

3-1-2008

Structural Racism: Building upon the Insights of John Calmore

John A. Powell

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

Recommended Citation

John A. Powell, *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791 (2008).
Available at: <http://scholarship.law.unc.edu/nclr/vol86/iss3/8>

This Comments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

STRUCTURAL RACISM: BUILDING UPON THE INSIGHTS OF JOHN CALMORE*

JOHN A. POWELL**

This Article builds upon the insights of Professor Calmore in fashioning a structural model for conceptualizing racism in its contemporary form. This model extends beyond our commonly understood, traditional model of racism as either a product of individual intentional racism or formally race-neutral policies and practices that have the effect of disadvantaging certain racial or ethnic groups. Structural racism or racialization emphasizes the interaction of multiple institutions in an ongoing process of producing racialized outcomes. Research in the field of dynamic and complex systems theory teaches that the structures matter. The structure of a system gives rise to its behavior. A systems approach helps illuminate the ways in which individual and institutional behavior interact across domains and over time to produce unintended consequences with clear racialized effects. Research in cognitive psychology demonstrates how subconscious attitudes can produce discriminatory decisions without conscious awareness. The individualistic anti-discrimination approach to addressing racism will have great difficulty interrupting these processes.

The racial and economic stratification of our urban metropolises is a product of federal subsidies a half-century ago and early housing policy decisions, as well as contemporary land use policies that encourage large lot development and low-income housing policies that concentrate poor renters into struggling pockets of poverty and isolation. The case of Thompson v. U.S. Department of Housing and Urban Development provides an instructive example of how a structural racism framework can inform legal advocacy efforts to reverse these trends. Remedying racial isolation and promoting access to opportunity requires an approach that is goal-driven and adaptive to the dynamic nature of the housing market. An "opportunity index" composed of variables that correlate to

* Copyright © 2008 by john a. powell.

** john a. powell is the Williams Chair in Civil Rights and Civil Liberties at the Moritz College of Law at The Ohio State University. He is also the Executive Director of the Kirwan Institute for the Study of Race and Ethnicity at The Ohio State University. The author does not capitalize his name.

opportunity can be utilized by institutional actors to guide their efforts.

By adding a structural lens to previous individual and institutional analyses of racism, we arrive at a more accurate diagnostic tool for the social ills that develop along racial lines. A structural racism lens will help us identify macro-level dynamics that have micro-level consequences for all American citizens and the policy areas that we can tap to rebuild our failing structures.

INTRODUCTION	792
I. UNPACKING STRUCTURAL RACISM	794
A. <i>Traditional Approaches to Thinking About Racism</i>	794
B. <i>The Structural Racism Framework</i>	795
II. THE STRUCTURAL EFFECTS OF SEGREGATION AND RACIAL ISOLATION.....	800
III. APPLYING THE STRUCTURAL RACISM FRAMEWORK IN PRACTICE	807
IV. RACIALIZED SPACE AND IDENTITY FORMATION	811
CONCLUSION.....	815

INTRODUCTION

Writing in 1998, John Calmore described both the deeply embedded role of racism in American society and the incommensurable definition maintained by it: “[R]acism operates so effectively that we seldom distinguish serious racist harms from a variety of other harms that categorically run from ‘bad luck’ to ‘natural catastrophes.’”¹ Seven years later, Hurricane Katrina tragically illustrated this point. Americans failed to acknowledge the fact that disproportionate numbers of African Americans lived in neighborhoods in New Orleans that were below sea level.² If some highlighted the fact that African Americans made up 98% of the Lower Ninth Ward and experienced high poverty rates,³ they said

1. John O. Calmore, *Race/ism Lost and Found: The Fair Housing Act at Thirty*, 52 U. MIAMI L. REV. 1067, 1073 (1998).

2. THE BROOKINGS INSTITUTION, NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE 16–17, 20 (2005), available at http://www.brookings.edu/~media/Files/rc/reports/2005/10metropolitanpolicy_fixauthornam/20051012_NewOrleans.pdf.

3. See GREATER NEW ORLEANS NONPROFIT KNOWLEDGE WORKS, GREATER NEW ORLEANS COMMUNITY DATA CENTER, LOWER NINTH WARD NEIGHBORHOOD: INCOME & POVERTY (2006), <http://www.gnocdc.org/orleans/8/22/income.html> (showing that 36.4% of people in the Lower Ninth Ward lived in poverty).

very little about why this racialized space came into being and how it contributed to the crisis of Katrina.⁴

This tribute issue honors the life and work of Professor John Calmore. As we pause to reflect upon his writing, thinking, and advocacy, we arrive at a vista within which race remains a central organizing theme of American society, but in which our understanding of racism is inadequate to the task of addressing it. The older notions of individual and institutional racism, while still relevant, cannot capture the important structural dynamics that shape the lives of people of color today. Building upon Professor Calmore's insights, I advance a structural model for conceptualizing racism in its advanced, contemporary form that will help us to realize both an economically and racially just society.

As Professor Calmore recognized, racism exists not simply in individuals, but "[in] our societal organization and cultural understandings."⁵ At the level of societal organization, the structural model helps us analyze how housing, education, employment, transportation, health care, and other systems interact to produce racialized outcomes. Such a model allows us to move beyond a narrow merit-based, individualized understanding of society to show how all groups are interconnected and how structures shape life chances. At the level of cultural understanding, the structural model shows how the structures we create, inhabit, and maintain in turn recreate us by shaping identity and imparting social meaning. Chief among the processes in a structural model that connect institutions to identity formation is the relationship between racial identity and geography, what Professor Calmore called "the racialization of space."⁶ Residential location is assumed to be an "index of the attitudes, values, behavioral inclinations and social norms of the kinds of people" living there.⁷ Undisturbed, these structures reproduce and naturalize these social meanings. The transformation of these structures would transform our internal and external meanings.

Professor Calmore wrote that he feared that racism was being "elided from dominant discussions about social justice and even from various discussions of race itself."⁸ A structural analysis identifies the ways in

4. GREATER NEW ORLEANS NONPROFIT KNOWLEDGE WORKS, GREATER NEW ORLEANS COMMUNITY DATA CENTER, LOWER NINTH WARD NEIGHBORHOOD: PEOPLE & HOUSEHOLD CHARACTERISTICS (2006), <http://www.gnocdc.org/orleans/8/22/people.html>.

5. Calmore, *supra* note 1, at 1068.

6. 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, 1235 (1995).

7. *Id.* at 1236 (quoting Susan J. Smith, *Residential Segregation and the Politics of Racialization*, in RACISM, THE CITY AND THE STATE 128, 133 (Malcolm Cross & Michael Keith eds., 1993)).

8. Calmore, *supra* note 1, at 1074.

which racism is still active on multiple levels—individual, institutional, and interinstitutional.

I. UNPACKING STRUCTURAL RACISM

A. *Traditional Approaches to Thinking About Racism*

Our traditional account of racism focuses on individual instances of racial discrimination.⁹ Under this model, racism is the prejudiced belief that motivates a particular bad actor to discriminate against a particular victim.¹⁰ It is the intentional behavior of the racist actor, motivated, at least in part, by racist beliefs, that causes the racial harm. The focus on the motivation of the actor in our understanding of racism draws particular attention to the moral character of that actor.

In the aftermath of Hurricane Katrina, an event that disproportionately affected the poor people of color forced into vulnerable coastal areas by years of neglectful policy, the question was raised if President Bush was a racist.¹¹ The assumption was that if this question could be answered, then we could know whether the Administration's weak response to the hurricane was racist or not. What this question ignores are the ways that our patterns of urban disinvestment and residential segregation produced disproportionately vulnerable communities. The individual framing of the question of racism misdirected our attention. It does not account for the ways in which policies produce foreseeable, even if unintended, racial harms. For example, the middle-class-oriented evacuation plan, which

9. See Howard Winant, *Racism Today: Continuity and Change in the Post-Civil Rights Era*, 21 ETHNIC & RACIAL STUD. 755, 757 (1998).

10. See WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1870 (3d ed. 1993) (defining racism as "the assumption that psychocultural traits and capacities are determined by biological race and that races differ decisively from one another which is usually coupled with a belief in the inherent superiority of a particular race and its right to domination over others"); see also *Washington v. Davis*, 426 U.S. 229, 242 (1976) (holding a racially discriminatory purpose to surpass the importance of merely discriminatory effects of a statute); Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 466 (1997) (defining the "idealist view" of racism as involving beliefs about certain groups that lead to discriminatory practices); Howard Winant, *Race and Race Theory*, 26 ANN. REV. SOC. 169, 178–79 (2000) (explaining prevalent, but currently outdated, racism theory as depending primarily on individual prejudiced beliefs and attitudes).

