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Urban Decolonization

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URBAN DECOLONIZATION

Norrinda Brown Hayat★

National fair housing legislation opened up higher opportunity neighborhoods to multitudes of middle-class African Americans. In actuality, the FHA offered much less to the millions of poor, Black residents in inner cities than it did to the Black middle class. Partly in response to the FHA's inability to provide quality housing for low-income blacks, Congress has pursued various mobility strategies designed to facilitate the integration of low-income Blacks into high-opportunity neighborhoods as a resolution to the persistent dilemma of the ghetto. These efforts, too, have had limited success. Now, just over fifty years after the passage of the Fair Housing Act and the Housing Choice Voucher Program (commonly known as Section 8), large numbers of African Americans throughout the country remain geographically isolated in urban ghettos. America's neighborhoods are deeply segregated and Blacks have been relegated to the worst of them. This isolation has been likened to colonialism of an urban kind. To combat the housing conditions experienced by low-income Blacks, in recent years, housing advocates have reignited a campaign to add "source of income" protection to the federal Fair Housing Act as a means to open up high-opportunity neighborhoods to low-income people of color.

This Article offers a critique of overreliance on integration and mobility programs to remedy urban colonialism. Integration's ineffectiveness as a tool to achieve quality housing for masses of economically-subordinated Blacks has been revealed both in the historically White suburbs and the recently gentrified inner city. Low-income Blacks are welcome in neither place. Thus, this Article argues that, focusing modern fair housing policy on the relatively small number of Black people for whom mobility is an option (either through high incomes or federal programs) is shortsighted, given the breadth of need for quality housing in economically-subordinated inner-city communities. As an alternative, this Article proposes, especially in the newly wealthy gentrified cities, that fair housing advocates, led by Black tenants, insist that state and local governments direct significant resources to economically depressed majority-minority neighborhoods and house residents equitably. This process of equitable distribution of local government resources across an entire jurisdiction, including in majority-minority neighborhoods, may be a critical step towards urban decolonization.

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INTRODUCTION

In 1963, James Baldwin and station KQED filmed *Take This Hammer*, a documentary portraying life for Blacks living in San Francisco.¹ For much of the film, Baldwin was driven around the inner city to speak to Black community members about their conditions.² Lack of employment, absence of political power, and relegation to ghettos had led to an intense sense of group frustration among Blacks in the city.³ Also featured in the film, however, was the promise of integrated housing coming to fruition in a notoriously liberal city.⁴ At one point, for example, Baldwin's companion points out the ILW housing project, which by then consisted of 70 percent White residents and 30 percent Black residents.⁵ ILW stood as a symbol of what the future held—the uplifting of Black families through mobility.⁶ It would take another five years before the

1. *Take This Hammer*, (KQED television broadcast Feb. 4, 1964).

2. *Id.*

3. *See id.*; see also Todd Whitney, *A Brief History of Black San Francisco*, KALW (Feb. 24, 2016), <http://kalw.org/post/brief-history-black-san-francisco#stream/0>.

4. *See Take This Hammer*, *supra* note 1.

5. *Id.*

6. *See id.*

federal Fair Housing Act (FHA) would bring this same promise of integration to the entire nation.⁷ National fair housing legislation, civil rights proponents hoped, would open up higher-opportunity neighborhoods to multitudes of African Americans.⁸

In actuality, the FHA offered much less to the millions of poor, Black residents in inner cities than it did to the Black middle class.⁹ Partly in response to the FHA's inability to provide quality housing for low-income blacks, Congress has pursued various mobility strategies designed to facilitate the integration of low-income Blacks into high-opportunity neighborhoods as a resolution to the persistent dilemma of the ghetto.¹⁰ These efforts, too, have had limited success. Now, just over fifty years after the passage of the Fair Housing Act and the Housing Choice Voucher Program (commonly known as Section 8), large numbers of African Americans throughout the country remain geographically isolated in urban ghettos.¹¹ San Francisco, the site of Baldwin's study, saw integration only in isolated spots.¹² The conditions of Black lives that he witnessed in 1968 either remain unimproved or are worse for masses of economically subordinated Blacks.¹³ The story is much the same in other major American cities.¹⁴ America's neighborhoods are deeply segregated and Blacks have been relegated to the worst of them.¹⁵ This economic isolation has been likened to colonialism of an urban kind.¹⁶ To combat the housing

7. JORGE ANDRES SOTO & DEIDRE SWESNIK, *THE PROMISE OF THE FAIR HOUSING ACT AND THE ROLE OF FAIR HOUSING ORGANIZATIONS* 1 (2012), https://www.acslaw.org/wp-content/uploads/2018/04/Soto_and_Swesnik_-_Promise_of_the_Fair_Housing_Act_1.pdf.

8. *See id.* at 2-5.

9. *See* Natasha M. Trifun, *Residential Segregation After the Fair Housing Act*, 36 *HUMAN RIGHTS* 14, 15 (2009).

10. *See* Michelle Adams, *Separate and [Un]Equal: Housing Choice, Mobility, and Equalization in the Federally Subsidized Housing Program*, 71 *TUL. L. REV.* 413, 423 (1996).

11. Cara Hendrickson, *Racial Desegregation and Income Deconcentration in Public Housing*, 9 *GEO. J. ON POVERTY L. & POL'Y* 35, 52 (2002).

12. *See infra* note 42 and accompanying text.

13. *See* CAUSA JUSTA: JUST CAUSE, *DEVELOPMENT WITHOUT DISPLACEMENT: RESISTING GENTRIFICATION IN THE BAY AREA* 7 (2014), <http://www.acphd.org/media/343952/cjic2014.pdf>.

14. *See* Trifun, *supra* note 9, at 14; *see also* Janie Boschma, *Separate and Still Unequal*, *THE ATLANTIC* (Mar. 1, 2016), <https://www.theatlantic.com/education/archive/2016/03/separate-still-unequal/471720/>.

15. *See* P. Lobmayer & R. Wilkinson, *Inequality, Residential Segregation by Income, and Mortality in US Cities*, 56 *J. OF EPIDEMIOLOGY & COMMUNITY HEALTH* 183 (2002); *see also* Nikole Hannah-Jones, *Segregation Now...*, *THE ATLANTIC* (2014), <https://www.theatlantic.com/magazine/archive/2014/05/segregation-now/359813/>.

16. ROWLAND ATKINSON & GARY BRIDGE, *GENTRIFICATION IN A GLOBAL CONTEXT: THE NEW URBAN COLONIALISM* 2 (2005). "Gentrification and colonialism are

conditions experienced by low-income Blacks, in recent years, housing advocates have reignited a campaign to add “source of income” protection to the federal Fair Housing Act as a means to open up high-opportunity neighborhoods to low-income people of color.¹⁷

This Article offers a critique of overreliance on integration and mobility programs to remedy urban colonialism. Integration’s ineffectiveness as a tool to achieve quality housing for masses of economically subordinated Blacks has been revealed both in the historically White suburbs and the recently gentrified inner city. Low-income Blacks are welcome in neither place. Thus, this Article argues that focusing modern fair housing policy on the relatively small number of Black people for whom mobility is an option (either through high incomes or federal programs) is shortsighted, given the breadth of need for quality housing in economically subordinated inner-city communities. As an alternative, this Article proposes, especially in the newly wealthy cities, that fair housing advocates, led by Black tenants, should insist that state and local governments direct significant resources to economically depressed majority-minority neighborhoods and house residents equitably. This process of equitable distribution of local government resources across an entire jurisdiction, including in majority-minority neighborhoods, may be a critical step towards urban decolonization.

In Part I, the Article reviews the evidence suggesting that widespread residential segregation has existed for masses of Blacks since Emancipation and in spite of civil rights laws and mobility programs, and that this isolation strongly resembles colonization. Part II analyzes the barriers to integration and mobility for low-income Blacks, including discrimination. This Part then suggests that discriminatory conduct pre- and post-acquisition of suitable housing makes segregation hard to disband and mobility challenging in both historically White suburbs and recently gentrified inner cities. To more effectively resolve the dilemma of lack of quality housing for masses of economically subordinated Blacks, Part III proposes that social justice lawyers expand their notion of fair housing

inseparable, and continually mutually reinforce each other.” *Colonizing the Inner City-Gentrification and the Geographies of Colonialism*, RIGHT TO THE CITY MONTREAL (Aug. 15, 2012), <https://righttothecitymtl.wordpress.com/2012/08/15/colonizing-the-inner-city-gentrification-and-the-geographies-of-colonialism/>.

17. In November 2018, Senators Kaine and Hatch proposed the Fair Housing Improvement Act of 2018, which would “address the fact that Source of Income is not a protected class under the Federal Fair Housing Act, thereby helping to remove an unnecessary barrier facing . . . families and veterans on the path to self-reliance.” Ben Lane, *Prominent Senators Begin Bipartisan Push to Expand Fair Housing Act*, HOUSINGWIRE (Nov. 15, 2018), <https://www.housingwire.com/articles/47416-prominent-senators-begin-bipartisan-push-to-expand-fair-housing-act>. See Fair Housing Improvement Act, S. 3612, 115th Cong. (2018).

policy to include the equitable development of Black communities. Part III proposes steps for these lawyers to aid in undoing the effects of urban isolation and colonization, especially in cities undergoing reurbanization, including: (1) working with their clients to recover the value in Black communities; (2) assisting community members in organizing for ownership; and (3) advocating for local governments to democratize redevelopment.

I. MOBILITY AS THE PRESCRIPTION FOR URBAN COLONIALISM

This Part briefly reviews the history of Black geographic isolation in America and the compromise to pursue integration through Black mobility as the nearly exclusive path to quality housing for all Blacks. It also reviews evidence suggesting mobility programs have had mixed success in achieving integration for masses of economically subordinated individuals among that group.

A. *Urban Colonialism*

For more than a century, Blacks living in northern cities have been isolated in urban ghettos.¹⁸ Beginning in the late 19th century, following Emancipation, northern and midwestern cities struggled with how and where to house their emerging poor Black populations.¹⁹ To be clear, there “was no Elysian era of color blindness in northern housing markets.”²⁰ The slums and tenements that pre-dated Emancipation were exclusively occupied by Whites, largely because there was no sizeable Black population in the North.²¹ It would be sometime after Emancipation before northern cities made even minimal efforts to house newly immigrated Blacks.²² Even then, housing was segregated. In 1902, for example, the

18. See Julie A. Nice, *Welfare Servitude*, 1 GEO. J. FIGHTING POVERTY 340, 347-48 (1994).

19. See, e.g., Edward J. Littlejohn, III, *From Statehood to Reconstruction: No Longer Slaves, Not Yet Citizens*, 18 J.L. SOC’Y 39, 41-42 (2018).

20. RICHARD H. SANDER, YANA A. KUCHEVA & JONATHAN M. ZASLOFF, MOVING TOWARDS INTEGRATION: THE PAST AND FUTURE OF FAIR HOUSING 40 (2018); see John Logan, Weiwei Zhang & Miao David Chunyu, *Emergent Ghettos: Black Neighborhoods in New York and Chicago, 1880-1940*, 120 AM. J. SOC’Y 1055, 1084 (2015).

21. In Boston, for instance, the Black population at the turn of the century was a mere 2 percent. LAWRENCE J. VALE, FROM THE PURITANS TO THE PROJECTS: PUBLIC HOUSING AND PUBLIC NEIGHBORS 84 (2000).

