laws in whatever forums remained available, and holding together the democratic architecture that law had abandoned. The lesson of that history is not only that law can construct the conditions of equality, but that it rarely does so without the prior and ongoing work of communities demanding that it must. What the current moment requires is the expansion of the constructive model, bringing the legal architecture, doctrinal frameworks, and institutional tools of civil rights law into alignment with the advocacy traditions that have always understood justice as something to be built.

CONCLUSION

A primary challenge facing civil rights law today is not simply that discrimination has become more difficult to prove. It is that racial inequality has become increasingly embedded in the ordinary institutions through which American life is organized. Recognizing this reality requires more than expanding existing doctrine. It requires expanding our understanding of what civil rights law is for. From Reconstruction through the Second Reconstruction, some of the nation's most ambitious civil rights achievements rested on the premise that equal citizenship required building institutions capable of making freedom real. Public schools, federal enforcement agencies, voting protections, fair housing institutions, transportation systems, and mechanisms for democratic participation are not incidental to equality. They are among its principal instruments.

That tradition is worth recovering. Communities are not displaced by a single decision but by the cumulative operation of housing policy, transportation planning, financial markets, and public investment. Political power is not diminished by one isolated act of discrimination but by institutional arrangements that fragment communities and weaken democratic participation over time. Wealth is not stripped away by a single

²⁵¹ See generally Charles M. Payne, *I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE* (1995); Barbara Ransby, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (2003)

²⁵² Emilye Crosby & Judy Richardson, *The Voting Rights Act beyond the Headlines*, SOUTHERN CULTURES (last visited July 10, 2026), <https://www.southerncultures.org/article/the-voting-rights-act-beyond-the-headlines/>; Frank W. Munger and Carroll Seron, *Race, Law & Inequality, Fifty Years after the Civil Rights Era*, 13 ANN. REV. OF L. & SOC. SCI. 331, 332 (2017) (providing the history of civil rights movement organizing that resulted in the Voting Rights Act).

market transaction but by systems that consistently determine where investment flows, whose property appreciates, whose homes are protected, and whose neighborhoods are allowed to flourish.

The question, then, is not whether civil rights law should prohibit discrimination or construct equality. It must do both. The prohibitory tradition remains essential because discrimination has not disappeared. But prohibitions alone cannot dismantle architectures that have been built over generations, nor can they create the conditions that equal citizenship requires. Those conditions must themselves be designed, constructed, maintained, and defended.

Ultimately, this is an argument about democratic responsibility. Every generation inherits institutions it did not build. Some distribute opportunity broadly; others preserve inherited hierarchies. Some invite communities to flourish; others quietly consign them to isolation, displacement, or decline. The task of civil rights law is not merely to police those institutions after they fail. It is to help shape them before they do.

Jim Crow's cousins inhabit the architecture of contemporary American life. They cannot be defeated by litigation nor prohibitions alone. They will be defeated only when we recover the constructive ambition and engage in the work necessary to not only dismantle unjust structures, but build institutions capable of sustaining a multiracial democracy. Civil rights laws have always helped define the country we aspire to become. The challenge is to ensure that it also serves as a blueprint for building that future.