11. See Meghan Clyne, *President Bush Is 'Our Bull Connor,' Harlem's Rep. Charles Rangel Claims*, N.Y. SUN, Sept. 23, 2005, <http://www.nysun.com/article/20495>; *A Concert for Hurricane Relief: Kanye West* (NBC television broadcast Sept. 2, 2005), available at <http://www.youtube.com/watch?v=9pVTrnxCZaQ> ("George Bush doesn't care about black people."). But see Interview by Brian Williams with President George W. Bush, in Washington, D.C. (Dec. 12, 2005), available at <http://www.msnbc.msn.com/id/10439994/page/2/> ("[Y]ou can call me anything you want—but do not call me a racist.").

assumed car ownership, did not account for the fact that many of the poor Black residents of New Orleans did not own cars.¹²

Racism need not be either intentional or individualist. Institutional practices and cultural patterns can perpetuate racial inequity without relying on racist actors. For example, the Supreme Court recognized that discrimination can become institutionalized through racially neutral practices in *Griggs v. Duke Power Co.*¹³ As the Court explained, “practices, procedures, or tests neutral on their face, *and even neutral in terms of intent*, cannot be maintained if they operate to ‘freeze’ the status quo of prior discriminatory employment practices.”¹⁴ The institutional racism framework reflects a broader recognition of the forms through which racialized power is deployed, dispersed, and entrenched.¹⁵ However, while illustrating the ways in which racism is often non-individualist and non-intentionalist, this framework focuses too heavily on intra-institutional dynamics, and thus fails to account for the ways in which the joint operations of social institutions produce critical racialized outcomes.¹⁶

B. *The Structural Racism Framework*¹⁷

The structural racism approach can appear to be both simple and complex. One of the reasons that it appears complex is because we are often trying to translate it from one method of thinking and knowing the world around us into another. It is the translation that is complicated.¹⁸ If

12. THE BROOKINGS INSTITUTION, *supra* note 2, at 13, 19.

13. 401 U.S. 424, 436 (1971).

14. *Id.* at 430 (emphasis added).

15. See Andrew Grant-Thomas & John A. Powell, *Structural Racism and Color Lines in the United States*, in 21ST CENTURY COLOR LINES: EXPLORING THE FRONTIERS OF AMERICA'S MULTICULTURAL PRESENT AND FUTURE (A. Grant-Thomas & G. Orfield eds., forthcoming 2008) (manuscript at 4, on file with the North Carolina Law Review).

16. *Id.*

17. Although I use the term “structural racism,” “structured racialization” may be a more apt descriptor. Racialization connotes a fluid process by which racial categories are created, contested, and given meaning. Before race can have meaning, there first must be racial categories. The categories must be given a meaning, and then there must be a way of sorting within these categories. Individuals, by themselves, do not create these categories or give them broadly understood social meaning. This is a collective, historical process. See generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1980S*, 66–68 (1st ed. 1986) (describing racial formation as a function of the interaction between micro- and macro-levels of social relations). When this process is ubiquitous enough, it will structure society and impact people, institutional arrangements, and collective meaning. See *id.* at 25–26 & nn.1–5.

18. The paradigm shift is as pronounced as the shift from Newtonian mechanics to quantum mechanics. Articulating quantum physics from a Newtonian perspective is impossible. Elise Porter, Note, *The Player and the Dice: Physics and Critical Legal Theory*, 52 OHIO ST. L.J. 1571, 1580 (1991) (“An important consequence of the uncertainty principle is the inability to describe sub-atomic particles using conventional Newtonian language.”).

we shift to a systems approach, some of the apparent complexity goes away.¹⁹ Systems theory does not bring new information so much as it imparts a new way of knowing.²⁰ For example, using a systems approach, the measurement and meaning of causation changes.

Systems theory is a model that focuses on relationships and processes and not on singular, linear causation.²¹ Experiments in causal attribution show that people tend to assume a single or primary cause for a given effect.²² As a consequence, we tend to ignore many of the elements of dynamic complexity such as accumulations, time delays, and other nonlinearities. In a complex systems model, actions and inactions have multiple effects, and the delayed or distant consequences are often different from the more proximate effects.²³

From a structural perspective, causation is understood as cumulative within and across domains. It is a product of reciprocal and mutual interactions within and between institutions. Institutional racism shifts our focus from the motives of individual people to practices and procedures within an institution. Structural racism shifts our attention from the single, intra-institutional setting to inter-institutional arrangements and interactions. Efforts to identify causation at a particular moment of decision within a specific domain understate the cumulative impact of discrimination.²⁴ A labor economist's analysis of labor market discrimination controlling for background characteristics and educational preparation of workers ignores prior discrimination in education, housing, and health markets.²⁵ Yet, racialized outcomes may be the product of cumulative effects of discrimination "over time and across domains."²⁶ For example, housing discrimination constrains many Black and Hispanic youth to attend high-poverty schools.²⁷ Children in these schools are much less likely than their affluent peers to attend college, and are more likely to

19. See generally John D. Sterman, *Learning In and About Complex Systems*, 10 SYS. DYNAMICS REV. 291 (1994) (summarizing the requirements for successful approaches to learning about complex dynamic systems).

20. *Id.* at 292-97.

21. *Id.*

22. *Id.* at 308.

23. *Id.*

24. See Rebecca M. Blank, *Tracing the Economic Impact of Cumulative Discrimination*, AM. ECON. REV., May 2005, at 99, 100.

25. *Id.*

26. *Id.* at 99; see also George C. Galster, *A Cumulative Causation Model of the Underclass: Implications for Urban Economic Development Policy*, in METROPOLIS IN BLACK AND WHITE: PLACE, POWER AND POLARIZATION 190, 190-91 (G.C. Galster & Edward W. Hill eds., 1992).

27. LISA ROBINSON & ANDREW GRANT-THOMAS, THE CIVIL RIGHTS PROJECT AT HARVARD UNIVERSITY, RACE, PLACE AND HOME: A CIVIL RIGHTS AND METROPOLITAN OPPORTUNITY AGENDA 31 (2004), http://civilrightsproject.ucla.edu/research/metro/Race_Place_Home.pdf.

drop out of school or complete their education in a correctional facility.²⁸ All three outcomes reduce the labor market options these young adults are likely to have, with grave implications for their chances to secure health and retirement benefits.²⁹ It follows that in order to fully understand why so many elderly African Americans and Hispanics live at or below the poverty line, we not only must retrace their lifelong relationship to the labor market, but also their relationship to the housing market and to the educational and criminal justice systems.

Unfortunately, studies that focus on a single decision point are much more common than studies that try to measure the cumulative effects of many decision points on labor market outcomes.³⁰ The recognition that racialized outcomes are a product of cumulative causation is not new. Gunnar Myrdal understood the "principle of cumulative causation" as a "vicious circle" due to the close interrelation of housing, employment, health, civil rights, and political power.³¹ It has only been in the last forty years that the research of systems theoreticians has given us the science to better understand that insight. The operation of the vicious circle is easy to see in terms of school segregation. Today, segregation in our schools results in lower educational outcomes for urban school districts, which in turn promotes the flight of affluent families from urban areas, exacerbating racial segregation in our schools.³²

Systems approaches are already in place in the environmental sciences, business schools, medicine, and many other disciplines.³³ As difficult as this approach is for some jurists, there is a common sense appeal. Consider the call for collective action in response to climate change.³⁴ Those who make this call recognize that the cumulative and mutual actions of many actors and institutions can produce a serious harm, yet they do not require a showing of intent to cause global warming before responding. The application of a systems theory model changes our

28. Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, NEW DIRECTIONS FOR YOUTH DEV.: THEORY PRAC. RES., Fall 2003, at 9, 10–11.

29. See DROPOUTS IN AMERICA: CONFRONTING THE GRADUATION RATE CRISIS I (Gary Orfield ed., 2004).

30. Blank, *supra* note 24, at 99–100 (characterizing "[c]urrent social science efforts to measure discrimination" as "decision-point" rather than cumulative analyses).

31. I GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 75–78 (1944).

32. Erica Frankenberg, *The Impact of School Segregation on Residential Housing Patterns*, in SCHOOL RESEGREGATION: MUST THE SOUTH TURN BACK? 164, 179 (John Charles Boger & Gary Orfield eds., 2005).