22. See KATHERINE ERIKSSON & GREGORY T. NIEMESH, DEATH IN THE PROMISED LAND: THE GREAT MIGRATION AND BLACK INFANT MORTALITY 7 (2016); see also Ron Grossman, Opinion, *The Great Migration: For Southern Blacks, Chicago Offered Jobs—But Not the Warmest Welcome from Whites*, CHI. TRIB. (Apr. 12, 2018), <http://www.>

founders of settlement houses in Boston's South End, "[e]pitomizing the 'separate but equal' doctrine of the day," formed a separately located house for Blacks, the Robert Gould Shaw House.²³ Boston was more proactive than most northern cities.²⁴ Despite the migration of hundreds of thousands of southern Blacks north and west during and following World War I, no more than a half a dozen settlements were even designated for Blacks before the Second World War.²⁵ Some settlement houses ceased operating, "rather than serve a local constituency that had become newly [B]lack."²⁶

The Great Depression slowed the migration of Blacks moving north, further delaying the need for northern and midwestern cities to decide where to house them.²⁷ The Blacks that had previously migrated north were isolated.²⁸ Nearly entire urban Black populations across hundreds of cities lived in "well-defined ghettos" in the Depression years.²⁹ After the Depression, this isolation in the ghettos remained largely unchanged.³⁰ The only difference was that there were now more Blacks.³¹ Blacks resumed migration from the rural South to the North after the Depression in still larger numbers.³² In major cities throughout the country, the Black population expanded during the 1940s between 40 and 100 percent.³³ Black urbanization across the country passed 50 percent after 1940, and the Black population nearly caught up with the White population.³⁴

chicagotribune.com/news/opinion/commentary/ct-perspec-flash-great-migration-south-african-americans-0415-20180410-story.html. Publications in the late 1890's were "rooted in popular stereotypes about [Blacks]." VALE, *supra* note 21, at 82. One report produced by the South End House in Boston concluded that the city "was not a 'healthy or suitable home for the Negro race.' Settlements, in this view, had a responsibility to aid those [Blacks] who had already come, but should do nothing to tempt more [B]lacks to migrate from the southern farms where they naturally belonged." *Id.*

23. VALE, *supra* note 21, at 84.

24. *Id.* at 84-85 ("The Boston effort to establish a separate mechanism for settling with [B]lacks seems to have been one of the most proactive efforts in the country at this time, yet its deliberate segregation provided an important foreshadowing of future struggles.").

25. *Id.* at 85.

26. *Id.*

27. Only 500,000 Blacks migrated North during the Depression. SANDER ET AL., *supra* note 20, at 63.

28. *Id.* at 64.

29. *Id.* at 62.

30. *Id.* at 64.

31. *Id.*

32. ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS: THE EPIC STORY OF AMERICA'S GREAT MIGRATION 187*, 218 (2011).

33. SANDER ET AL., *supra* note 20, at 63-64.

34. *Id.* at 63.

Geographers mapping the stratification and location of groups in American cities have identified a change that occurred after the Great Depression resulting from the “interrelated and government-supported mixture of massive suburbanization,³⁵ growth in the automobile industry, and expansion within key consumer durables markets.”³⁶ This change, which is sometimes referred to as “the spatial fix,” led the federal government to financially aid Whites who had previously inhabited inner cities in relocating out of those cities and into newly developed suburbs,³⁷ and to then shield their newly designated spaces from integration through laws.³⁸ The development of these new suburbs left the inner city exclusively to Blacks.

Decades of Black isolation in inner cities followed the spatial fix. By 1965, three out of every four Blacks lived in the city, and approximately

35. The Depression had revealed the limits of private markets and marked the transition of the federal government into the housing market. See Douglas J. Elliot, *The Federal Role in Housing Finance: Principal Issues and Policy Proposals*, in *THE FUTURE OF HOUSING FINANCE: RESTRUCTURING THE U.S. RESIDENTIAL MORTGAGE MARKET* 1, 2 (Martin Neil Baily ed., 2011). The Federal Housing Administration was founded in 1934 and from its inception set itself as a “protector of the all-white neighborhood.” CHARLES ABRAMS, *FORBIDDEN NEIGHBORS* 229 (1955). Professor Sander and his colleagues remind us that the federal government was more a “follower than a leader” in this respect. SANDER ET AL., *supra* note 20, at 84. Black segregation had been firmly established throughout urban America well before the federal government entered the equation. *Id.* What the federal government did was add structure and lend legitimacy to some of the racial practices that had already operated to form the Black ghetto. *Id.*

36. JACK HACKWORTH, *THE NEOLIBERAL CITY* 79–80 (2006) [hereinafter HACKWORTH, *NEOLIBERAL CITY*]. This change is sometimes referred to as the “spatial fix.” *Id.*

37. RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, at xii, 6 (2017).

38. *Id.* In 1917, in *Buchanan v. Warley* the Supreme Court finally held that ordinances prohibiting African Americans from owning or renting property within a municipality’s limits were illegal. 245 U.S. 60, 82 (1917). *Buchanan* also prohibited state and local governments from passing segregation laws. *Id.* at 79–82. After *Buchanan*, intentionally all-White towns were illegal. In jurisdictions that acknowledged *Buchanan*, property owners began to use racially restrictive covenants as an alternative. Rigel C. C. Oliveri, *Setting the State for Ferguson: Housing Discrimination and Segregation in St. Louis*, 80 MO. L. REV. 1053, 1055 (2015). Racially restrictive covenants are agreements between property owners not to rent or sell their property to racial minorities. *Id.* These covenants proliferated during the Great Migration of Blacks from the South and continued to be used in real estate transactions until 1948 when, in *Shelley v. Kraemer*, the Court held that they too were illegal. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948). Prior to Reconstruction, Blacks and Whites occupied the same space even in central cities. JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 80–81 (2006). Beginning in 1890, however, this pattern began to change with thousands of towns being established for Whites only. *Id.* at 3. Ordinances and racially restrictive covenants were common tools used to exclude Blacks from these towns. *Id.* at 102–03.

one of two in northern cities.³⁹ Ninety-five percent of all northern Blacks lived in the city.⁴⁰ The highest concentration of Blacks was in eleven cities: New York, Chicago, Los Angeles, Detroit, Philadelphia, Washington, D.C., St. Louis, Baltimore, Cleveland, Houston, and New Orleans. Each of these cities had Black populations of between 200,000 and one million,⁴¹ and in each of these cities Blacks were “compelled to live in concentrated ghettos.”⁴² These ghettos shared certain characteristics: economic and social decay, under-employment, familial instability, and housing decay.⁴³ For example, urban critic Jane Jacobs described Washington’s Southwest as a place “blackballed by geography” and “buffeted by official whims.”⁴⁴ The conditions inside inner-city dwellings were such that having bathrooms, kitchen sinks, central heating, and electric lights were luxuries of “extreme rarity.”⁴⁵ Moreover, the housing to which Blacks had access was expensive and overcrowded.⁴⁶ Taking Harlem as an example, Professor Kenneth Clark noted that in 1965 “there were more people in fewer rooms (in Harlem) than elsewhere in the city” and yet the rents were high.⁴⁷ The same was true in Chicago and Baltimore.⁴⁸ Regardless of their income levels, all, except a relatively few Blacks, lived in the inner-city, while Whites lived everywhere else.⁴⁹ During the Civil Rights Movement of the 1960s, Blacks called on the federal government to address both the housing isolation and the conditions experienced there.⁵⁰

39. KENNETH B. CLARK, *DARK GHETTO* 22 (1965).

40. *Id.*

41. *Id.* at 23.

42. *Id.* at 25 (noting that the exception to this phenomenon may have been San Francisco).

43. *Id.* at 27.

44. CHRIS MYERS ASCH & GEORGE DEREK MUSGROVE, *CHOCOLATE CITY: A HISTORY OF RACE AND DEMOCRACY IN THE NATION’S CAPITAL* 320 (2017).

45. *Id.* at 320-21.

46. *Id.* at 335 (“Black residents paid up to 50 percent more than [W]hite residents for comparable housing, and [B]lack housing units were roughly five times more crowded than [W]hite units. As more people crammed into older [B]lack neighborhoods, public services could not keep up, schools expanded beyond capacity, and living conditions deteriorated. By 1963, D.C. led the nation in tuberculosis, venereal disease, and infant mortality.”)

47. CLARK, *supra* note 39, at 30. *See also* Pam Fessler, *Low-Income Renters Squeezed Between Too-High Rents And Subpar Housing*, NPR (Mar. 30, 2016, 4:52 AM) <https://www.npr.org/2016/03/30/471347546/low-income-renters-squeezed-between-too-high-rents-and-subpar-housing> (showing that this problem subsists even today).

48. *Id.*

49. *Id.*

50. The role of the White community in creating and protecting the “tight barrier” surrounding the Black ghetto cannot be underestimated. SANDER ET AL., *supra* note 20,

In the over fifty years since the Civil Rights Movement, neither fair housing laws nor government-sponsored mobility programs have significantly altered this landscape. A majority of economically subordinated Blacks are isolated in inner cities in a pattern that is in fact or strongly resembles colonization.⁵¹

at 64. A combination of organized White efforts concentrated Blacks in “well-defined [B]lack districts, from which [W]hite renters and homeowners had almost entirely departed by the early 1930s.” *Id.* at 62. Restrictive covenants were one of the subtler forms of protectionism. *See, e.g., id.* at 64 (“Restrictive covenants rarely if ever formed a complete barrier around the ghetto.”). After World War II, restrictive covenants became the target of civil rights activism around housing when the Black middle class briefly swelled, opening up the opportunity for mobility to that select group. *Id.* at 64–65.

51. A colony is a territory that is not free. *See Colony*, Black’s Law Dictionary (10th ed. 2014). It is a place controlled from the outside instead of from within. *See id.* Scholars, politicians, and activists have described American Blacks as a colonized people. For example, in 1935, scholar and founder of the National Association for the Advancement of Colored People, W.E.B. DuBois argued for accepting the “Negro Nation within a Nation.” *See generally* Walter Rucker, “A Negro Nation within a Nation”: W.E.B. DuBois and the Creation of a Revolutionary Pan-Africanist Tradition 1903 -1947, 32 BLACK SCHOLAR 37 (2002). In 1965, scholar Kenneth Clark argued “the dark ghettos are social, political, educational, and—above all—economic colonies. Their inhabitants are subject peoples.” CLARK, *supra* note 40, at 11. In 1967, activist Stokely Carmichael and professor Charles Hamilton argued in their book that “institutional racism has another name: colonialism.” STOKELY CARMICHAEL & CHARLES HAMILTON, BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA 5 (1967). In their seminal book, sociologists Nancy Denton and Douglass Massey offer significant evidence that the location and conditions of Blacks in America makes them colonized people. *See generally* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (1993). Journalist Ta-Nehisi Coates wrote to his son describing America as a “syndicate arrayed to protect its exclusive power to dominate and control our bodies. Sometimes this power is direct (lynching), and sometimes it is insidious (redlining).” TA-NEHISI COATES, BETWEEN THE WORLD AND ME 44 (2015). Television host Chris Hayes states “the American criminal justice isn’t one system with massive racial disparities but two distinct regimes. One (the Nation) is the kind of policing regime you expect in a democracy; the other (the Colony) is the kind you expect in an occupied land.” CHRIS HAYES, A COLONY IN A NATION (2017). Both Lyndon Johnson and Richard Nixon invoked the language as well. *See* Adam Serwer, *Lyndon Johnson was a Civil Rights Hero. But also a Racist.*, MSNBC, (Apr. 12, 2014, 11:06 AM), <http://www.msnbc.com/msnbc/lyndon-johnson-civil-rights-racism>; *See* Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER’S MAG. (Apr. 2016), <https://harpers.org/archive/2016/04/legalize-it-all>. The word “colonized,” as used by these writers and speakers, refers at once to the mental state of economically subordinated Blacks (one of resentment over their condition for which they have little control) and their physical location (over a century-long isolation in the urban ghetto not by their own choosing).

