

# Transportation Policy and the Underdevelopment of Black Communities

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*ABSTRACT: Historian Manning Marable posited that “[t]he most striking fact about American economic history and politics is the brutal and systemic underdevelopment of Black people.”<sup>1</sup> According to this theory, Black people “have never been equal partners in the American Social Contract, because [our] system exists not to develop, but to underdevelop Black people.”<sup>2</sup> To affect this underdevelopment, racism is embedded into the core of power, the economy, culture, and society. The result is that Black people have been intentionally sacrificed to feed America’s growth and expansion.*

*Our transportation system has always been a driver of racial inequality. Using Marable’s theory of underdevelopment, this Essay explores the ways transportation policy and infrastructure development have fed inequality and helped make many Black communities inhospitable for health, success, and economic opportunity. The nation’s transportation infrastructure was built at the expense of Black communities and has contributed to and sustained the underdevelopment of Black America, often making it difficult for Black people to take advantage of society’s opportunities. The benefits and burdens of our transportation system—highways, roads, bridges, sidewalks, and public transit—have been planned, developed, and sustained to pull resources from Black communities that are subsequently deployed and invested to the benefit of predominantly white communities and their residents.*

*Drawing on the legal scholarship calling for a Third Reconstruction, this Essay argues that to break the link between transportation policy and the underdevelopment of Black communities, advocates must more robustly deploy civil rights laws to challenge the dispossession of land, lack of opportunity and investment, and the accumulation of harms in Black communities. To*

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1. MANNING MARABLE, HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA: PROBLEMS IN RACE, POLITICAL ECONOMY, AND SOCIETY 1 (Haymarket Books 2015) (1983).

2. *Id.* at 2 (emphasis omitted).

*do so, advocates must re-envision civil rights laws as tools for community equity and economic justice, rather than solely as shields against individualized harms. We must also grapple with how civil rights laws can more effectively address the intersectional harms that transportation policy causes.*

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## I. INTRODUCTION

Historian Manning Marable posited that “[t]he most striking fact about American economic history and politics is the brutal and systemic underdevelopment of Black people.”<sup>3</sup> According to this theory, Black people “have never been equal partners in the American Social Contract, because [our] system exists not to develop, but to *underdevelop Black people*.”<sup>4</sup> To affect this underdevelopment, racism is embedded into the core of power, the economy, culture, and society.<sup>5</sup> The result is that Black people have been intentionally sacrificed to feed America’s growth and expansion.<sup>6</sup> Public figures ranging from politicians to intellectuals routinely identify and “condemn” America for “systematically exclud[ing]” Black communities “from the material, cultural and political gains achieved by other ethnic

3. *Id.* at 1.

4. *Id.* at 2.

5. *Id.* at 9–10.

6. *See id.* at 2.

minorities” towards the rights and power generally guaranteed to white people without question.<sup>7</sup>

Blacks are unemployed, economically exploited and politically disfranchised because they are excluded or segregated because of caste or racial discrimination. But there is another point of view on this issue: Blacks occupy the lowest socioeconomic rung in the ladder of American upward mobility precisely because they have been “integrated” all too well into the system. America’s “democratic” government and “free enterprise” system are structured deliberately and specifically to maximize Black oppression.<sup>8</sup>

Ultimately, Manning argues, the oppression of Black America is the driving force behind the development of the United States—and the resulting underdevelopment of Black people.<sup>9</sup>

Transportation policy has always been a driver of inequality. The nation’s transportation system, like other American systems, has been deployed to maximize the oppression of Black America while accelerating the accumulation of political and economic power in white communities.<sup>10</sup> Using Marable’s theory of underdevelopment, this Essay explores the ways transportation policy and infrastructure development have fed inequality and helped make many Black communities inhospitable for health, success, and economic opportunity. The nation’s transportation infrastructure was built at the expense of Black communities and has contributed to and sustained the underdevelopment of Black America, often making it difficult for Black people to take advantage of society’s opportunities.<sup>11</sup> The benefits and burdens of our transportation system—highways, roads, bridges, sidewalks, and public transit—have been planned, developed, and sustained to pull resources from Black communities that are subsequently deployed and invested to the benefit of predominantly white communities and their residents.<sup>12</sup>

We continue to see the effects of underdevelopment. Black people are disproportionately at the bottom of the economic and social ladder, and have found little investment in Black communities, businesses, or education.<sup>13</sup> For example, the lack of infrastructure investments in Black communities in New Orleans led to displacement, disastrous emergency evacuation responses, and death in the Lower Ninth Ward of New Orleans in the aftermath of Hurricane

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7. *Id.*

8. *Id.*

9. *Id.*

10. *See* discussion *infra* Part III.

11. *See infra* Part II.

12. *See infra* Part III.

13. *See infra* Part III.