33. Sterman, *supra* note 19, at 292.

34. See generally Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 11, 1997, 37 I.L.M. 22, available at <http://unfccc.int/resource/docs/convkp/kpeng.pdf> (illustrating the collective response to climate change).

analysis of responsibility and remedy. It is not surprising that when a court looks at a hostile work environment, it looks at a process and set of relations instead of a single cause. A systems approach changes the focus from assigning culpability to solving a problem and redressing a harm. Parties may be called upon to address harms they may not have directly caused or intended to cause. In many cases, these harms were predictable or foreseeable, even if they were unforeseen in fact.

In the context of institutions, one institution might be called upon to address something that was in part caused in another domain. Courts sometimes adopt an inter-institutional perspective. The Supreme Court used school segregation to strike down a literacy test requirement for voter registration in *Gaston County v. United States*.³⁵ North Carolina sought to reinstate a literacy test as a qualification for voting.³⁶ The issue was whether the literacy test itself was a deprivation of the franchise under the Voting Rights Act of 1965.³⁷ Justice Harlan applied the Voting Rights Act test suspension provision because a segregated and unequal public school system "deprived its black residents of equal educational opportunities, which in turn deprived them of an equal chance to pass the literacy test."³⁸ Thus, an apparently impartial literacy test was found to be a violation of the Voting Rights Act when one examined the institutional relationship between segregated education and voting restrictions.

A central tenet of dynamic systems theory is that the structure of a system gives rise to its behavior.³⁹ From a structural racism perspective, structures matter. However, studies have shown that people have a strong tendency to attribute behavior to dispositional factors, a phenomenon known as fundamental attribution error.⁴⁰ Our dominant models of racism suffer from this error.⁴¹ A structural model of racism hopes to overcome this deficiency by emphasizing the structural relationships that produce racialized outcomes.

The architecture of modern discrimination law induces lawyers to fit their client's story into the narratives available in existing jurisprudence. Because of the individualistic framing of the adversarial context and focus on intent, discrimination litigation requires a villain.⁴² Although social

35. 395 U.S. 285 (1969).

36. *Id.* at 287.

37. *Id.* at 293.

38. *Id.* at 291.

39. Sterman, *supra* note 19, at 308.

40. *Id.*

41. For a discussion of situational factors affecting racism, see *infra* Part II.

42. In 1976, the Supreme Court, reviewing an Equal Protection Clause claim, limited the scope of the Fourteenth Amendment's protection against discrimination by announcing the "intent doctrine." *Washington v. Davis*, 426 U.S. 229, 230 (1976). Under this doctrine, a

psychologists of the mid-twentieth century believed discrimination resulted from the discriminator's conscious motivation, modern social science has greatly expanded our understanding of discrimination and how it infiltrates interpersonal, intergroup, and structural relationships.⁴³

In recent years, social science research has shown that we all have subconscious or implicit biases—beliefs, attitudes, and expectations that are based on stereotypes about the race, gender, age, or groups to which an individual belongs. Though most of us are completely unaware of their influence on our subconscious, these biases affect how we perceive, interpret, and understand others' actions.⁴⁴ Because these attitudes—unrecognized on the conscious level but powerful at the subconscious level—influence choices and decisions, individual and institutional discrimination can occur even in the absence of blatant prejudice, ill will, or animus. To demonstrate and analyze this process, psychologists developed the "implicit association test," which measures unconscious attitudes toward various groups of people by tracking the response time required to match up pleasant and unpleasant words such as "love," "kindness," and "trust" and "fear," "hatred," and "dishonor," respectively, with images of individuals who belong to "in-groups" and "out-groups"—Caucasians juxtaposed against African Americans or males juxtaposed against females, for example.⁴⁵ More than two-thirds of test takers register bias toward stigmatized groups.⁴⁶

Often the response to conscious attitudes or beliefs or subconscious schemas or frameworks that cause bias is to ask that people are treated as individuals rather than as members of a particular race or by the color of

plaintiff who alleges discrimination in violation of the Equal Protection Clause must prove that the discriminating actor or agency "selected or reaffirmed a particular course of action at least in part 'because of,' not merely 'in spite of,' its adverse effects upon an identifiable [racial] group." *Personnel Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

43. Eric K. Yamamoto et al., *Redefining Discrimination: Using Social Cognition Theory to Challenge the Faulty Assumptions of the "Intent Doctrine" in Anti-Discrimination Law 2* (2004) (unpublished manuscript, on file with the North Carolina Law Review); see also Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 *STAN. L. REV.* 317, 323 (1987).

44. Because of these implicit biases, identical actions or opinions of two people of different social groups often are interpreted differently, depending upon the group to which each belongs. See also Jerry Kang, *Trojan Horses of Race*, 118 *HARV. L. REV.* 1489, 1506–14 (2005) (discussing various developments in measuring implicit biases).

45. The Implicit Association Test, or "IAT," is a virtual research project hosted at Project Implicit, <https://implicit.harvard.edu/implicit> (last visited Feb. 26, 2008). General findings are discussed at General Information, <http://www.projectimplicit.net/generalinfo.php> (last visited Feb. 26, 2008). Project Implicit also lists supporting and related research papers at Research Papers, <http://www.projectimplicit.net/articles.php> (last visited Feb. 26, 2008).

46. Anthony Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 *CAL. L. REV.* 945, 957–58 (2006).

their skin. But this solution is not available to us. Research in cognitive psychology demonstrates that subconscious stereotyping is a normal byproduct of ordinary cognitive functioning and a necessary part of human survival.⁴⁷

Unequal treatment that results from cumulative discrimination, implicit bias, and interactive institutional behavior is not remediable through a simple individualistic discrimination model. Addressing these patterns of exclusion requires a different resolution process. The traditional non-discrimination rule enforcement model may actually be counterproductive.⁴⁸ First, it encourages lawyers and organizations to see issues as potential legal claims that have to be fit uncomfortably into the legal narratives available under our current discrimination law. Second, general non-discrimination rules will be ineffective at redressing racial hierarchies. Externally imposed rules lack the connection to day-to-day practices and local context that is necessary to identify and correct more subtle cumulative and unconscious discrimination. Third, fears of liability may induce firms to adopt strategies that reduce the short-term risk of legal exposure rather than strategies that address the underlying problem.⁴⁹ These short-term strategies can undermine attempts to intervene in the processes that produce racialized outcomes.

II. THE STRUCTURAL EFFECTS OF SEGREGATION AND RACIAL ISOLATION

When we take a broad view of many U.S. metropolitan regions—Cleveland, Los Angeles, Detroit, Baltimore, or New Orleans—we often find a “tale of two cities”⁵⁰ in which racial segregation parallels and reinforces socioeconomic stratification. Some parts of the region are

47. Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1188 (1995) (“Every person, and perhaps even every object that we encounter in the world, is unique, but to treat each as such would be disastrous. Were we to perceive each object *sui generis*, we would rapidly be inundated by an unmanageable complexity that would quickly overwhelm our cognitive processing and storage capabilities. Similarly, if our species were ‘programmed’ to refrain from drawing inferences or taking action until we had complete, situation-specific data about each person or object we encountered, we would have died out long ago. To function at all, we must design strategies for simplifying the perceptual environment and acting on less-than-perfect information. A major way we accomplish both goals is by creating categories.”).

48. Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 475 (2001).

49. *Id.* at 461.

50. CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Richard Maxwell ed., Penguin Books 2000) (1859) (“It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way . . .”).

affluent and largely white, with high-performing schools, new grocery stores with fresh produce, growing employment opportunities, high-quality childcare, state-of-the-art health care facilities, and opportunities for social networking critical to civic engagement and job advancement.⁵¹ The other is largely poor, plagued by high crime environments and confined to racially segregated areas of concentrated poverty.⁵² In these neighborhoods, under-resourced schools struggle to meet the many needs of children in poverty, parents shop at grocery stores with overpriced and low-quality food, and people motivated to work lack access to meaningful, sustainable employment.⁵³

This segregation of families and communities is neither natural nor irreversible. Half a century ago, when federal subsidies for suburban housing and transportation made it economical for middle-class families to leave the city, whites left in large numbers.⁵⁴ Because early housing policy often prohibited integrated neighborhoods through lending restrictions and racially restrictive covenants, it was mostly whites who left and were able to build equity in new neighborhoods.⁵⁵ As the central cities lost significant population, jobs followed. The loss of tax revenue resulted in increased tax rates for municipal services for those left behind, who were least able to shoulder them. Funds for maintenance and repair of existing infrastructure waned as money went to subsidizing further suburban and exurban⁵⁶ development, cutting into farmland and forest.⁵⁷

51. For a full discussion of opportunity segregation, see generally john a. powell, *Opportunity-Based Housing*, 12 J. AFFORDABLE HOUS. & CMTY. DEV. L. 188 (2003).