B. *The Fair Housing Act, the Voucher Program & Mobility's Promise*

In 1967, a second march on Washington was planned to bring attention to the ills associated with poverty, including poor housing.⁵² Specifically, the leaders of the Poor People's Campaign⁵³ called for the redistribution of political and economic power to provide quality jobs, education, and housing to the poor.⁵⁴ In March 1968, at the early gatherings of the Poor People's Campaign, Martin Luther King, Jr. and other activists, like Johnnie Tillmon of the National Welfare Rights Organization (NWRRO), began to outline their platform's major elements.⁵⁵ A central aspect of the platform was to petition the government to pass an Economic Bill of Rights as a step toward alleviating poverty.⁵⁶ That bill, it was hoped, would, at a minimum, provide a \$30 billion annual appropriation for a war on poverty, full employment and guaranteed income

52. *Dr. King's Vision: The Poor People's Campaign of 1967-68*, POOR PEOPLE'S CAMPAIGN, <https://www.poorpeoplescampaign.org/history/> (last visited Nov. 16, 2018) [hereinafter *Dr. King's Vision*].

53. The first gathering of over fifty multiracial organizations that came together to birth what we now know as the Poor People's Campaign, had taken place that same month in Atlanta, Georgia. *Id.* There the likes of "Tom Hayden of the Newark Community Union, Reis Tijerina of the Federal Alliance of New Mexico, John Lewis of the Southern Regional Council, Myles Horton of the Highlander Center, Appalachian volunteers from Kentucky, welfare rights activists, California farm workers, and organized tenants" gathered. *Id.* King addressed the crowd and noted it was the first of its kind that he had ever attended. *Id.*

54. *Id.* On March 20, 1968, in Eutaw, Alabama, in his speech "*There Will be a Mighty Wrath*" King stated:

We've got public accommodations about straightened out. We fought here and all over from Selma right through the black belt of Alabama to get the right to vote. Now we are going to get the right to have three squares a day. Now we are going to get the right to have a decent house to live in. . . . We aren't going to stop in Montgomery this time. We aren't going to stop in Atlanta this time. We aren't going to stop until we get to the gates of the White House before Lyndon Baines Johnson, and the Congress of the United States of America. We are going to build a shantytown in Washington. We're going to build our own town, and let the world see how we so often have to live back home.

Martin Luther King Jr., Address to a Mass Rally in Eutaw, Alabama (Mar. 20, 1968), *excerpt in* THE ATLANTIC, special ed. 2018, <https://www.theatlantic.com/magazine/archive/2018/02/martin-luther-king-jr-poor-peoples-campaign/552539/> (last visited Dec. 15, 2018).

55. *Dr. King's Vision*, *supra* note 52.

56. *Id.*

legislation, and the construction of 500,000 low-cost housing units per year until slums were eliminated.⁵⁷

As a direct result of conversations with these civil rights activists, the Johnson Administration's National Advisory Commission on Civil Disorders—commonly known as the Kerner Commission—published the “Report on the National Advisory Commission on Civil Disorders” in 1967.⁵⁸ The report held out the institutionalization of segregated ghettos as one of the culprits behind the civil unrest plaguing many American cities and recommended significant investment in housing opportunities, specifically those designed to curtail segregation.⁵⁹ The Kerner Report asserted “Black in-migration and [W]hite exodus . . . have produced the massive and growing concentrations of impoverished Negroes in our major cities, creating a growing crisis of deteriorating facilities and services and unmet human needs.”⁶⁰

Congress responded to the issues identified in the Kerner report and the demands of the Poor People's Campaign with the passage of Title VIII of the Civil Rights Act of 1968, the Fair Housing Act (FHA).⁶¹ The FHA prohibits housing discrimination on the basis of membership in a protected class.⁶² The legislative history states that Congress passed the Act in recognition that “persistent racial segregation had left predominantly [B]lack inner cities surrounded by mostly [W]hite suburbs and the deleterious effects of such a pattern.”⁶³ Section 3604(a) of the Act makes

57. DAVID J. GARROW, *BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE* 595-96 (1st ed. 1986).

58. The Kerner Commission was established by President Lyndon B. Johnson on July 28, 1967. NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, DEP'T OF JUSTICE, REPORT 1 (1967), <https://www.ncjrs.gov/pdffiles1/Digitization/8073NCJRS.pdf>. It was formed in response to the race riots taking place in major cities throughout the United States at that time. *Id.*

59. *Id.* at 5.

60. *Id.*

61. See *Take This Hammer*, *supra* note 1. Congress passed Title VIII of the Civil Rights Act, the Fair Housing Act, seven days after Martin Luther King's assassination, in what some considered a legislative memorial to the civil rights leader and intended to pacify the riots that were taking place in response to his slaying. See, e.g., DaNeen L. Brown, *The Fair Housing Act Was Languishing in Congress. Then Martin Luther King Jr. Was Killed*, WASH. POST (Apr. 11, 2018), https://www.washingtonpost.com/news/retropolis/wp/2018/04/11/the-fair-housing-act-was-languishing-in-congress-then-martin-luther-king-jr-was-killed/?utm_term=.20d176437d04; Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmities. Project, 135 S.Ct. 2507, 2516 (2015).

62. Fair Housing Amendments Act, 42 U.S.C. § 3604 (1988). In 1988, Congress amended the Fair Housing Amendments Act, expanding the scope of the legislation to include persons with disabilities. UNITED SPINAL ASS'N, UNDERSTANDING THE FAIR HOUSING AMENDMENTS ACT 1 (2004), https://www.unitedspinal.org/pdf/fair_housing_amendment.pdf.

63. *Inclusive Cmities. Project*, 135 S.Ct. at 2510.

it unlawful to “refuse to sell or rent . . . or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race [or] color”⁶⁴ Senator Walter Mondale argued that a “[d]eclining tax base, poor sanitation, loss of jobs, inadequate educational opportunity, and urban squalor will persist as long as discrimination forces millions to live in the rotting cores of central cities.”⁶⁵ Senator Edward Brooke, himself Black, offered: “we can and should make it possible for those who can to move to where the better schools and services, the decent homes and jobs are most plentiful. That is the simple purpose of this bill.”⁶⁶ The FHA was designed as a tool for mobility.

By 1968, the notion that integration was the surest path to greater opportunity for Blacks had precedent.⁶⁷ Five decades earlier, in 1917, the Supreme Court in *Buchanan v. Warley* held that ordinances prohibiting African Americans from owning or renting property in White neighborhoods were illegal.⁶⁸ In 1948, in *Shelley v. Kramer*, the Court banned covenants in real estate transactions between private parties that prohibited sale to Black people.⁶⁹ Most notably, however, was *Brown v. Board of Edu-*

64. 42 U.S.C. § 3604(a) (1988).

65. 114 Cong. Rec. 2276 (1968).

66. 114 Cong. Rec. 2280 (1968).

67. See John O. Calmore, *Racialized Space and the Culture of Segregation: “Hewing a Stone of Hope from a Mountain of Despair”*, 143 U. PA. L. REV. 1233, 1253 (1995).

68. *Buchanan v. Warley*, 245 U.S. 60, 82 (1917). See also Hans J. Hacker, *The Neutrality Principle: The Hidden Yet Powerful Legal Axiom at Work in Brown Versus Board of Education*, 8 BERKELEY J. AFR.-AM. L. & POL’Y 5, 27 (2006).

69. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

By the 1930’s racial restrictive covenants were the norm in [W]hite communities across D.C. and increasingly in the surrounding suburbs of Montgomery County, Maryland and Fairfax and Arlington Counties, Virginia, where long-standing [B]lack communities slowly receded in the face of [W]hite in-migration. As neighborhoods such as Tenleytown, Fort Reno, Georgetown, and Foggy Bottom became wealthier and whiter, [B]lack residents were hemmed into areas where they already predominated, even as thousands of Southern migrants continued to arrive. With fewer and fewer outlets for the [B]lack population, [B]lack neighborhoods grew increasingly poor and crowded. Washington took on the pattern that would characterize it for the rest of the twentieth century; an increasingly poor, inner city ringed by almost exclusively [W]hite neighborhoods and suburbs.

ASCH & MUSGROVE, *supra* note 44, at 259. Merely lifting restrictive covenants ultimately proved to be insufficient. In D.C., for example, though restrictive covenants had been illegal since 1948, 1960 census figures showed neighborhoods were more segregated than before. See *id.* at 253 (“Entire swaths of residential development—an arc beginning along the Potomac in Georgetown and extending across the northern tier of the city through

tion in 1954, in which the Supreme Court remedied lack of quality education for Blacks by proscribing *de jure* segregation and ending the “dual system” of separate White and Black schools.⁷⁰ This decision thus also played a role in securing integration as the legal path to quality housing for Blacks.⁷¹ In each of these cases, the majority expressed a belief in the notion that the problems confronting the inhabitants of inner city ghettos could be eradicated if the barriers to Black mobility were removed. Integration had been the goal for at least five decades by the time the Fair Housing Act was passed.⁷²

II. THE PERSISTENCE OF SEGREGATION

In this Part, the article summarizes the persistence of segregation in urban centers, generally, and against the economically subordinated specifically.

A. *Limitations on Black Mobility*

Despite the FHA’s explicit ban on discrimination in housing sales and rentals, as well as an emerging body of case law broadly interpreting the FHA’s language,⁷³ segregated housing patterns worsened through the 1970s and 1980s.⁷⁴ Housing integration continued to be strongly opposed, and “White flight” to the suburbs provided an appealing alternative to staying in racially “threatened” neighborhoods.⁷⁵ By 2000, more people lived in suburbs than in central cities and rural areas combined.⁷⁶ Many of these suburbs had no significant Black population 30 years after

Tenleytown, Chevy Chase, Takoma Park, and Brookland—were essentially off-limits to [B]lack residents.”).

70. 347 U.S. 483 (1954).

71. *Id.*

72. See Hacker, *supra* note 68, at 29, 34–40.

73. See *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968) (finding that 42 U.S.C. § 1982 requires that “all citizens, without regard to race or color,” have the “‘same right’ to purchase and lease property ‘as enjoyed by [W]hite citizens.’ ”).

74. MASSEY & DENTON, *supra* note 51, at 45 (“The combination of rapid [W]hite suburbanization and extensive [B]lack in-migration led to an unprecedented increase in the physical size of the ghetto during the 1950s and 1960s . . . [T]he percentage of [B]lacks more than doubled in most northern cities, going from 14 [percent] to 33 [percent] in Chicago, from 16 [percent] to 38 [percent] in Cleveland, from 16 [percent] to 44 [percent] in Detroit, and from 18 [percent] to 34 [percent] in Philadelphia.”). Massey and Denton also point out the continuing White strategies of “ghetto containment and tactical retreat.” *Id.*

75. *Id.*

76. LOEWEN, *supra* note 38, at 139.

the Act's passage.⁷⁷ Sociologists Douglas Massey and Nancy Denton have noted that “[e]ven if [B]lack incomes had continued to climb through the 1970s, segregation would not have declined: no matter how much [B]lacks earned they remained spatially separated from [W]hites. Up until at least 1980, money did not buy entry into [W]hite neighborhoods of American cities.”⁷⁸ In major cities like Chicago and Cleveland, where significant Black populations (including those with financial means) existed, the average segregation factor was 90.6 and 88.2, respectively, indicating an extremely high degree of segregation.⁷⁹

A number of explanations have been offered for why segregation persists despite the FHA. Personal choices of Blacks, some argue, are responsible for continued housing segregation.⁸⁰ There is evidence, however, that Blacks overwhelmingly choose to live in integrated neighborhoods when provided with the opportunity.⁸¹

Economic disparity patterns between Blacks and Whites have also been offered to explain segregation.⁸² However, income differences alone account for “only ten to thirty-five percent of racial segregation actually observed.”⁸³ At least one study has shown that White residents’ percep-

77. MASSEY & DENTON, *supra* note 51, at 70-71, 85.

78. *Id.* at 85.