Katrina.<sup>14</sup> Similarly, Ferguson, Missouri, suffered a dramatic economic decline in the years before the killing of Michael Brown, which, paired with poorly trained police officers, created an “environment of hopelessness, injustice, and inequality.”<sup>15</sup> In 2020, transportation policy contributed to the disproportionate impact of COVID-19 in Black communities. Numerous studies confirmed that low-income communities of color, that disproportionately faced lack of access to reliable transportation and the pollution of roads and highways running through their communities, were at increased risk of contracting COVID-19.<sup>16</sup>

To move forward, Marable urged a systemic analysis of “the historical foundations of underdevelopment, and articulate[d] a theory of social transformation which will overturn capitalism, patriarchy and white supremacy.”<sup>17</sup> More recently, scholars and activists have called for a Third Reconstruction to affect a fundamental change in how our country attacks systemic and structural racial inequality.<sup>18</sup> This Essay draws from both the

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14. See Robert D. Bullard, Glenn S. Johnson & Angel O. Torres, *Dismantling Transportation Apartheid in the United States Before and After Disasters Strike*, 34 HUM. RTS. 2, 4 (2007). Those that depend on public transit as their primary form of transportation are often not accounted for in disaster planning. For instance, “more than one-third of New Orleans’ [Black] residents did not own a car,” and “[o]ver 15 percent of the city’s residents [generally] relied on public transportation as their primary mode of travel.” *Id.* State and local government officials knew that in the event of an emergency like Hurricane Katrina, there was no effective plan to evacuate roughly 40 percent of the population in high-threat areas—even though Hurricane Georges in 1998 and Hurricane Ivan in 2004 drew attention to this fact. *Id.* Hurricane Katrina also did lasting damage to the public transit system: nearly 15 months later, “less than half of all buses and streetcar routes were running, and only 17 percent of the buses were in use.” *Id.*

15. Imani J. Jackson & Frank LoMonte, *Policing Transparency*, 44 HUM. RTS., no. 4, 2020, at 11, 16.

16. See, e.g., Yelena Rozenfeld, Jennifer Beam, Haley Maier, Whitney Haggerson, Karen Boudreau, Jamie Carlson & Rhonda Medows, *A Model of Disparities: Risk Factors Associated with COVID-19 Infection*, INT’L J. FOR EQUITY HEALTH, July 29, 2020, at 1, 6 (finding racial minorities living in low air quality neighborhoods and those experiencing transportation insecurity were disproportionately likely to contract COVID-19); Gabrielle Coppola, David Welch & Nic Querolo, *Virus Erupts in U.S. Cities Where the Poor Have Few Defenses*, BLOOMBERG (Mar. 28, 2020, 10:30 AM), <https://www.bloomberg.com/news/articles/2020-03-28/virus-erupts-in-poor-us-cities-whose-people-have-few-defenses> [<https://perma.cc/2TLV-7BYJ>] (attributing the disproportionate impact of the virus in Detroit to a lack of transportation to access health care and hospitals); Laurens Holmes Jr. et al., *Black-White Risk Differentials in COVID-19 (SARS-COV2) Transmission, Mortality and Case Fatality in the United States: Translational Epidemiologic Perspective and Challenges*, INT’L J. ENV’T RSCH. & PUB. HEALTH, June 2020, at 1, 11 (linking disproportionate deaths of Black people from COVID-19 “to decreased effort by the US public health system, local and county health departments and the healthcare institutions to provide the assistance needed such as transportation for Blacks/AA to access the screening centers and sites”); see also Emiko Atherton, *Complete Streets, COVID-19, and Creating Resilient Communities*, INST. TRANSP. ENG’RS J., July 2020, at 20, 20 (discussing how the pandemic and the disproportionate impact on Black communities highlighted the need to “provide safe, reliable, and affordable access to jobs, healthcare, the grocery store, places of worship, and schools”).

17. MARABLE, *supra* note 1, at 9.

18. E.g., Paul Butler, *The System Is Working the Way It Is Supposed to: The Limits of Criminal Justice Reform*, 104 GEO. L.J. 1419, 1475 (2016) (offering support for a “Third Reconstruction,”

Third Reconstruction and Marable theories to argue that to break the link between transportation policy and the underdevelopment of Black communities, advocates must robustly deploy civil rights laws to challenge the dispossession of land, lack of opportunity and investment, and the accumulation of harms in Black communities. The Essay proceeds in three Parts. Part II briefly explains and explores Manning Marable's theory of underdevelopment.<sup>19</sup> Part III applies Marable's theory to transportation policy in the United States, connecting his theory of underdevelopment to a history of transportation policies that destroyed, isolated, and segregated Black communities, leading to the underdevelopment of those communities and their residents.<sup>20</sup> Part IV proposes a way forward.<sup>21</sup> Despite the wide-ranging impact that transportation decisions have on civil rights and racial equity concerns, transportation policy has not been widely embraced as a pressing civil rights concern.<sup>22</sup> Finally, Part V concludes.<sup>23</sup> This Essay argues that moving forward, advocates must harness the power of civil rights laws to dismantle systems and structures of racial inequality and the discrimination at the intersection of race, class, and place.<sup>24</sup> To do so, advocates must re-envision these laws as tools for community equity.<sup>25</sup>