52. See PAUL A. JARGOWSKY, STUNNING PROGRESS, HIDDEN PROBLEMS: THE DRAMATIC DECLINE OF CONCENTRATED POVERTY IN THE 1990S, at 2 (2003), available at <http://www.brookings.edu/es/urban/publications/jargowskypoverty.pdf> (“[Poor families] often tend to live near other poor people in neighborhoods with high poverty rates.”); see also THE BROOKINGS INSTITUTION, *supra* note 2, at 5–8 (describing the stratification of New Orleans by race and income and the difference in living conditions between Blacks and whites).

53. See THE BROOKINGS INSTITUTION, *supra* note 2, at 5–8.

54. Kevin Fox Gotham, *Racialization and the State: The Housing Act of 1934 and the Creation of the Federal Housing Administration*, 43 SOC. PERSP. 291, 291–317 (2000).

55. See KEVIN FOX GOTHAM, RACE, REAL ESTATE, AND UNEVEN DEVELOPMENT: THE KANSAS CITY EXPERIENCE, 1900–2000, at 57 (2002) (explaining the FHA establishment of a discriminatory framework that “confined Blacks to deteriorating and dilapidated housing in the inner city”); DAVID L. KIRP, JOHN P. DWYER & LARRY A. ROSENTHAL, OUR TOWN: RACE, HOUSING, AND THE SOUL OF SUBURBIA 26 (1995) (explaining that “thousands of racially-segregated neighborhoods were built” through racially discriminatory restrictions and mortgage guarantees); Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1848 (1994).

56. An exurb is “a region lying beyond the suburbs of a city, especially one inhabited principally by wealthy people.” AMERICAN HERITAGE DICTIONARY 630 (4th ed. 2000).

57. john a. powell & Kathleen M. Graham, *Urban Fragmentation as a Barrier to Equal Opportunity*, in RIGHTS AT RISK: EQUALITY IN AN AGE OF TERRORISM 79, 83–84 (D.M. Piché et al. eds., 2002).

Today, suburban land use policies that promote single-family, large-lot development depress the growth of suburban rental housing and limit in-migration by African American and Latino families.⁵⁸ The location of subsidized rental housing often contributes to segregation as well, by clustering affordable housing in economically disadvantaged communities of color.⁵⁹ In addition, continued discrimination in the housing market, such as racial steering by realtors and predatory mortgage lending, limits housing opportunities for people of color.⁶⁰

African Americans remain the most racially segregated population in the nation, as measured by their residential segregation from whites.⁶¹ Despite very modest improvements in recent decades, racial residential segregation remains severe in most metropolitan regions in the United States. As of 2000, the average metropolitan region in the United States had an African American-white “dissimilarity index” of 0.65—meaning that 65% of the metropolitan African American population would have to relocate in order to become fully racially integrated in our metropolitan regions.⁶²

Residential racial segregation has far reaching implications for a variety of “life-changing opportunities such as living-wage employment, high-quality education, and safe, healthy neighborhoods for children.”⁶³ However, disinvestment and concentrated poverty is not limited to the

58. Rolf Pendall, *Local Land Use Regulations and the Chain of Exclusion*, 66 J AM. PLAN. ASS'N 125, 125 (2000).

59. LANCE FREEMAN, THE BROOKINGS INSTITUTION, SITING AFFORDABLE HOUSING: LOCATION AND NEIGHBORHOOD TRENDS OF LOW INCOME HOUSING TAX CREDIT DEVELOPMENTS IN THE 1990S, at 3 (2004), available at http://www.brookings.edu/reports/2004/04metropolitanpolicy_freeman.aspx.

60. Discrimination in Metropolitan Housing Markets: National Results from Phase 1, Phase 2, and Phase 3 of the Housing Discrimination Study (HDS), <http://www.huduser.org/publications/hsgfin/hds.html> (last visited Feb. 22, 2008). For additional support of the interpretation that steering limits housing opportunities, see also John Yinger, *Housing Discrimination Is Still Worth Worrying About*, 9 HOUS. POL'Y DEBATE 893, 902 (1998).

61. JOHN ICELAND ET AL., U.S. CENSUS BUREAU, RACIAL AND ETHNIC RESIDENTIAL SEGREGATION IN THE UNITED STATES: 1980–2000, at 4, 7 (2002), available at http://www.census.gov/hhes/www/housing/eresseg/pdf/paa_paper.pdf.

62. EDWARD L. GLAESER & JACOB L. VIGDOR, THE BROOKINGS INSTITUTION, RACIAL SEGREGATION IN THE 2000 CENSUS: PROMISING NEWS 15 (2001), available at <http://www.brookings.edu/dybdocroot/es/urban/census/glaeser.pdf>.

63. JOHN A. POWELL, JASON REECE, CHRISTY ROGERS & SAMIR GAMBHIR, KIRWIN INST. FOR THE STUDY OF RACE & ETHNICITY, COMMUNITIES OF OPPORTUNITY: A FRAMEWORK FOR A MORE EQUITABLE AND SUSTAINABLE FUTURE FOR ALL § 1:2 (2007), http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/Comm_of_Opportunity_Jan_2007.pdf. For an example of the correlation between racial segregation and school poverty, see JOHN A. POWELL, REBECCA RENO & JASON REECE, KIRWIN INST. FOR THE STUDY OF RACE & ETHNICITY, ECONOMIC SEGREGATION: CHALLENGING OHIO'S PUBLIC SCHOOLS 6 (2005), <http://4909e99d35cada63e7f757471b7243be73e53e14.gripelements.com/publications/FinalEconSegregationReport.pdf>.

central city; distressing symptoms of such abandonment, such as property vacancy and foreclosure, have spread to mature inner suburbs.⁶⁴ This ongoing social, racial, and economic segregation produces depressed and uneven educational and economic outcomes, which hinder the ability of an entire region to become a vibrant, sustainable residential and employment magnet.

This opportunity isolation and economic sorting of people in our metropolitan areas may be getting worse. Many inner-suburban communities, particularly in the mature Northeast and Midwest regions, are experiencing the “urban problems” of opportunity isolation usually associated with central cities, such as an increase in foreclosure and vacant properties, fiscal distress, population decline, and growing poverty.⁶⁵ Meanwhile, affluent exurban areas are becoming the new magnets for opportunity in our metropolitan regions, attracting jobs, investment, and high-income households.⁶⁶ The result is a continued polarization of neighborhoods in our regions between rich and poor families. Researchers at the Brookings Institution recently found that the proportion of middle-class neighborhoods declined by 30% since 1970, while low-income and high-income neighborhoods grew by 32% and 53%, respectively.⁶⁷

Currently, most affordable housing in our metropolitan regions is disconnected from significant educational, economic, social, and civic opportunities. Federal housing programs and exclusionary land use policies have concentrated affordable housing in segregated, opportunity-poor communities.⁶⁸ For example, in 2000, three-quarters of the nation’s traditional assisted housing units were located in central cities, while just over a third of the nation’s metropolitan population lived in central cities.⁶⁹ More recently built Low-Income Housing Tax Credit (“LIHTC”) developments are clustered in central city locations as well: in 2000, 58%

64. For the rise of poverty in the suburbs, see ALAN BERUBE & ELIZABETH KNEEBONE, THE BROOKINGS INSTITUTION, TWO STEPS BACK: CITY AND SUBURBAN POVERTY TRENDS 1999–2005, at 1 (2006), http://www.brookings.edu/metro/pubs/20061205_citysuburban.pdf.

65. For a discussion of “Rust Belt” challenges, see RADHIKA K. FOX & SARAH TRUEHAFT, POLICYLINK, SHARED PROSPERITY, STRONGER REGIONS: AN AGENDA FOR REBUILDING AMERICA’S OLDER CORE CITIES 9 (2d ed. 2006), available at <http://www.policylink.org/pdfs/CoreCities.pdf>.

66. For a discussion of the “favored quarter,” see Sheryll D. Cashin, *Localism, Self-Interest and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 GEO. L. J. 1985, 2003–15 (2000).

67. JASON C. BOOZA ET AL., THE BROOKINGS INSTITUTION, WHERE DID THEY GO? THE DECLINE OF MIDDLE-INCOME NEIGHBORHOODS IN METROPOLITAN AMERICA 1, 5 (2006), available at http://www.brookings.edu/metro/pubs/20060622_middleclass.pdf.