79. *Id.*

80. Marc Settles, *The Perpetuation of Racial Segregation in America: Historical Discrimination, Modern Forms and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 97-98 (citing Reynolds Farley et al., “Chocolate City, Vanilla Suburbs”: Will the Trend Toward Racially Separate Communities Continue?, 7 SOC. SCI. RES. 319, 322 (1978)). See also ERIC M. USLANER, SEGREGATION AND MISTRUST: DIVERSITY, ISOLATION, AND SOCIAL COHESION 218 (2012) (“When minorities live apart from majority groups, we often presume that they prefer to live among their own kind—even as data show that minorities often avoid integrated neighborhoods because they fear discrimination There is little evidence that minorities choose to live in segregated neighborhoods because they reject mainstream society.”); Pedro Nicolaci da Costa, *Public Housing Plays a Huge Role in Racial Segregation and Inequality—But Not in the Way Most People Think*, BUS. INSIDER (Nov. 16, 2017), <http://www.businessinsider.com/racist-housing-policies-supercharged-us-wealth-gap-2017-11>.

81. See Reynolds Farley et al., *Continued Racial Residential Segregation in Detroit: “Chocolate City, Vanilla Suburbs” Revisited*, 4 J. HOUSING RS. 1, 23 (1993) (finding among the Black respondents surveyed, only 17 percent indicated that they would like to live in a completely Black community as their first or second choice. Only a small number of Black respondents indicated that their unwillingness to move to an all-White neighborhood was based on a desire to live with other Blacks. Approximately 82 percent of the Black respondents chose a racially mixed community, described as being comprised of 45 percent African Americans).

82. See Marc Settles, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND USE & ENVTL. L. 89, 97-98 (1998).

83. *Id.* at 98.

tion of a neighborhood is negatively impacted the more Black residents are present in that neighborhood.⁸⁴ The argument here is that only a “middling amount” of integration can happen in any one White neighborhood before its residents will flee.⁸⁵ This phenomenon is called “tipping.”⁸⁶ There are simply too many Black people (especially those who are economically subordinated) and too few spaces in higher opportunity neighborhoods to achieve full integration.⁸⁷ The FHA, as it was designed, offered the greatest mobility to the Black middle and upper classes, which were well-positioned to integrate because they had the means to do so.⁸⁸ By making White protectionism illegal, the FHA opened up opportunity for those Blacks who possessed the financial wherewithal and cultural norms required for assimilation to do so. Alternatively, the FHA offered little to economically subordinated Blacks.

Subsequent to the passage of the FHA, in an attempt to increase housing opportunities for the economically subordinated in the rental market, Congress passed mobility programs, including notably the Housing and Community Development Act of 1974, which established the Housing Choice Voucher Program (HCVP or, as it is commonly called “Section 8”).⁸⁹ The HCVP subsidizes housing costs, in the form of a voucher, which can be used to obtain market rate homes in high-opportunity neighborhoods.⁹⁰ Theoretically, a voucher should help a family relocate from a lower-opportunity neighborhood to a higher one. Federal mobility programs have met “mixed success,” especially for families of color.⁹¹

Approximately 2.2 million households participate in federal mobility programs, providing them the resources to relocate to higher-opportunity neighborhoods.⁹² Yet, the vast majority of these programs’

84. Maria Krysan et al., *Does Race Matter in Neighborhood Preferences? Results from a Video Experiment*, 115 AM. J. SOC. 527, 548-49 (2009).

85. See generally Ankur Goel, *Restricting Minority Occupancy to Maintain Housing Integration—United States v. Scarlett City Associates* 840 F.2d 1096 (2d Cir. 1988), *Cert. Denied* 109 S. Ct. 376 (1988), 24 HARV. C.R.-C.L. L. REV. 561, 562 (1989).

86. *Id.*

87. See *id.*

88. See generally Sara Pratt, *Civil Rights Strategies to Increase Mobility*, 127 YALE L.J. F. 498 (2017).

89. See generally CTR. ON BUDGET & POLICY PRIORITIES, POLICY BASICS: THE HOUSING CHOICE VOUCHER PROGRAM (2017), <https://www.cbpp.org/sites/default/files/atoms/files/PolicyBasics-housing-1-25-13vouch.pdf>.

90. See *id.*

91. See Alana Semuels, *How Housing Policy Is Failing America’s Poor*, THE ATLANTIC (June 24, 2015), <https://www.theatlantic.com/business/archive/2015/06/section-8-is-failing/396650/>.

92. *Id.*

participants live in lower-opportunity, racially segregated neighborhoods.⁹³

In 1992, Congress authorized the Department of Housing and Urban Development (HUD) to engage in “a 10-year research demonstration [which] combined tenant-based rent assistance with housing counseling to help very low-income families move from poverty-stricken urban areas to low-poverty neighborhoods.”⁹⁴ This study, called Moving to Opportunity (MTO), followed 4,608 families in five metropolitan cities,⁹⁵ the vast majority of which were headed by African American or Hispanic single mothers, to determine whether access to a voucher with no limitations affected family and child outcomes.⁹⁶ MTO was designed to “develop more effective mobility strategies for recipients of tenant-based housing assistance in metropolitan areas throughout the Nation.”⁹⁷

A follow-up study to the original MTO study reconnected with participants four to seven years later and found that the MTO succeeded in moving families to less economically distressed communities and that families reported feeling safer and having more positive mental health.⁹⁸ On the other hand, the follow-up study found that there was no detectable effect on the labor market outcomes, social programs, or reading and math achievement for children.⁹⁹ A subsequent study, conducted by Raj Chetty in 2015, found improved outcomes for the children of MTO families.¹⁰⁰ Specifically, those children under the age of thirteen when their families moved had significantly higher college attendance rates and earnings.¹⁰¹ These children also lived in better neighborhoods as adults

93. *Id.*

94. *Moving to Opportunity for Fair Housing*, U.S. DEP’T OF HOUSING & URB. DEV., <https://www.hud.gov/programdescription/mto> (last visited June 28, 2018) [hereinafter MTO Program].

95. The participants in the MTO study lived in project-based public housing in Baltimore, Boston, Chicago, Los Angeles or New York. NAT’L BUREAU OF ECON. RESEARCH, ET AL., *MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM: INTERIM IMPACTS EVALUATION* at ii (2003), <https://www.huduser.gov/portal/Publications/pdf/MTOFullReport.pdf>.

96. *Id.* at i, 15.

97. MTO Program, *supra* note 94.

98. See NAT’L BUREAU OF ECON. RESEARCH, ET AL., *MOVING TO OPPORTUNITY FOR FAIR HOUSING DEMONSTRATION PROGRAM: FINAL IMPACTS EVALUATION*, at xvi-iii (2011), https://www.huduser.gov/publications/pdf/mtofh_fullreport_v2.pdf [hereinafter MTO Final Impacts].

99. *Id.* at xxvii, xxx.

100. See Raj Chetty, Nathaniel Hendren & Lawrence Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Project*, 106 AM. ECON. REV. 855, 859-60 (2016).

101. *Id.* at 876, 878-79.

and were less likely to be single parents.¹⁰² Despite this good news, even the Department of Housing and Urban Development acknowledged that “an array of barriers,” including market conditions and discrimination, “force[d] even those with vouchers to rent housing in neighborhoods of intense poverty.”¹⁰³

B. *Discrimination Against Economically Subordinated Blacks in the High-Opportunity Suburbs*

Segregation persists in high-opportunity neighborhoods despite the Fair Housing Act and mobility programs, at least in part, because Blacks face unchecked discrimination when attempting to live in high-opportunity neighborhoods both pre- and post-acquisition of housing.

1. Pre-Acquisition Barriers to Mobility

In many localities, participants in mobility programs face unfettered discrimination on the real estate market when attempting to acquire suitable housing in high-opportunity neighborhoods.¹⁰⁴ One study conducted by the Lawyer’s Committee for Better Housing (LCBH), which focused on Chicago, found that “significant discrimination against families based on their source of income” drastically reduced the available housing market for these households.¹⁰⁵ Utilizing testers, the LCBH study revealed that in higher-opportunity neighborhoods “55 [percent] of landlords refused to accept Housing Choice Vouchers as suitable rental payment . . . and an additional 16 [percent] . . . equivocate about accepting [vouchers] as a means of rental payment.”¹⁰⁶ In Chicago, more generally, the study also found that “46 [percent] of landlords refused to accept [vouchers] and 22 [percent] of landlords equivocate.”¹⁰⁷ Put another way, “[v]oucher holders [were] denied access to approximately 70 [percent] of the market rate units that [were] supposedly available to them.”¹⁰⁸

102. *Id.* at 880.

103. MTO Program, *supra* note 94.

104. See Rahim Kurwa, Grounds for Eviction: Race, Mobility, and Policing in the Antelope Valley 58 (2018) (unpublished Ph.D. dissertation, University of California Los Angeles).

105. LAWYERS’ COMM. FOR BETTER HOUSING, INC., LOCKED OUT: BARRIERS TO CHOICE FOR HOUSING VOUCHER HOLDERS: REPORT ON SECTION 8 HOUSING CHOICE VOUCHER DISCRIMINATION 6 (2002) [hereinafter Section 8 Voucher Discrimination Report].

106. *Id.* at 10.

107. *Id.* at 10–11.

108. *Id.* at 11.

There is evidence to suggest that families of color suffer the greatest harm from pre-acquisition discrimination.¹⁰⁹ The LCBH study reveals “[v]oucher holders face[d] additional illegal discrimination based on race or ethnicity.”¹¹⁰ For example, when testing a studio for \$475 in Jefferson Park, the landlord told a White Section 8 recipient that he or she was accepted, that a lower level apartment was available, and that apartments were available in a unit across the street.¹¹¹ Ninety-five minutes later, the landlord told a similarly situated Black individual that there were no available apartments because too many other were people interested and he wanted to choose from that pool of people.¹¹² In that same study, when testing a one-bedroom advertised for \$685 in 2002, the landlord told a White individual that the voucher was accepted and two one-bedroom apartments were available.¹¹³ The landlord then told a Black individual that the voucher was acceptable but no apartments were available at the time.¹¹⁴ Importantly, Chicago is among the many cities with laws currently prohibiting discrimination based on source of income.¹¹⁵

2. Post-Acquisition Barriers to Mobility

Participants in mobility programs continue to experience discrimination after successfully relocating to high-opportunity neighborhoods.¹¹⁶ Professor Rahim Kurwa calls this discrimination in the “context of reception.”¹¹⁷ By this Kurwa means that high-opportunity neighborhoods are often so hostile that voucher holder families relocate after some time back to the communities from which they arrived, either because they were actually or constructively evicted.¹¹⁸ For example, suburbanites opposing diversity in their communities sometimes encourage their elected officials to use municipal law to ban certain conduct perceived to be associated

109. *Id.*

110. *Id.* at 8.

111. Section 8 Voucher Discrimination Report, *supra* note 105, at 6.

112. *Id.*

113. *Id.* at 8.

114. *Id.*

115. See CITY OF CHI. COMM’N ON HUMAN RELATIONS, SECTION 8 VOUCHERS AND SOURCE OF INCOME DISCRIMINATION, <https://www.cityofchicago.org/content/dam/city/depts/cchr/AdjSupportingInfo/AdjFORMS/Section8VouchersSourceofIncomeDisc.pdf> (last visited Dec. 27, 2018); see also SEATTLE OFFICE FOR CIVIL RIGHTS, SEATTLE’S SOURCE OF INCOME ORDINANCE, <https://www.seattle.gov/Documents/Departments/CivilRights/SOCR-SourceOfIncome.pdf> (last visited Dec. 27, 2018).

116. Kurwa, *supra* note 104, at iii.

117. *Id.* at iii, 157.

118. *Id.* at 170-72, 175-181.

with public housing and voucher holders.¹¹⁹ Some suburban towns have utilized law enforcement to monitor otherwise non-criminal behavior of Black residents, such as violations of various federal housing program rules, how many days a month a romantic partner can spend the night, maintenance of lawns, and volume of music.¹²⁰ All of this is done in an effort to cause those residents to leave voluntarily or be removed from the community.

In *Williams v. City of Antioch*,¹²¹ more than 800 African Americans filed a lawsuit against the city of Antioch for engaging in a concerted campaign to reduce the Black population and discourage any additional Black families from moving to the city.¹²² Antioch was not isolated. In June 2013, the Department of Justice issued a Findings Letter following its investigation of two cities in Los Angeles County, the Housing Authority of Los Angeles County (HACoLA), and the Los Angeles County Sheriff's Department (LASD).¹²³ The DOJ found that the government entities had engaged in activities that resulted in violations of the Fair Housing Act and, in some instances, the Fourth Amendment by intimi-

119. *See id.* at 62, 163-65.

120. MASSEY & DENTON, *supra* note 51, at 2.

121. *See Williams v. City of Antioch*, No. C-08-2301 BZ, 2008 WL 7292441 (N.D. Cal. July 16, 2008) [hereinafter First Amended Complaint].

122. The Alexanders were one of the families. *Id.* In 2003 through 2004, when the Alexanders lived on Matsqui Road members of the Antioch Police Department visited the Alexanders' home between four and six times while they lived in this house. *Id.* On at least one of these visits, police officers approached the Alexander family home with guns drawn. The reason given by the police officers for these visits was noise complaints from the neighbors about the five Alexander children, who ranged in age from approximately two to twelve years old. During some of these visits, the police officers questioned the Alexanders about whether they were on Section 8. Also during this time, Mr. Alexander's white neighbors wrote two letters stating that Mr. Alexander and his family should "go back to Oakland," referred to Mr. Alexander and his family as "niggers" and to his children as "fat black kids." Concurrently, one of Mr. Alexander's neighbors, an older White man, yelled to him from the street "Why don't you move?" and "We don't want you here." The Alexanders reported the first letter to the police department and were told there was "nothing that they could do." Eventually, the Alexanders relocated to another house also in Antioch. In May 2008, police officers visited the family residence looking for a "dark-skinned black kid" that they claimed had been down the street "selling drugs" and then seen running into the Alexanders' home wielding a gun. Mr. Alexander and his family are light-skinned. On another occasion, the Alexander family was targeted by the SWAT team early one morning. The SWAT team entered the home and pointed machine guns at the entire family, only to later apologize. The size of the *Williams* class underscores the fact that the experiences faced by the Alexanders were not isolated. *Id.* at 10-11.

123. U.S. DOJ, Findings Letter on the Investigation of Los Angeles County Sheriff's Department Stations in Antelope Valley to Sheriff Leroy D. Baca (June 28, 2013) [hereinafter Findings Letter].

dating, harassing, and facilitating the termination of voucher holders from the program.¹²⁴ The sheriff's department settled the lawsuit in May 2015.¹²⁵

In one study conducted after the discrimination in Antelope Valley was exposed, Black voucher holders reported experiencing various forms of hostility (77 percent), hostility from neighbors (41 percent), and one or more incidents of aggressive policing (59 percent).¹²⁶ The same study noted that voucher holders chose not to engage in some perfectly legal behavior in order to avoid scrutiny from their neighbors and community.¹²⁷ Neighbors and local government imposed an unspoken set of rules prohibiting otherwise innocuous conduct, such as having lights on late at night, leaving the garage door open, not taking in trash cans after garbage has been picked up, parking in front of the mailbox, having too nice of a car, lacking a car altogether, and having too many cars parked outside.¹²⁸ One voucher holder stated, "Now I just don't play any music. I try to keep peace. No music, no company. Not that I had a lot of traffic anyways. I just try to stay to myself."¹²⁹

These stories serves as examples of the difficulties with social integration that Blacks, especially those who are economically subordinated,

124. *Id.* at 1, 5. From

[a]t [] least 2008 through mid-2011, LASD participated in HACoLA's investigations of homes participating in the voucher program at disproportionate rates in the Antelope Valley compared to the remaining parts of the County where HACoLA's and LASD's jurisdictions overlap. Because Antelope Valley's population of voucher holders ha[d] a significantly higher percentage of African Americans than voucher holders living in the rest of HACoLA's jurisdiction—70 [percent] compared to 40 [percent]—LASD's practice of accompanying HACoLA on compliance checks in the Antelope Valley disproportionately impacted African American voucher holders.

Id. at 6.

125. Stipulation and [Proposed] Order Approving Settlement Agreement and Order of Resolution and Entry of Judgment, *United States v. Cty. of L.A.*, No. CV 15-03174 (C.D. Cal. May 1, 2015) (settlement of a civil suit brought against the Los Angeles County Sherriff's Department and the County of Los Angeles for patterns of practices and conduct by law enforcement officers and agents of the County, that deprived persons of rights, privileges, and immunities secured and protected by the Constitution and the Fair Housing Act).

126. Kurwa, *supra* note 104, at 181.

127. *See, e.g., id.* at 183-84, 195.

128. *Id.* at 135-36.

129. *Id.* at 184.

experience in certain middle- to high-opportunity racially segregated neighborhoods.¹³⁰

C. Discrimination Against Economically Subordinated Blacks in the Gentrified Inner City

Remaining in a gentrifying inner city has become complicated for economically subordinated Blacks who have historically resided there. By the 2000s, American cities, especially in the North, no longer followed the old pattern of rich, White suburb and poor, Black city.¹³¹ Instead, highly paid “knowledge workers,” the affluent, and young people have returned in large numbers to certain large cities.¹³²

For example, in Washington, D.C., some reports estimate that between 2009 and 2013 approximately 48,742 people moved into the district.¹³³ The next year, between 2014 and 2015, an estimated 63,700 new residents migrated to the city.¹³⁴ These newcomers came from the surrounding suburbs, including Fairfax, Alexandria, and Arlington in Virgin-

130. Professor Kurwa offers “the self-protective behaviors of tenants who kept to themselves rather than risk additional scrutiny may have contributed to the inability to organically grow a community of black voucher holder in Antelope Valley.” *Id.* at 189.

131. JEFF CHANG, *Vanilla Cities and Chocolate Suburbs*, in *WE GON’ BE ALRIGHT: NOTES ON RACE AND RESEGREGATION* 77-79 (2016). See also, HACKWORTH, *NEOLIBERAL CITY*, *supra* note 39, at 125-26 (2006). Hackworth reminds us that in the 1970s, the federal government reduced outlays to cities forcing the latter to become more entrepreneurial. *Id.* at 125. As a result, cities reoriented themselves around finance, insurance, and real estate, including an investment in real estate close to struggling central business districts. *Id.* Geographers have articulated the reorientation of cities around financial industries as a second “spatial turn.” *Id.* Out of this second spatial turn, three major urban forms were birthed, the most popular being gentrification, which became widespread in many cities in the mid-1990s. *Id.* Pre-1990 gentrification occurred when “[s]mall scale owner occupiers entered disinvested neighborhoods to rehabilitate individual homes for personal consumption. If enough investors came to a neighborhood, the process sometimes became more corporate with development firms entering the ‘tamed’ market to sell condominiums, townhouses and brownstones to less adventurous buyers. In some situations, this led to direct displacement of vibrant working-class communities. Resistance movements coalesced around the threat of displacement and grew quite violent in highly polarized cities like New York.” *Id.* at 125-26.

132. See Emily Badger, *Who’s Really Moving Back into American Cities*, *WASH. POST* (Apr. 1, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/04/01/the-surprisingly-narrow-reality-of-americas-urban-revival/>.

133. See Al Harris, *Where New Residents of Washington, D.C. Are Moving From*, *SPAREFOOT* (Aug. 2, 2016), <https://www.sparefoot.com/moving/moving-to-washington-dc/where-new-residents-of-washington-dc-are-moving-from/>.

134. *Id.*

ia as well as Montgomery and Prince George's counties.¹³⁵ But they also came from New York, Brooklyn, Los Angeles, and Chicago.¹³⁶ D.C.'s new residents were overwhelmingly educated,¹³⁷ wealthy,¹³⁸ and White.¹³⁹ The influx of new non-Blacks residents caused the Black population to dip below 50 percent for the first time in sixty years.¹⁴⁰ Some geographers and sociologists have labeled this shift the "great inversion," while others call it "reorganization."¹⁴¹ As a result of reurbanization, many cities are wealthier than they have been in many decades, if ever.¹⁴² But they are just as segregated.

The in-migration that has happened as a result of reurbanization is more variegated than it is truly inverted.¹⁴³ In Washington, D.C., much of the early redevelopment took place in upscale urban neighborhoods such as Georgetown, Cleveland Park, others in Northwest D.C., around downtown, and Capitol Hill where Blacks were displaced long ago.¹⁴⁴ Reurbanization, on the other hand, has taken place in multi-cultural hubs and displaced some people of color from neighborhoods such as Columbia Heights, U Street, and Brookland; however, Washington's service class continues to occupy a significant cluster south and east of the district and extending into the nearby Prince George's County, Maryland sub-

135. RICHARD FLORIDA, *THE NEW URBAN CRISIS: HOW OUR CITIES ARE INCREASING INEQUALITY, DEEPENING SEGREGATION, AND FAILING THE MIDDLE CLASS—AND WHAT WE CAN DO ABOUT IT* 136 (2017).

136. *Id.* at 63.

137. By 2020, Georgetown University McCourt School of Public Policy report says 50 percent of the new jobs will require bachelor's degree. THE COMM'N ON AFR. AM. AFFAIRS, *AN ANALYSIS: AFRICAN AMERICAN EMPLOYMENT, POPULATION & HOUSING TRENDS IN WASHINGTON, D.C.* 3 (Maurice Jackson ed., 2017).

138. Average White family income is \$120,000 compared to \$41,000 for Black families. *Id.*

139. *Id.* at 6.

140. *Id.* at 2; see Sabrina Tavernise, *Washington, D.C., Loses Black Majority*, N.Y. TIMES (July 17, 2011), <http://www.nytimes.com/2011/07/18/us/18dc.html>.

141. FLORIDA, *supra* note 135, at 122.

142. See generally ALAN EHRENHALT, *THE GREAT INVERSION AND THE FUTURE OF THE AMERICAN CITY* (2013). Reurbanization in urban centers has occurred concurrently with the rise of neoliberalism, or even as a result of it. Professor Jason Hackworth describes this second wave of gentrification as "the knife-edge neighborhood-based manifestation of neoliberalism." HACKWORTH, *NEOLIBERAL CITY*, *supra* note 39, at 149.