68. FREEMAN, *supra* note 59, at 3.

69. *Id.* at 5–6.

of all LIHTC units were located in central cities.⁷⁰ This is significant because the LIHTC program is the most prolific subsidized housing program in the nation.⁷¹

This clustering of assisted housing corresponds to a spatial segregation of assisted units from stable neighborhoods. In 2000, while the average metropolitan neighborhood had a 13% poverty rate, neighborhoods with traditional assisted housing had a poverty rate of 29%.⁷² While only 4% of all metropolitan housing units were located in concentrated poverty neighborhoods, more than 11% of assisted housing units were sited in concentrated poverty neighborhoods.⁷³ The average neighborhood with traditional assisted housing had household incomes that were more than 40% lower and home values that were more than 20% lower than the average metropolitan neighborhood.⁷⁴

Fifty years of social science research have demonstrated that racially isolated and economically poor neighborhoods restrict employment options for young people, contribute to poor health, expose children to extremely high rates of crime and violence, and house some of the lowest-performing schools.⁷⁵ A vast research literature documents the ways in which social opportunities, and the advantages they confer, cluster and accumulate spatially.⁷⁶ Neighborhoods powerfully shape residents' access to social, political, and economic opportunities and resources. A number of studies have linked concentrated disadvantage to an increased likelihood of perpetrating and being victimized by violence and crime.⁷⁷ The level of stress experienced in high-poverty, isolated neighborhoods contributes substantially

70. *Id.* at 6.

71. *Id.* at 4.

72. This figure does not include LIHTC units. LIHTC units were on average found in neighborhoods with a 19% poverty rate in 2000. *Id.* at 13.

73. *Id.* at 8.

74. *Id.* at 9.

75. See Christopher Jencks & Susan E. Mayer, *The Social Consequences of Growing Up in a Poor Neighborhood*, in *INNER-CITY POVERTY IN THE UNITED STATES* 171, 173–81 (Laurence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990); Jeanne Brooks-Gunn et al., *Do Neighborhoods Influence Child and Adolescent Development?*, 99 *AM. J. SOC.* 353, 384–85 (1993); Robert D. Dietz, *The Estimation of Neighborhood Effects in the Social Sciences: An Interdisciplinary Approach*, 31 *SOC. SCI. RES.* 539, 555–66 (2002); Yannis M. Ioannides & Linda Datcher Laury, *Job Information Network, Neighborhood Effects, and Inequality*, 42 *J. ECON. LIT.* 1056, 1070–74 (2004); Roberts J. Sampson, Jeffrey D. Morenoff & Thomas Gannon-Rowley, *Assessing "Neighborhood Effects": Social Processes and New Directions in Research*, 28 *ANN. REV. SOC.* 443, 473–74 (2002); Margery Austin Turner & Dolores Acevedo-Garcia, *Why Housing Mobility? The Research Evidence Today*, *POVERTY & RACE* (Poverty & Race Research Action Council, Wash., D.C.), Jan.–Feb. 2005, at 1–2, available at <http://www.prrac.org/newsletters/janfeb2005.pdf>.

76. *Id.*

77. Robert J. Sampson et al., *Neighborhoods and Violent Crime: A Multi-Level Study of Collective Efficacy*, 277 *SCIENCE* 918, 923 (1997).

to this risk. When people face a high level of stress, child abuse, neglect, and family breakups are more likely.⁷⁸

In addition, voluminous literature has examined the “spatial mismatch” between predominantly African American, older urban neighborhoods and the employment opportunities in the suburbs and exurbs.⁷⁹ New research is also emphasizing the importance of access to a diverse social network and workforce intermediaries to overcome the social dimension of the spatial mismatch.⁸⁰

Researchers have also found that the poverty rate of a school influences educational outcomes far more than the poverty rate of an individual; and that impoverished students do better if they live in middle-class neighborhoods and/or attend more affluent schools.⁸¹ Studies also show that students who receive their education in integrated environments fare better than their segregated peers.⁸² For example, a recent analysis of school desegregation in Louisville, Kentucky, found that students of color who attended more integrated schools demonstrated increased academic achievement levels and higher test scores.⁸³ Students of color in economically integrated schools in Raleigh, North Carolina, have experienced dramatic increases in test scores.⁸⁴ In the Minneapolis region, students attending low-poverty schools in the region’s suburbs through “The Choice Is Yours” program have shown increases in educational outcomes on par with their suburban peers.⁸⁵ Attending a desegregated school also translates into higher goals for future

78. See generally U.S. DEP’T OF HEALTH & HUMAN SERVS., YOUTH AND VIOLENCE: A REPORT OF THE SURGEON GENERAL ch. 4 (2001), <http://www.surgeongeneral.gov/library/youthviolence/toc.html>.

79. For example, in Atlanta, Georgia, in 2000, only 11% of metro-area jobs were located within three miles of the central business district (“CBD”), versus the 63% located more than ten miles away from the CBD (and therefore outside the jurisdiction of the central city). In Detroit and Philadelphia, 78% and 60% of jobs, respectively, were more than ten miles away. EDWARD GLAESER ET AL., THE BROOKINGS INSTITUTION, JOB SPRAWL: EMPLOYMENT LOCATION IN U.S. METROPOLITAN AREAS 5 (2001), available at <http://www.brook.edu/es/urban/publications/glaeserjobspawl.pdf>.

80. Karen Chapple, *Overcoming Mismatch: Beyond Dispersal, Mobility, and Development Strategies*, 72 J. AM. PLAN. ASS’N 322, 324 (2006).

81. HARD WORK FOR GOOD SCHOOLS: FACTS NOT FADS IN TITLE I REFORM 130, 137 (Elizabeth H. DeBray & Gary Orfield eds., 2002).

82. MICHAEL KURLAENDER & JOHN T. YUN, HARVARD CIVIL RIGHTS PROJECT, IS DIVERSITY A COMPELLING EDUCATIONAL INTEREST? EVIDENCE FROM METROPOLITAN LOUISVILLE 4 (1999).

83. *Id.* at 7.

84. A. Finder, *As Test Scores Jump, Raleigh Credits Integration by Income*, N.Y. TIMES, Sept. 25, 2005, at A1.

85. MINNESOTA DEPARTMENT OF EDUCATION, MINNESOTA VOLUNTARY PUBLIC SCHOOL CHOICE 2004–2005 EVALUATION BRIEF 11 (2006), available at <http://education.state.mn.us/mde/static/009403.pdf>.

educational attainment, more occupational choices,⁸⁶ and improved social networks.⁸⁷

In the United States, each successively higher education level is associated with higher earning power, and data over the last twenty-five years show that this gap is only widening.⁸⁸ Furthermore, higher levels of educational attainment are associated with greater labor force participation rates and a lower probability of unemployment.⁸⁹ The gap between the employment rates of college versus high school graduates has been widening steadily as well.⁹⁰ Additionally, there is a strong positive relationship between the education level and the health status of an individual: the lower the level of educational attainment, the higher the mortality rate and prevalence of specific diseases such as cancer and heart disease.⁹¹ Residents of poor, segregated neighborhoods experience poorer health outcomes because of increased exposure to the toxic substances that are disproportionately present in their communities, and because of greater barriers to sustaining healthy behaviors, such as limited access to adequate grocery stores.⁹²

Perhaps most importantly for economic development, there are fewer jobs in the “new economy” for students without a college education.⁹³ Because the public education system reflects the economic and racial segregation of neighborhoods, segregated localities offer significantly different levels of educational opportunity. Disparities in educational attainment disadvantage the region’s competitiveness in the new global skill-based economy, where educated labor is one of the primary indicators of an economically healthy region.⁹⁴

86. KURLAENDER, *supra* note 82, at 27.

87. Amy S. Wells, *The “Consequences” of School Desegregation: The Mismatch Between the Research and the Rationale*, 28 HASTINGS CONST. L.Q. 771, 772 (2001).

88. JENNIFER C. DAY & ERIC C. NEWBURGER, U.S. DEP’T OF COMMERCE, *THE BIG PAYOFF: EDUCATIONAL ATTAINMENT AND SYNTHETIC ESTIMATES OF WORK-LIFE EARNINGS 2* (2002), available at <http://www.census.gov/prod/2002pubs/p23-210.pdf>.

89. U.S. CONGRESS JOINT ECON. COMM., *INVESTMENT IN EDUCATION: PRIVATE AND PUBLIC RETURNS 5* (2000), available at <http://www.house.gov/jec/educ.pdf>.

90. *Id.* at 4.