143. FLORIDA, *supra* note 135, at 122.

144. See Annys Shin, *Gentrification in Overdrive on 14th Street*, WASH. POST (July 21, 2013), https://www.washingtonpost.com/local/gentrification-in-overdrive-on-14th-street/2013/07/21/d07d344e-ea5b-11e2-a301-ea5a8116d211_story.html; see also Gerry Widdicombe, *The Fall and Rise of Downtown D.C.*, THE URBANIST (Jan. 10, 2010), <http://www.spur.org/publications/urbanist-article/2010-01-10/all-and-rise-downtown-dc>.

urbs.¹⁴⁵ Indeed, “seven out of ten of the metro’s most concentrated service-class neighborhoods are still located in historically African American sections of the District itself, and two more are in Prince George’s County, which is almost 65 percent [B]lack.”¹⁴⁶ The housing conditions in these neighborhoods are substandard.¹⁴⁷

The same patterns occur in other major cities undergoing reurbanization. In San Francisco in 2016, following a wave of gentrification, of the 46,000 Blacks that remained in the city, a majority still lived in public housing.¹⁴⁸ Similarly, in New York City, the 2000s began a period of prosperity,¹⁴⁹ but on the heels of this economic resurgence, New York remained deeply segregated.¹⁵⁰ Specifically, the Black-White dissimilarity index remained at 81.6 in 2010, meaning that 82.5 percent of White or Black New Yorkers would have to move to a different neighborhood in order for Blacks and Whites to be equally distributed across neighborhoods.¹⁵¹ Most importantly, the vast majority of people of color lived in the poorest neighborhoods.¹⁵²

145. See J.B. Wogan, *Why D.C.’s Affordable Housing Protections Are Losing a War With Economics*, GOVERNING (Feb. 2015), <http://www.governing.com/topics/urban/gov-washington-affordable-housing-protections-gentrification-series.html>; see also Robert Steuteville, *Seeking Equitable Redevelopment in Southeast DC*, PUB. SQUARE (Nov. 20, 2017), <https://www.cnu.org/publicsquare/2017/11/20/seeking-equitable-redevelopment-southeast-dc>.

146. See FLORIDA, *supra* note 135, at 137.

147. See Andrew Giambone, *Poverty In D.C. is Getting Worse East of the Anacostia River, Study Finds*, WASH. CITY PAPER (Sept. 29, 2016, 12:00 PM), <https://www.washingtoncitypaper.com/news/housing-complex/blog/20835238/poverty-in-dc-is-getting-worse-east-of-the-anacostia-river-study-finds>; see also Fenit Nirappil, Jonathan O’Connell & Shaun Courtney, *Tax Dollars Keep Flowing to Landlord D.C. is Suing Over Housing Conditions*, WASH. POST (Feb. 26, 2017), https://www.washingtonpost.com/local/dc-politics/tax-dollars-keep-flowing-to-landlord-dc-is-suing-over-housing-conditions/2017/02/26/541bb0b2-b8af-11e6-959c-172c82123976_story.html.

148. See Thomas Fuller, *The Loneliness of Being Black in San Francisco*, N.Y. TIMES (July 20, 2016), <https://www.nytimes.com/2016/07/21/us/black-exodus-from-san-francisco.html>.

149. See HAYES, *supra* note 51, at 263–64.

150. See Ingrid Gould Ellen, *Building Justice: New York City’s Separate and Unequal Neighborhoods*, CITY LIMITS (Aug. 22, 2016), <https://citylimits.org/2016/08/22/building-justice-new-york-citys-separate-and-unequal-neighborhoods/> (noting that between 1980 and 2010, the average Black-White dissimilarity index in metropolitan areas around the country fell from 73.1 to 59.4 and that during this same time period, segregation remained virtually unchanged in New York).

151. *Id.*

152. *Id.*

Therefore, it is incorrect to say that the advantaged class has taken over these cities.¹⁵³ Instead, there is a “metropolitan landscape that is being split into areas of tightly clustered zones of concentrated advantage” amidst large swaths of the disadvantaged.¹⁵⁴ When, as a result of reurbanization, elite enclaves expand into historically Black neighborhoods, the new occupants have displaced the old occupants to varying degrees.¹⁵⁵

Deep segregation persists in San Francisco, Washington, and New York despite laws prohibiting discrimination based on source of income. The failure of each of these jurisdictions to realize desired neighborhood attainment for economically subordinated Blacks illuminates the vast distance between theoretical mobility and the practical ability to relocate. The same forces, including discrimination, that shape the movement of Black households in the larger real estate market work more starkly against economically subordinated Blacks seeking housing mobility as a means to economic advancement.¹⁵⁶

III. URBAN DECOLONIZATION AS FAIR HOUSING POLICY

Black people throughout the United States live almost exclusively in economically depressed Black neighborhoods.¹⁵⁷ These are the “Black bottoms, Black back sides, Black quarters, Black sections, and hoods that were creations of structure (i.e., institutional racism and segregation) and agency (the Black mapping of American space since Emancipation).”¹⁵⁸ In some cases, this isolation has been of their own choosing,¹⁵⁹ but in most cases it has not.¹⁶⁰ Fair housing policy has largely ignored Black spaces,

153. FLORIDA, *supra* note 135, at 122.

154. *Id.*

155. See e.g., Justin Wm. Moyer, *NYC Bans ‘Poor Doors’—Separate Entrances for Low-Income Tenants*, WASH. POST (June 20, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/06/30/nyc-bans-poor-doors-separate-entrances-for-low-income-tenants/>.

156. See ELIZABETH A. MULROY, *THE SEARCH FOR AFFORDABLE HOUSING, WOMEN AS SINGLE PARENTS: CONFRONTING INSTITUTIONAL BARRIERS IN COURTS, THE WORKPLACE, AND THE HOUSING MARKET* 123, 134 (Elizabeth A. Mulroy ed., 1988); see also Andrew G. Dieterich, *An Egalitarian’s Market: The Economics of Inclusionary Zoning Reclaimed*, 24 *FORDHAM URB. L.J.* 23, 94-95 (1996).

157. See Khiara M. Bridges, *Excavating Race-Based Disadvantage Among Class-Privileged People of Color*, 53 *HARV. C.R.-C.L. L. REV.* 65, 78-80 (2018).

158. MARCUS ANTHONY HUNTER & ZANDRIA F. ROBINSON, *CHOCOLATE CITIES: THE BLACK MAP OF AMERICAN LIFE* 31 (2018).

159. See SANDER, *supra* note 22, at 301-09.

160. Living in economically depressed and racially segregated neighborhoods is also intergenerational for many Black people. Research done by sociologist Patrick Sharkey has found that 67 percent of Black families living in the poorest quarter of neighborhoods

focusing instead on de-segregation. The integration agenda absolves local governments of the responsibility to invest in majority-minority communities to the detriment of their residents for whom mobility is not an option. The following Part of this Article argues that now, as certain neoliberal cities undergo reurbanization, fair housing advocacy should be expanded to include spatial equity through the democratization of redevelopment. This Part calls on fair housing lawyers to shift focus, particularly as it relates to the neighborhoods in which economically subordinated Blacks live, to urge local governments to invest in majority-minority communities by first: 1) acknowledging the value in Black communities; 2) assisting communities in organizing for ownership; and 3) advocating for the democratization of redevelopment. Ultimately, this Part proposes that residents, advocates, and local policymakers should pursue housing policy that favors deeply inclusive redevelopment by providing housing for residents of majority-minority neighborhoods while those residents remain in place.

A. *Recovering the Value in Black Communities*

Mobility is not the only solution to the ills of inadequate housing for economically subordinated Blacks as a group. Professor John Calmore offered that “[s]patial equality is a group-based remedy that focuses on opportunity and circumstances within [B]lack communities and demands that both be improved, enriched, and equalized.”¹⁶¹ Short of this, Calmore argued, “[B]lacks, as a group, will be left with the inadequate ‘remedy’ of individuals choosing, or being forced, to move to ‘better’ space somewhere else.”¹⁶² The convergence of the civil rights agenda, the con-

remain there in the next generation. This is compared to just 40 percent for Whites. PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* 40 (2013). Sharkey attributes these statistics to the impact of their surroundings. Richard Rothstein, *The Urban Poor Shall Inherit Poverty*, AM. PROSPECT (Jan. 7, 2014), <http://prospect.org/article/urban-poor-shall-inherit-poverty>. Additionally, after *Brown v. Board of Education*, because of White flight, resegregation occurred in schools and housing communities, which the U.S. Supreme Court ruled in *Swann v. Charlotte-Mecklenburg* is constitutional according to *Brown*. Pamela J. Smith, *All-Male Black Schools and the Equal Protection Clause: A Step Forward Toward Education*, 66 TUL. L. REV. 2003, 2009-2011 (1992).

161. John Calmore, *Spatial Equality and the Kerner Commission Report: A Back-to-the-Future Essay*, 71 N.C. L. REV. 1487, 1495 (1993).

162. *Id.* Edward Goetz advocates for rethinking of solutions to concentrated poverty that do not require Blacks to move out of important urban real estate and abandon all social ties. See GOETZ, *CLEARING THE WAY: DECONCENTRATING THE POOR IN URBAN AMERICA* 20 (2003). Black geographic spaces, even economically distressed ones, are not devoid of positive social capital. *Id.* at 11. The residents of these communities have argued

servative anti-government platform, and liberal thought regarding the solution to housing inequity resulted in a devaluation in Black communities that has been followed by disinvestment. Mobility programs are often at odds with many Black residents' desires for community, safety, and agency.¹⁶³ Problematically, the mobility agenda did not take into account the views of the tenants themselves.¹⁶⁴ "As public housing projects were dismantled in cities like Chicago, Philadelphia, Atlanta, New Orleans and Baltimore (cities with the largest numbers of public housing units demolished), tenants often found their circumstances changing in ways that either defied their will or left them without a viable alternative for housing."¹⁶⁵ Tenants were forced to leave meaningful communities and reported losing bonds with their neighbors.¹⁶⁶ Many of these tenants were, of course, provided vouchers.¹⁶⁷

There is precedent for intentional Black place-making. Beginning at the end of Reconstruction, "Black people [were] looking to determine their own lives and own space. . . . [So they set about creating] a robust Black civic and social life beyond the White gaze."¹⁶⁸ One of the most famous of these independent Black towns is Zora Neale Hurston's beloved Eatonville, Florida.¹⁶⁹ Eatonville was not an anomaly. At least sixty such towns were established in the period between the Civil War and World War I.¹⁷⁰ For example, Greenwood, Oklahoma, home of "Black Wall Street," was once one of the most prominent concentrations of African American businesses in the United States.¹⁷¹ An exhibit at the Smithsonian's National Museum of African American History and Cul-

this even as they watched their housing intentionally left to deteriorate and their networks dismantled under the language of progress. *See id.* at 18.

163. *See* GOETZ, *supra* note 162, at 18; *see also* Calmore, *supra* note 161, at 1495 ("Fair housing must be reconceptualized to mean not only increased opportunity for [B]lacks to move beyond their socio-territorial disadvantage but also to mean enhanced choice to overcome opportunity-denying circumstances while continuing to live in [B]lack communities.").

164. *See, e.g.*, Calmore, *supra* note 161, at 1506-07.

165. Kurwa, *supra* note 104, at 49-50.

166. Lynne C. Manzo, Rachel G. Kleit & Dawn Couch, "Moving Three Times is Like Having Your House on Fire Once": *The Experience of Place and Impending Displacement Among Public Housing Residents*, 45 URB. STUD. 1855, 1870, (2008).

167. *Id.* at 1875 n.9.

168. HUNTER & ROBINSON, *supra* note 158, at 16.

169. *Id.* at 16-17.

170. ZORA NEALE HURSTON, *DUST TRACKS ON A ROAD: AN AUTOBIOGRAPHY* 7 (1991).

171. During the riot of 1921, the Oklahoma state government along with White residents massacred hundreds of Blacks and razed Greenwood within hours. *1921 Tulsa Race Riot*, TULSA HIST. SOC'Y & MUSEUM, <https://tulsahistory.org/learn/online-exhibits/the-tulsa-race-riot/> (last visited July 5, 2018).

ture (NMAAHC) explores this history of thriving all-Black towns. The exhibit includes Nicodemus, Kansas, where 350 settlers left Kentucky to escape the Jim Crow South and established a newspaper, bank, hotel, and schools.¹⁷² There are still other, more recent, examples. Of note is Washington, D.C., which was long referred to as “Chocolate City,” because of its thriving majority-Black population, many of whom were homeowners.¹⁷³

Fair housing advocates working on behalf of these residents, informed by their clients’ goals and desires, should consider rethinking their strategies and alliances to protect and further grow the positive equity in these communities rather than assisting in disbanding them. Two ways of doing so are 1) aiding the communities they serve to organize for ownership and 2) lobbying local governments, especially in reurbanized neoliberal cities, to democratize redevelopment, as described below.

B. Community Organizing for Cooperative Ownership

Black tenants living in economically depressed neighborhoods might consider initiating or accelerating the incubation of democratically organized enterprises in their communities. Through the creation of democratically organized enterprises, such as limited-equity housing cooperatives, these residents might transform their status from renters into owners while improving the quality of their housing and maintaining their communal ties.¹⁷⁴

Black cooperativism has been a vehicle for African Americans, having been “excluded from other economic options” since Emancipation, to address economic need.¹⁷⁵ For example, between 1865 and 1883, Afri-

172. “Go to Kansas”, NAT’L PARK SERV., <https://www.nps.gov/nico/index.htm> (last visited Feb. 3, 2019). Nicodemus thrived from 1877 through World War I, when its population dwindled after having been denied a stop on the railroad. U.S. DEP’T OF INTERIOR, PROMISED LAND ON THE SOLOMON: BLACK SETTLEMENT AT NICODEMUS, KANSAS 21, 24 (1986).

173. Parliament Chocolate City, YOUTUBE, <https://www.youtube.com/watch?v=DZaVA3NS7zE> (last visited July 5, 2018).

174. Limited-equity housing cooperatives are a form of urban commons consistent with diverse economies, such as the solidarity economy. See Stefano Aressti et al., *Citysteading: The Steady Making of Economic and Political Life as a Community*, 1 RT. TO HOUSING GAZETTE 36, 36 (2016).

175. See Mira Luna, *Interview: The Deep Roots of African American Cooperative Economics*, SHAREABLE (Apr. 28, 2014), <https://www.shareable.net/blog/interview-the-deep-roots-of-african-american-cooperative-economics>; see generally AMANDA HURON, CARVING OUT THE COMMONS: TENANT ORGANIZING AND HOUSING COOPERATIVES IN WASHINGTON, D.C. 91-110 (2018); Eva Seidelman & Louise Howells, *Building Economic*

can American caulkers and stevedores owned their own cooperative, the Chesapeake Marine Railway and Dry Dock Company in Baltimore, Maryland.¹⁷⁶ When White carpenters boycotted shipyards who used African American caulkers, a group of Black men decided to form a cooperative to own their own shipyard as a way to protect the security of their jobs.¹⁷⁷ The Chesapeake Marine Railway was successful. The founders raised \$40,000 selling 8,000 shares at \$5 per share.¹⁷⁸ They paid off their \$30,000 mortgage in five years, employed between 100 and 200 Black and White members, and paid dividends between 4 and 10 percent per year for four years.¹⁷⁹ By 1907, W.E.B. Du Bois, himself a strong supporter of Black cooperativism, documented the existence of 154 African American-owned cooperatives, including fourteen “producer cooperatives,” three “transportation cooperatives,” 103 “distribution or consumer cooperatives,” and thirty-four “real estate and credit cooperatives.”¹⁸⁰

The Freedom Quilting Bee, a handicraft cooperative formed in 1966 in Alberta, Alabama, is another example of successful Black cooperativism.¹⁸¹ The Freedom Bee was established because of the lack of stable income-generating opportunities for women in sharecropping families.¹⁸² These women began by selling quilts, but eventually developed other entrepreneurial strategies, including the purchase of twenty-three acres of land in 1968.¹⁸³ The cooperative used this land to build a sewing plant

and Racial Equity in D.C. Through Cooperative Businesses, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 33, 37-38 (2016).

176. JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* 63 (2014) [hereinafter, GORDON NEMBHARD, *COLLECTIVE COURAGE*].

177. *Id.* at 64.

178. *Id.*

179. *Id.*

180. *Id.* at 72. In a speech presented at the Rosenwald Economic Conference in 1933, DuBois summarized his theories on cooperatives:

I propose as the next step, which the American Negro can give to the world a new and unique gift. We have tried song and laughter and with rare good humor a bit condescending the world has received it; we have given the world work, hard, backbreaking labor and the world has let [B]lack John Henry die breaking his heart to beat the machine. It is now our business to give the world an example of intelligent cooperation so that when the new industrial commonwealth comes we can go into it as an experienced people and not again be left on the outside as mere beggars . . . if leading the way as intelligent cooperating consumers, we rid ourselves of the ideas.

Id. at 189.

181. GORDON NEMBHARD, *COLLECTIVE COURAGE*, *supra* note 176, at 161.

182. *Id.*

183. *Id.*

and also sold some to sharecropping families who had been evicted from their homes.¹⁸⁴ At a point, the cooperative, with its 150 members, was the largest employer in the town.¹⁸⁵ By 1992, in addition to the sewing plant, the cooperative owned a day care center and operated after school tutoring and summer reading programs.¹⁸⁶ The number of Black cooperatives continued to grow throughout the twentieth and twenty-first centuries.¹⁸⁷

In the more recent past, cooperative developments have been especially useful in addressing “underdevelopment and isolation in inner cities,” particularly in the housing context.¹⁸⁸ In the midst of a wave of gentrification in Washington, D.C. during the 1980s and 1990s, numerous limited equity cooperatives were formed for the purpose of purchasing and thus taking control over their housing.¹⁸⁹ The benefits of cooperativism in this context were four-fold, providing the new owner’s: (1) autonomy; (2) affordability; (3) stability; and (4) community.¹⁹⁰ Professor Amanda Huron recounts the stories of numerous such co-ops, including the Aspen, Dogwood, and Mulberry Cooperatives, in her book *Carving Out the Commons*.¹⁹¹ The Aspen Cooperative, for example, formed in the Glover Park neighborhood of D.C. in the early 1980s after receiving eviction notices from their landlord on Christmas Eve in 1977.¹⁹² At a time in the District, where “housing costs were spiraling upward and condominium conversion was rampant, the work of these tenants—mostly [B]lack, mostly women—was helping keep housing within reach for low income residents.”¹⁹³ Today, a very small percentage of Washington’s housing stock are limited equity cooperatives.¹⁹⁴

There has been renewed and accelerated interest in cooperativism in some Black communities in recent years. In 2013, Cooperation Jackson, a network of “worker-owned and democratically self-managed enterprises” formed to address the needs of Jackson, Mississippi’s working

184. *Id.*

185. *Id.* at 162.

186. *Id.*

187. HURON, *supra* note 175, at 172–238.

188. Jessica Gordon Nembhard, *Cooperative Ownership in the Struggle for African American Economic Empowerment*, 28 HUMAN. & SOC’Y 1, 6 (2004).

189. Amanda Huron, *The Work of the Urban Commons: Limited-Equity Cooperatives in Washington, D.C.* 84, 121 (2012) (unpublished Ph.D. dissertation, The City University of New York) [hereinafter Huron, *Urban Commons*].

190. *Id.* at 75.

191. *See generally* HURON, *supra* note 175.

192. *Id.* at 83–84.

193. *Id.*

194. Huron, *Urban Commons*, *supra* note 189, at 66.

class residents.¹⁹⁵ Cooperation Jackson’s platform is three-pronged, including grassroots community organizing, electoral political strategies, and incubating democratic economic initiatives and cooperatives.¹⁹⁶ In 2018, in Newark, New Jersey, Urban Cooperative Enterprise Legal Center evolved out of a “plan to provide alternatives to communities that have been neglected by mainstream economic and political systems, such as the formerly incarcerated.”¹⁹⁷ UCELCLC “combin[es] economic development with social and ecological development” in an effort to create “a new form of enterprise that is both sustainable and effective at making self-sufficient low and moderate income communities.”¹⁹⁸

Cooperativism offers agency to residents over both the conditions of their housing and where and with whom they live.¹⁹⁹

C. Democratizing Redevelopment in Reurbanizing Cities

The state must play a critical role in supporting the conditions for diverse economies to flourish amidst capitalism.²⁰⁰ Local governments are the gatekeepers over the commodity developers seek—land—and for it they might consider extracting a higher price where conditions are ripe to do so.²⁰¹ There is promise, especially in newly wealthy, reurbanized cities, for mutually beneficial partnerships between majority-minority

195. *Who We Are*, COOPERATION JACKSON, <https://cooperationjackson.org/intro/> (last visited July 6, 2018).

196. *Id.*

197. *About*, URB. COOPERATIVE ENTERPRISE LEGAL CENTER., <http://www.theucelc.org/> (last visited July 6, 2018).

198. *Id.*

199. Agency, not ownership, is often the goal of organizing for many members of limited equity housing cooperatives. Some residents, however, are thrilled at the prospect of ownership itself. In her book, Amanda Huron recounts the elation of one member of the Sycamore Cooperative, Mary, both at being able to purchase and to do so as part of a collective:

I most certainly did! I was happy! I was elated. And the fact that you were going to own something That you didn’t have an opportunity [before]. Blacks were afraid to go to the banks. Blacks were afraid they were not going to be able to qualify for a loan, and that sort of thing. You didn’t have to go to the bank! All you had to do was fill out the paper! . . . [I]t was a nice thing, and you were able to own something without having to go through the government paperwork, and being afraid you weren’t going to get a loan, and all of that. So I think that made people more willing to act as a team. Cause they knew collectively they could get a loan.

HURON, *supra* note 175, at 81.

200. *Id.* at 70.

201. *See id.* at 63-64, 69-70.

communities and local governments; fair housing advocates can help local governments navigate those relationships. For the reurbanizing city, there are moral but also practical motivations for redeveloping equitably. More specifically, inhabitants of the urban center are the members of the service class needed to support the infrastructure of reurbanization. Cities can engage in equitable, place-based policymaking and invest deeply in majority-minority neighborhoods by: 1) passing enabling legislation for democratically organized enterprises, including LECs; 2) engaging in tax reform that benefits these entities; and 3) directing public funds towards projects that will increase and improve the stock of affordable housing, including in majority-minority communities.

Some progressive local governments have already begun to experiment with innovative models of stemming displacement and increasing the stock of quality and affordable housing available to economically subordinated Black constituents. In Houston, Texas, for example, Mayor Sylvester Turner has set about creating a community land trust²⁰² with the aim of making homeownership throughout the city more affordable.²⁰³ The proposed pilot program, Complete Communities, is meant to direct investment to five neighborhoods that have historically been underserved, including the city's historically African American Third Ward.²⁰⁴

Furthermore, Complete Communities is not happening in a vacuum. It is a key part of the city's response to persistent fair housing lawsuits directed at it by the federal government and concerns from housing advocates that Houston will not spend recovery money in line with fair

202. Leah Binkovitz, RICE KINDER INST. FOR URBAN RESEARCH, *In Houston, A Radical Approach to Affordable Housing* (June 6, 2018), <https://kinder.rice.edu/2018/06/06/houston-radical-approach-affordable-housing> (“Across the country there are more than 220 land trusts. They vary in size and location but tend toward the coasts. There are urban land trusts and rural land trusts. The movement has its roots in the Civil Rights era, Lowe explained, when it offered a particular promise to [B]lack Americans who saw in them the potential to mitigate the unequal structures and policies that kept them from participating in society in the same way as [W]hite Americans. Homeownership was just one of the avenues to wealth creation and neighborhood stabilization that many [B]lack families were excluded from and in the rural South, land trusts, like New Communities Inc. in Georgia, also offered a route to stability as a way out of sharecropping.”).