91. Ctr. for the Advancement of Health, *Life Lessons: Studying Education’s Effect on Health*, FACTS OF LIFE, Dec. 2002, at 1, <http://www.cfah.org/factsoflife/vol7no12.cfm>; see also U.S. DEP’T. OF HEALTH & HUMAN SERV., *HEALTHY PEOPLE 2010: UNDERSTANDING AND IMPROVING HEALTH 12* (2d ed. 2000), available at <http://www.healthypeople.gov/Document/pdf/uih/2010uih.pdf> (discussing the association between education level and disease).

92. Turner & Acevedo-Garcia, *supra* note 75, at 1.

93. See BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, *Tomorrow’s Jobs, in OCCUPATIONAL OUTLOOK HANDBOOK 2008–09* (library ed.) 2, 8 (2008), available at <http://www.bls.gov/oco/reprints/ocor001.pdf>.

94. See RICHARD L. FLORIDA, *CITIES AND THE CREATIVE CLASS* 144–45 (2005).

III. APPLYING THE STRUCTURAL RACISM FRAMEWORK IN PRACTICE

Many equitable housing policies effectively connect low-income families to areas of opportunity. Inclusionary zoning mandates the inclusion of affordable housing in larger developments created by private housing developers.⁹⁵ Hundreds of inclusionary zoning programs are in place throughout the nation, with suburban Montgomery County, Maryland, as the most prominent example.⁹⁶ Over a thirty-year span, Montgomery County's inclusionary zoning policies produced over 13,000 affordable housing units.⁹⁷ These mandates counteract the unnatural barriers placed on affordable housing development by more exclusionary housing policies such as large-lot zoning.

In addition to inclusionary zoning, other housing policies can help counteract exclusion in the housing market, including regional fair-share housing policies, equitable use of housing trust fund developments, educating realtors on racial steering, enforcing fair housing laws to stop predatory lending and realtor discrimination, and targeted use of subsidized housing resources and vouchers to areas of opportunity.⁹⁸

Some state-sponsored Low-Income Housing Tax Credit ("LIHTC") programs are adopting criteria which underscore the connection to opportunity for low-income housing developments. Although most states' LIHTC guidelines promote development in higher poverty areas, some states have started revising their site selection criteria to promote more units in lower poverty areas. Several states add incentive scoring "points" for developments in areas of income diversity, population growth, or job opportunities.⁹⁹ Wisconsin recently modified its scoring criteria to

95. For an overview of affordable housing, see generally STUART MECK, REBECCA RETZLAFF & JAMES SCHWAB, AM. PLANNING ASS'N, PLANNING ADVISORY SERV. REPORT NO. 513/514, REGIONAL APPROACHES TO AFFORDABLE HOUSING (2003). For detailed information on inclusionary zoning, see Policy Link, Inclusionary Zoning, <http://www.policylink.org/EDTK/IZ/> (last visited Jan. 14, 2008).

96. A provision of the Moderately Priced Housing Law "requires that between 12.5% and 15% of the houses in new subdivisions of 20 or more units be moderately priced dwelling units (MPDUs)." See Moderately Priced Dwelling Unit (MPDU) Program in Montgomery County, Maryland, <http://www.montgomerycountymd.gov/apps/dhca/index.asp> (follow "MPDU" hyperlink, then follow "MPDU Program Description" hyperlink) (last visited Oct. 11, 2007).

97. Nicholas J. Brunick, *The Inclusionary Housing Debate: The Effectiveness of Mandatory Programs Over Voluntary Programs*, ZONING PRAC., Sept. 2004, at 2, 3, available at <http://www.planning.org/affordablereader/znzp/ZPSep04.pdf>

98. For a discussion of housing market exclusion, see generally Casey J. Dawkins, *Recent Evidence on the Continuing Causes of Black-White Residential Segregation*, 26 J. URB. AFF. 379 (2004).

99. Minnesota grants bonus LIHTC points for projects built in the top ten and top twenty job- and population-growth counties in the state. Minnesota Housing Finance Agency 2007 Housing Tax Credit Program Self-Scoring Worksheet for Selection Points at 5, http://www.ci.minneapolis.mn.us/cped/docs/lihtc_exhibit_e_2006.doc. California grants bonus

prioritize zip codes with recent job growth.¹⁰⁰ Minnesota utilizes indices of population growth and job growth.¹⁰¹ Illinois designed “live near work” criteria to promote LIHTC development in suburban areas with job growth and labor shortages.¹⁰² Also, many states integrate other opportunity structures into their site selection evaluation, such as proximity to childcare, access to public transit, and access to nearby services, such as grocery stores and medical facilities.¹⁰³

The case of *Thompson v. U.S. Department of Housing and Urban Development*¹⁰⁴ provides an instructive example of how a structural racism framework can inform legal advocacy efforts. In 1995, six families living in Baltimore public housing filed suit on behalf of 14,000 other low-income families.¹⁰⁵ In 2005, a federal court ruled that the Department of Housing and Urban Development (“HUD”) had violated Title VIII of the Fair Housing Act by failing to affirmatively further fair housing.¹⁰⁶ HUD had effectively restricted low-income minority families to segregated neighborhoods in the central city.¹⁰⁷ During the 1990s, 89% of public housing units developed with HUD’s support in the Baltimore Region were in Baltimore City.¹⁰⁸ The majority—more than 67%—of the City’s Section 8 voucher holders lived in census tracts that were 70 to 100% Black.¹⁰⁹ In a Remedial Phase Expert Report (“The Report”), I offered several recommendations that exemplify an experimentalist approach.¹¹⁰ The

points for projects in locations with inclusionary housing policies in high-income and high-job growth areas through its “balanced communities” guidelines. See CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE REGULATIONS IMPLEMENTING THE FEDERAL AND STATE LOW INCOME HOUSING TAX CREDIT LAWS 1 (2005), available at <http://www.treasurer.ca.gov/ctcac/programreg/20050608.pdf>.

100. Wisconsin Housing and Economic Development Authority, 2006 Tax Credit Program, 2006 Self-Scoring Exhibit at 3, http://www.wheda.com/cat_tca/2006/2006.asp (follow “Sample Self-Scoring Exhibit” hyperlink) (last visited Oct. 11, 2007).

101. Tax Credit Allocations: States Reflect in ’01, Mull QAP Changes for Next Year (2001), <http://www.housingfinance.com/ahf/articles/2001/01SeptQAPchanges/index.html>.

102. STATE OF ILLINOIS, LOW-INCOME HOUSING TAX CREDIT QUALIFIED ALLOCATION PLAN 44 (2005), <http://www.ihda.org/admin/upload/files/da4de9b6-a832-467f-813e-530bdb52b6e6.pdf>.

103. For example, North Carolina awards up to sixty points in the proposed 2008 QAP for features such as grocery stores, libraries, parks, and hospitals. The 2008 Low-Income Housing Tax Credit Qualified Accounting Plan for the State of North Carolina 10 (2008), <http://www.nchfa.com/Forms/QAP/2008/08QAPfinal.pdf>.

104. 348 F. Supp. 2d 398 (D. Md. 2005).

105. *Id.* at 404.

106. *Id.* at 409.

107. *Id.* at 408.

108. *Id.* at 460.

109. *Id.*

110. Remedial Phase Expert Report of John A. Powell at 2, 7, *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 348 F. Supp. 2d 398 (D. Md. 2005) (No. 95V00309), 2005 WL 4979114,

Report recommended that the remedy must be goal-driven and adaptive to the dynamic nature of the housing market.¹¹¹ I developed an opportunity index for the Baltimore region, made up of over a dozen variables related to opportunity.¹¹² This multi-factor analysis is an attempt to move past the binary divides of “urban” and “suburban,” “black” and “white,” and “rich” and “poor.”

The index can be used by HUD to think about how to reverse the decades of housing segregation it has helped perpetuate. The Report recommended that the remedy connect subsidized housing recipients to areas of opportunity.¹¹³ Finally, The Report recommended that the remedy require HUD to utilize a variety of available tools, including vouchers and new housing production.¹¹⁴ Rather than a command-and-control approach, these proposals reflect the need for continual stakeholder participation and revision. They also put the onus on HUD to develop internal procedures that produce quantifiable outcomes.

The application of a structural racism model changes our analysis of responsibility and the propriety of response. As with the case of global warming under a systems approach, actors are free to intervene in the production of harms that they did not directly cause. In the context of institutions, one institution might then be able to act to address something that was, in part, caused in another domain. In the Amicus Brief of the Caucus for Structural Equity in *Parents Involved in Community Schools v. Seattle School District No. 1*,¹¹⁵ we emphasized the inter-institutional relationship between residential segregation and educational segregation in shaping educational outcomes.¹¹⁶ We argued that local school boards should be empowered to intervene in the processes that perpetuate segregation, even though redressing the root cause of segregation was in large measure beyond their institutional control.¹¹⁷ This approach has important implications for our remedy and response, as well as for our understanding of harm and liability. There is often a need for institutional coordination in situations in which authority is dispersed among many

available at http://4909e99d35cada63e7ff757471b7243be73e53e14.gripelements.com/publications/powellremedialreport_submit_3_10_06.pdf.

111. *Id.* at 2.

112. *Id.* at 51–53.

113. *Id.* at 11–38.

114. *Id.* at 48–50.

115. 551 U.S. ___, 127 S. Ct. 2738 (2007).

116. Brief of the Caucus for Structural Equity as Amicus Curiae Supporting Respondents at 26–27, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. ___, 127 S. Ct. 2738 (2007) (Nos. 05-908, 05-915).

117. *Id.*

different institutions.¹¹⁸ For example, in *Thompson*, there was a call for coordination beyond the defendants and the city.¹¹⁹

We can apply a structural racism framework to Hurricane Katrina to further our understanding of the racialized devastation that ensued. Because explanations for the flooding largely involved identifying or dismissing individually based racist behavior, there was little to no discussion of the ways in which race operated at the social, economic, and political levels. People failed to discuss phenomena like patterns of racial segregation that made Black residents of New Orleans particularly vulnerable to the disaster. Racialized disinvestment in schools, public health, and other critical institutions in the core city, which impact the suburbs as well, have existed for decades in New Orleans. Unlike the wind and the water, they did not receive much attention in the discourse around Katrina.

Katrina did not produce the deleterious realities of structural racism; rather, it exposed them in a striking and stark way. In the past, we have seen that disasters, whether “natural” or man made, disproportionately affect the most marginalized members of our society.¹²⁰ In Chicago’s severe heat wave in 1995, for example, poor people, people of color, and the elderly were among those most likely to have died.¹²¹ In New Orleans, people of color were more likely to be living in areas of lower elevation, sometimes below sea level, and therefore were at greater risk of being affected by the flooding that resulted from the hurricane.¹²² Areas with less opportunity and higher concentrations of poor people of color, such as the Ninth Ward, experienced the most damage.¹²³

Perhaps the biggest impending crisis today is the foreclosure and subprime lending debacle gripping the nation. Teaser mortgages, subprime loans, and other adjustable rate mortgages have placed many homeowners on the edge of an economic precipice, with the slightest change in the market (or their financial standing) enough to push them into foreclosure.¹²⁴

118. *Id.* at 29–30.

119. *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 348 F. Supp. 2d 398, 409 (D. Md. 2005).

120. John A. Powell et al., *Towards a Transformative View of Race: The Crisis and Opportunity of Katrina*, in *THERE IS NO SUCH THING AS A NATURAL DISASTER* 59, 76 (Chester Hartman & Gregory D. Squires eds., 2006).

121. ERIC KLINENBERG, *HEAT WAVE: A SOCIAL AUTOPSY OF DISASTER* 18–19 (2002).

122. THE BROOKINGS INSTITUTION, *supra* note 2, at 17, 20.

123. *Id.* at 16–20.

124. *Legislative and Regulatory Options for Minimizing and Mitigating Mortgage Foreclosures: Hearing Before the H. Comm. on Financial Servs.*, 110th Cong. 73–74 (2007) (statement of Ben S. Bernanke, Chairman, Board of Governors of the Fed. Reserve System), available at <http://purl.access.gpo.gov/GPO/LPS90774> (“Adjustable-rate subprime mortgages originated in late 2005 and in 2006 have performed the worst, with some of them defaulting after

An estimated two million foreclosures are expected in the next two years.¹²⁵ If current trends continue, a disproportionate share of these foreclosures will burden poor and minority borrowers, clustered in disadvantaged urban neighborhoods.¹²⁶ The foreclosure challenge impacts everyone, even those not immediately at risk for foreclosure. Stricter lending guidelines, rising interest rates, and multiple foreclosures on one block threaten to squeeze everyone's ability to build equity in their homes.

IV. RACIALIZED SPACE AND IDENTITY FORMATION

The structures that we inhabit not only distribute material benefits and burdens across society, but also distribute meaning, which in turn shapes racial attitudes and influences the formation of racial identities:

[S]lave plantations in the antebellum South shaped racial attitudes and identities and, as such, the plantation was a "race-making situation." Applying this concept to the current urban landscape, sociologist David James argues that "racial segregation in general and the racial ghetto in particular are race-making situations that perpetuate the color line in America."¹²⁷

Cognitive psychologists refer to the subconscious categorical structures that characterize normal cognitive functioning described in Part I.B as "schemas."¹²⁸ Our social schemas not only serve "essential heuristic functions in human cognition" by enabling us to quickly identify objects or respond to stimuli, but they also impute meaning to behavior or events and make inferences about causation.¹²⁹ Consequently, social schemas interact with the structures we inhabit. For example, the institutional arrangements that produce ghettos are also likely to influence the cultural understanding and meaning of ghettos both for those in ghettos and those outside of ghettos.

only one or two payments (or even no payments at all). . . . In addition, the sharp deceleration in home prices since 2005, including outright declines in some markets, left many of these more-recent borrowers with little or no home equity.").

125. ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LENDING, *LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 3* (2006), available at <http://www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf>.

126. Vikas Bajaj, *Bad Loans Put Wall St. in a Swoon*, N.Y. TIMES, Mar. 14, 2007, at C1; Juan Gonzalez, *Set Up for a Fall: Subprime Mortgages Lead To Record Foreclosures in the City's Poorest Nabes*, N.Y. DAILY NEWS, Mar. 28, 2007, at 13.

127. Calmore, *supra* note 6, at 1241-42 (quoting David R. James, *The Racial Ghetto as a Race-Making Situation: The Effects of Residential Segregation on Racial Inequalities and Racial Identity*, 19 LAW & SOC. INQUIRY 407, 413 n.19 (1994)).

128. Krieger, *supra* note 47, at 1190.

129. *Id.* at 1200.

This is why Martha Mahoney asserts that “[r]esidential segregation is both a cause and product in the processes that shape the construction of race in America.”¹³⁰ Once structures are in place, they appear to have a logic and momentum of their own that reproduces and naturalizes the meanings that they help shape. This cycle appears as inevitable as it seems vicious:

If white prejudice and discrimination cause the segregation that, in turn, contributes to the poverty concentrations among African-Americans, and if these concentrations in turn fuel such prejudice and discrimination, then urban black Americans are caught in the proverbial “vicious circle.” As Gunnar Myrdal explained fifty years ago, “ ‘ [w]hite prejudice and discrimination keep the Negro low in standards of living . . . This, in its turn, gives support to white prejudice. White prejudice and standards thus mutually “cause” each other”

This reciprocal, or mutual, causation of race and representation is also a significant aspect of racialization and racial formation. Social situations give rise to the circumstances and the structures of inequality that sustain particular notions of race. Society’s widely held racial prejudices provide individuals with “common sense” explanations that explain our everyday experiences and perceptions. Racial identities, values, and perceptions do not operate in a vacuum. They are subject to a constant process of validation and revalidation—to reality checks, if you will. For instance, the concentration of inner-city blacks in very poor, segregated neighborhoods is not only a result of racial prejudice and discrimination, but it is also, as James explains, “a powerful referent in the minds of whites that defines how blacks are different from whites.”¹³¹

As Martha Mahoney elaborates, segregation is a “product of notions of black inferiority and white superiority, manifested geographically through the exclusion of blacks into subordinated neighborhoods stigmatized by both race and poverty.”¹³² It is not simply that residential segregation and the institutional arrangements that support, structure, and perpetuate segregation shape racial formation and racial attitudes; they also render the process itself invisible and seemingly natural.