203. Florian Martin, *Mayor Turner: Houston Wants to Build ‘Thousands’ of Affordable Homes*, HOUS. PUB. MEDIA (June 26, 2018), <https://www.houstonpublicmedia.org/articles/news/2018/06/26/292769/mayor-turner-houston-wants-to-build-thousands-of-affordable-homes/>.

204. Rebecca Elliott, *Few Details, No New Money in Mayor's Complete Communities Plan*, HOUS. CHRON. (Apr. 17, 2017), https://www.houstonchronicle.com/news/politics/texas/article/Few-details-no-new-money-in-mayor-s-Complete-11079302.php?utm_campaign=chron&utm_source=article&utm_medium=https%3A%2F%2Fwww.chron.com%2Fnews%2Fhouston-texas%2Fhouston%2Farticle%2FTurner-looking-to-private-sector-for-Complete-13192347.php.

housing goals.²⁰⁵ No new funding was acquired at the time of the pilot's launch.²⁰⁶ Instead, the mayor has promised "60 percent of the city's federal housing funds as well as 60 percent of the housing funds from local tax increment reinvestment zones would be directed toward the five neighborhoods."²⁰⁷ Importantly, with respect to the Third Ward, Houston's plan anticipates the city playing a "supportive" role and the community organizing itself to lead the contemplated plans for affordable housing, jobs, and education contemplated by the pilot.²⁰⁸

Another model might include a city levying taxes directly on the highest-grossing employers to fund the building of affordable housing. On May 14, 2018, Seattle's city council unanimously passed an "ambitious" tax on the city's lead employers, called the "head tax" or the "Amazon tax," to fund affordable housing development and fight homelessness.²⁰⁹ As passed, each company with a gross of at least \$10 million would have been required to pay \$275 per employee.²¹⁰ The tax would have affected 3 percent of the businesses in the city.²¹¹ Retail giant Amazon, for example, has 45,000 employees in Seattle, and would have to pay \$10 million each year.²¹² Seattle has the third largest homeless population in the country, behind only Los Angeles and New York.²¹³ There are racial justice implications for the Seattle council's plan. Black people are 6.2 percent of Seattle's overall population, but 29.2 percent of its

205. Leah Binkovitz, RICE KINDER INST. FOR URBAN RESEARCH, *After Months of Meetings, the Mayor's Pilot Program Has Produced a Set of Draft Plans for the Five Neighborhoods* (May 10, 2018), <https://kinder.rice.edu/2018/05/09/complete-communities-draft-plans-await-review-approval>.

206. *Id.*

207. *Id.*

208. *Id.* The Third Ward community has requested to lead this effort: "Third Ward's Emancipation Economic Development Council has been mobilizing around the idea that, in the face of gentrification, the neighborhood needs its own community land trust to ensure residents at risk of displacement can stay in their neighborhood." Leah Binkovitz, *How Houston's Third Ward is Fighting Gentrification*, HOUS. CHRON. (June 12, 2018), <https://www.houstonchronicle.com/local/gray-matters/article/houston-third-ward-gentrification-community-trust-12972879.php>.

209. Daniel Beekman & Matt Day, *Seattle City Council Votes 9-0 for Scaled-Down Head Tax on Large Employers*, SEATTLE TIMES (May 15, 2018, 2:58 PM), <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-votes-9-0-for-scaled-down-head-tax-on-large-employers/>.

210. Initially, the council proposed a \$500 tax, per capita. *Id.*

211. *Id.*

212. Kori Hale, *Amazon's Escobar Approach to Local Government Tax Rulings*, FORBES (June 22, 2018, 9:07 AM), <https://www.forbes.com/sites/korihale/2018/06/22/amazons-escobar-approach-to-local-government-tax-rulings/#5cc45a7c4c99>.

213. *Id.*

homeless population.²¹⁴ Ultimately, the “head tax” was designed to generate \$47 million over five years for “publicly owned and permanently affordable housing.”²¹⁵ In an unfortunate turn, and under substantial pressure from Amazon, on June 12, 2018 the council repealed the tax just one month after its passage.²¹⁶

Knitting private development together with job creation may present still a third model. In Washington, D.C., the “First Source Hiring Law” was enacted in 1984 to “ensure that city residents are given priority for new jobs created by municipal financing and development programs.”²¹⁷ First Source requires the mayor to include for every government-assisted project totaling between \$300,000 and \$5,000,000, a provision that at least 51 percent of the new employees hired be District residents.²¹⁸ While not new, the “first source law” is getting renewed attention in response to the rapid reurbanization taking place in the city, particularly in the construction industry.²¹⁹ In 2018, the city council en-

214. *Amazon Evades Taxes Meant to Help the Homeless*, CULTUREBANX (June 19, 2018), <https://www.culturebanx.com/cbx-weekly-24/2018/6/18/vrmej97sdghuqsdx3bj9qc6ojt4dk>.

215. Jimmy Tobias, *Lessons from the Death of Seattle’s ‘Amazon’ Tax*, THE NATION (June 22, 2018), <https://www.thenation.com/article/lessons-death-seattles-amazon-tax/>.

216. Daniel Beekman, *About-Face: Seattle City Council Repeals Head Tax Amid Pressure from Businesses, Referendum Threat*, SEATTLE TIMES (June 23, 2018, 3:44 PM), <https://www.seattletimes.com/seattle-news/politics/about-face-seattle-city-council-repeals-head-tax-amid-pressure-from-big-businesses/>.

217. Press Release, Dep’t of Emp. Servs., The District of Columbia Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011, https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/First%20source%20program%20law.pdf (last visited July 6, 2018). See also Fact Sheet, Dep’t of Emp. Servs., First Source Program, https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/First%20source%20program%20info_factsheet.pdf (last visited July 6, 2018).

218. D.C. Code § 2-219.03(e)(1)(A) (2012).

219. See Meredith Roaten, *Officials Ask Why First Source is Having Trouble Getting D.C. Residents into Jobs*, STREET SENSE MEDIA (Aug. 14, 2018), https://www.streetsensemedia.org/article/dc-jobs-hiring-audit-first-source-2018-employment-residents/#.W_VnoJNKiqA. In 2014, then-Chair of the Committee on Housing and Workforce Development former Councilmember Michael Brown, authored a report arguing the rationale for significant improvements to the program: “Labor market data shows that there are over 700,000 jobs in the District and yet approximately 72 [percent] of those jobs are held by people living outside the city’s borders. The District’s Congressionally imposed ban on taxing any of the income that leaves the city means that the District is subsidizing surrounding jurisdictions to the tune of \$1 billion to \$2 billion a year in lost revenue. The District’s sustained rate of high unemployment, the sharp increase in the demand for social services, and the inability to tax income at the source, puts the city in a unique situation that makes local hiring critical to the overarching health of the jurisdiction.” D.C. COUNCIL, COMM. ON HOUS. & WORKFORCE DEV., COMM. REP., B19-50 THE “WORKFORCE INTERMEDIARY ESTABLISHMENT AND REFORM OF FIRST SOURCE

deavored to strengthen the “first source” program calling for large-scale improvements to its delivery.²²⁰

The efforts these three cities are making are important, innovative first steps, and other cities might consider taking up such projects. Whether any of these projects could have long-lasting impact on the quality of life for residents in majority-minority communities remains to be seen. However, there are more mature examples that should give us hope. In Austin, for example, the Guadalupe Community Land Trust creates affordable housing and works with residents with “long-standing ties to East Austin” whose incomes are at or below 80 percent of the area median income to become homebuyers since 1984.²²¹

Some Black communities and their advocates may be skeptical of working with the state, thinking it is too oppressive and wrapped up with capitalism to be a genuine partner.²²² This skepticism is understandable.²²³ It is the state after all that has abandoned its lower classes, especially economically subordinated Blacks, time and again, making the current “reclamation of the commons” necessary in the first place.²²⁴ For example, the historical troubles with implementation surrounding D.C.’s “First Source” law and the swift and fierce attacks on Seattle’s “head tax” suggest the road ahead will be long and fraught. Ultimately, these are simply three examples among many possibilities. Other models should be explored based on the particular community and context.

CONCLUSION

In his film *Remigration*, Oscar-winning director Barry Jenkins, tells a dystopian tale of San Francisco sometime in the not-so far off future where hyper-gentrification has forced all middle and lower income workers, mostly racial minorities, inland.²²⁵ In one scene, Baldwin’s “*Take*

AMENDMENT ACT OF 2011,” 18th Period, at 3 (2011), <http://lims.dccouncil.us/Download/2472/B19-0050-COMMITTEEREPORT.pdf>.

220. Roaten, *supra* note 219.

221. Binkovitz, *supra* note 203. Families buy the homes, at a price well below market value, and lease the land itself from the community land trust. That way, the homeowners pay taxes just on the house, not the property. Between 1984 and 2018, the land trust grew from seven to sixty homes. *Id.*

222. See Massimo De Angelis, *Reflections on Alternatives, Commons and Communities*, 6 THE COMMONER 1, 7 (2003).

223. DEREK WALL, THE COMMONS IN HISTORY: CULTURE, CONFLICT, AND ECOLOGY 125 (2014) (explaining that commons cannot be made by the government because the commons have to begin with the people).

224. HURON, *supra* note 175, at 71.

225. REMIGRATION (2011).

This Hammer” hauntingly plays on the television.²²⁶ Hearing Baldwin speak about housing in San Francisco for Blacks pre-Fair Housing Act in the “future,” one cannot help but reflect on how little has changed in the post-FHA era. That was no doubt Jenkins’ point.

Blacks, even in reurbanized liberal cities, especially the economically subordinated, continue to be housed in majority-minority neighborhoods where conditions and opportunity are lacking.²²⁷ This motif is largely either unchanged or worsened by the expansion of neoliberal gentrification. Neither the Fair Housing Act nor mobility programs have significantly altered this landscape.²²⁸

Moreover, the costs to communities of color of the continued push for mobilization, including the diminishment of community ties in their historic neighborhoods and the risk of personal safety in their new neighborhoods, may be well greater than their desire to pay. The residents of Black communities recognize the value in their space and are accelerating efforts to organize for ownership to stem the tide of displacement.²²⁹

Fair housing advocates for these communities would be wise to take the lead for their clients by supporting organizing efforts. Advocates could lobby local governments to use the capital gained through reurbanization to improve the housing of economically subordinated Blacks already in place. More specifically, cities could invest in majority-Black communities instead of disbanding or further isolating them. Possible vehicles for this support could be the limited equity cooperatives, community land trusts, and innovative taxation models that improve public housing and job creation through development. Fifty years of experience with the Fair Housing Act tells us that these options may offer better opportunities for affordable and equitable housing for economically subordinated Blacks living in neoliberal cities than amending the Fair Housing Act to cover additional protected classes.

226. *Id.*

227. See Parts II.A. and II.B., *supra*.

228. *Id.*

229. See Parts III.A. and III.B., *supra*.