In sum, the problem of segregation is deeper than the exclusion of economic resources and social advantages; it goes to the constitution of the

130. Martha Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1659 (1995).

131. Calmore, *supra* note 6, at 1242–43.

132. Mahoney, *supra* note 130, at 1659.

self.¹³³ The “self” is contextual and relational.¹³⁴ For example, “white” identity derives much of its substance through its negation of the racialized other.¹³⁵ The racial meaning that is in part a product of our institutional arrangements plays a role in the construction of our selves and our society. Institutional tinkering can shift our sense of self and reshape these racial meanings: “By shifting the institutional ground under our selves and our ideals and interests, we put pressure against our understanding of their content. We expose ambiguities of meaning . . . that lay hidden and invisible so long as this ground remained shaken.”¹³⁶

One avenue for moving beyond such a dualism in our policies is to shift our vantage point from an urban-suburban (Black-white, rich-poor) dichotomy to viewing a metropolis as a complex, heterogeneous, interconnected whole. Many regions, particularly Rust Belt regions exhibiting extreme racial residential segregation and slow economic growth, require progressive solutions that move beyond an urban-suburban dichotomy to end dysfunctional growth, build long-term cooperation, and promote a fairer, more efficient use of human and structural resources.¹³⁷ A cooperative commitment to equitable development—one that acknowledges and works within the context of the cultural, racial, and historical dynamics that characterize any region—can put the region on a positive trajectory of growth, vitality, and sustainability for all communities.¹³⁸

In an in-depth report on the challenges facing the Cleveland region, the African American Forum on Race and Regionalism¹³⁹ called for

133. john a. powell, *The Multiple Self: Exploring Between and Beyond Modernity and Postmodernity*, 81 MINN. L. REV. 1481, 1516 (1997).

134. *Id.*

135. *See id.* at 1492–93.

136. ROBERTO MANGABEIRA UNGER, *DEMOCRACY REALIZED: THE PROGRESSIVE ALTERNATIVE* 11 (1998).

137. For a discussion of the relationship between Rust Belt regions and lack of economic and social opportunity, see RADHIKA K. FOX & SARAH TREUHAFT, *SHARED PROSPERITY, STRONGER REGIONS: AN AGENDA FOR REBUILDING AMERICA’S OLDER CORE CITIES* 9 (2005), available at <http://www.policylink.org/pdfs/CoreCities.pdf>.

138. *Id.* at 13.

139. The African American Forum on Race and Regionalism was founded to provide interdisciplinary research and an African American perspective on regional efforts. The forum’s co-chairs include: Carl Anthony, who leads the Ford Foundation’s Sustainable Metropolitan Communities Initiative; Angela Glover Blackwell, the founder and CEO of Policy Link; Robert Bullard, the Ware Distinguished Professor of Sociology and Director of the Environmental Justice Resource Center at Clark Atlanta University; and john a. powell, the Executive Director of the Kirwan Institute for the Study of Race and Ethnicity and the Williams Chair in Civil Rights and Civil Liberties at the Moritz College of Law at The Ohio State University. Deoohn Ferris, the President of the Sustainable Community Development Group, Inc., acts as secretariat for the forum.

proactive policymaking that gives all people access to neighborhood resources, connections to opportunity-rich areas throughout the region, and a voice in the future of their communities.¹⁴⁰ We called this “regional equity.”¹⁴¹ Both words in the phrase are important. The process must be informed by an understanding of the entire region, including all communities and all people; and the process must have equity or fairness at its core, not as a peripheral concern.¹⁴² Regional equity affirms the need for every community to have a voice in the resource development and future of the region.¹⁴³ It builds and sustains region-wide, collaborative institutions with inclusive representation and a common goal: improving the health of the whole and expanding opportunity for all people and communities across the region.¹⁴⁴ Regional equity requires comprehensive and strategic investment in people *and* neighborhoods.

Regional equity must create access to opportunity, leadership, and responsibility, with a particular focus on low-income communities of color.¹⁴⁵ There are multiple strategies for connecting these communities to opportunity, including a focus on people, places, and the linkages among them.¹⁴⁶ The people-focused or mobility approach seeks to remedy segregation and concentrated poverty by creating ways for low-income people of color to move to more economically mixed neighborhoods.¹⁴⁷ An “in-place” strategy seeks to bring investment and other resources into distressed communities.¹⁴⁸ The “linkages” approach emphasizes connecting low-income neighborhoods and residents to opportunity through strategies like improved transportation and social or business networking.¹⁴⁹

There are benefits and limits to each of these approaches, and equitable regionalism must integrate the most promising elements of each. We advocate for a comprehensive strategy that focuses on people, places, *and* linkages—creating new opportunities as well as expanding access to existing ones. The hope is that this new vision will help people see themselves and their own interests in a slightly different light. If the

140. ANGELA GLOVER BLACKWELL, ROBERT D. BULLARD, DEEHOH FERRIS, JOHN A. POWELL, *THE AFRICAN AMERICAN FORUM ON RACE AND REGIONALISM: GROWING TOGETHER TO EXPAND OPPORTUNITY TO ALL* 34 (2007), available at <http://www.thepresidentscouncil.com/www/docs/CleveReportMay2007.pdf>.

141. *Id.* at 35.

142. *See id.* at 35–39.

143. *See id.* at 36.

144. *See id.* at 35–36.

145. *See id.* at 36.

146. *See id.* at 34.

147. *See id.* at 36–37.

148. *See id.* at 35–36.

149. *See id.* at 40–42.

institutional arrangements are assumed to be a given, the set of interests that a group sees at stake will be both defined and defended as exclusive.¹⁵⁰ If the institutional arrangements are open to revision, then both the definition and defense of a set of interests is likely to be broad. The conservative and exclusive defense has the advantage of seeming safe and tangible.¹⁵¹ Thus, it is understandable why middle-income white families might oppose inter-district programs designed to integrate schools. Whites have a group interest in protecting their investment in educational opportunity for their children. Residential housing values are based upon school quality and educational opportunity.¹⁵² Educational opportunity in turn influences occupational life.¹⁵³ Regionalism can be structured to expand the resource base, rather than to redistribute existing resources.¹⁵⁴ By accepting a set of institutional arrangements and their corresponding group antagonisms as a given, it becomes impossible to see alternative persuasive ways of pursuing self-interests. Regionalism shifts the institutional context in which people find themselves and seeks to help them see their interests and ideals in a slightly revised light. Investing in people, neighborhoods, and communities promises returns not just to a select few individuals or neighborhoods, but to the entire region. Every region's most important resource is its people—all of its people—and their energy, creativity, and hope for a better future. Regional equity cannot succeed as a narrow, short-term effort, but must be a comprehensive vision in which every community can contribute to a vibrant, re-energized region.

CONCLUSION

The way in which race impacts the distribution of life opportunities for people of color across space is a major human rights issue for the twenty-first century. The intensification of globalization too often provokes the wrong response. For example, the transformation of the American economy has engendered racial resentment rather than a critique of corporate prerogative. At the national and international level, the

150. See *id.*

151. See UNGER, *supra* note 136, at 11.

152. See Sandra E. Black, *Do Better Schools Matter?: Parental Valuation of Elementary Education*, 114 Q.J. ECON. 577, 595 (1999) (noting that parents "are willing to pay 2.1 percent—or \$3948—more for houses associated with" higher test scores, and that moving from a school district that scores in the 25th percentile to one in the 75th percentile "would result in a house price increase of \$5452").

153. See UNGER, *supra* note 136, at 24 ("[C]ertain qualities of combined institutional arrangements may indeed support the development of our practical capabilities.").

154. For a discussion of the forms regionalism may take, see generally DAVID RUSK, *CITIES WITHOUT SUBURBS: A CENSUS 2000 UPDATE* (2003) and MYRON OREFIELD, *METROPOLITICS: A REGIONAL AGENDA FOR COMMUNITY AND STABILITY* (1998).

response takes the form of anti-immigrant appeals and attacks on affirmative action. At the local level, the response has been greater fragmentation of our metropolitan spaces in tandem with growing suburban isolationism.

By adding a structural lens to previous individual and institutional analysis of racism, we arrive at a more accurate diagnostic tool for the social ills that develop along racial lines. Understanding the function of racism is the most critical step in developing and implementing solutions. Structural racism teaches that our actions, thoughts, and practices matter, for how we build and maintain structures in turn recreates us. Our collective actions and inactions have created structures that perpetuate group-based inequality—but also *distribute meaning*. Once structures are in place, they appear to have a logic and momentum of their own that reproduces and naturalizes these meanings. This cycle appears as inevitable as it seems vicious. The transformation of structures transforms our internal and external meanings.

A structural racism lens will help us identify macro-level dynamics that have micro-level consequences for all American citizens, and the policy areas that we can tap to rebuild our failing structures. Although the structural racism analysis takes a holistic view of the problem, that should not be taken to mean that the remedy must be similar in scope. We must be careful to distinguish between analysis, communication, and response. A properly aimed intervention can act as a catalyst that transforms the entire system. Solving a problem in one domain can be achieved through another domain because of their interrelationship. The challenge is to resist the balkanization of these issues. As Professor Calmore so cogently argued, “we must take into account not only social relations, but also cultural orientations; not only oppositional social projects, but also contested structures of oppression.”¹⁵⁵ A structural racism analysis provides the insights we need to challenge our racialized structures.

155. John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2229 (1992).