## II. MANNING MARABLE'S THEORY OF UNDERDEVELOPMENT

A common framework for understanding how racism works in America is to focus on the way white supremacy and structural racism have led to the exclusion of Black people from the economic, social, and political gains experienced by other groups.<sup>26</sup> Indeed, America is profoundly segregated

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referring "to a coordinated effort to address institutional racism and inequality"); Tracey Meares, *A Third Reconstruction?*, BALKINIZATION (Aug. 14, 2015, 8:30 AM), <https://balkin.blogspot.com/2015/08/a-third-reconstruction.html> [<https://perma.cc/C2SZ-PJUB>] ("Once we have system in which the formal and hidden curricula are the same for everyone we will have achieved the goal of the Third Reconstruction."); Robert Belton, *The Dismantling of the Griggs Disparate Impact Theory and the Future of Title VII: The Need for a Third Reconstruction*, 8 YALE L. & POL'Y REV. 223, 225 (1990) ("[C]all[ing] for a 'Third Reconstruction' to achieve the workplace equality that Congress has now made clear is Title VII's goal."); WILLIAM J. BARBER II & JONATHAN WILSON-HARTGROVE, *THE THIRD RECONSTRUCTION: HOW A MORAL MOVEMENT IS OVERCOMING THE POLITICS OF DIVISION AND FEAR* 122 (2016) (detailing a vision of "a Third Reconstruction to push America toward our truest hope of a 'more perfect union' where peace is established through justice, not fear").

19. See *infra* Part II.

20. See *infra* Part III.

21. See *infra* Part IV.

22. See *infra* Part IV.

23. See *infra* Part V.

24. See *infra* Part V.

25. See *infra* Part V.

26. MARABLE, *supra* note 1, at 2; see, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 13 (2012) (asserting that, like slavery and Jim Crow before it, mass incarceration functions as a racial caste system that "permanently locks a huge percentage of the African American community out of the mainstream society and economy").

along racial lines, with white communities of opportunity on the one hand, and many communities of color without access to quality schools, jobs, transportation, or health care on the other. These systems of racial exclusion—which have outlived both chattel slavery and legally countenanced Jim Crow—reach beyond physical spaces to create a web of discrimination and exploitation, and psychological and economic barriers that persist to this day.<sup>27</sup> However, Manning Marable viewed this social, economic, and political inequality through a different framework. He asserted that this inequality was the result of perfect inclusion rather than exclusion because “America’s ‘democratic’ government and ‘free enterprise’ system are structured deliberately and specifically to maximize Black oppression.”<sup>28</sup> Marable advanced a theory of underdevelopment which posited that the defining characteristic of America’s economic and political development was its relentless commitment to the underdevelopment of Black people, within a system that was intentionally designed to lead to this Black underdevelopment.<sup>29</sup> This Part explores Marable’s theory of underdevelopment.

Manning Marable believed that race is the primary connection between accumulation and dispossession.<sup>30</sup> He believed that Black people were “on the other side of one of the most remarkable and rapid accumulations of capital seen anywhere in human history, existing as a necessary yet circumscribed victim within the proverbial belly of the beast.”<sup>31</sup> It is not just that racially discriminatory policies have far-reaching economic impact, including producing racial income and wealth disparities, dispossession of land, and lack of access to opportunity, but “that capitalism is preserved and reproduced on the backs of the Black community.”<sup>32</sup> In probing the intersections of race and class, Marable argued “that the development of capitalism in the United States and the creation of its wealth were built upon the exploitation of the labor, knowledge, and lives of Black people through slavery, segregation, and discrimination.”<sup>33</sup> Moreover, he believed this interdependent relationship is one of paradoxes and contradictions: “[E]ach advance in white freedom was purchased by Black enslavement; white affluence coexists with Black poverty;

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27. See, e.g., RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, at viii (2017) (making the case that segregation in America is the consequence of unhidden public policy that “was so systematic and forceful that its effects endure to the present time”).

28. MARABLE, *supra* note 1, at 2.

29. *Id.* at 1–2.

30. Leith Mullings, *Foreword* to MANNING MARABLE, *HOW CAPITALISM UNDERDEVELOPED BLACK AMERICA: PROBLEMS IN RACE, POLITICAL ECONOMY, AND SOCIETY*, at ix, xiii (Haymarket Books 2015) (1983).

31. MARABLE, *supra* note 1, at 1–2.

32. Mullings, *supra* note 30, at xv–xvi.

33. *Id.* at xi.

white state and corporate power is the product in part of Black powerlessness; income mobility for the few is rooted in income stasis for the many.”<sup>34</sup>

Central to affecting underdevelopment are systems that “accelerat[e] the economic and political power” of white people over nonwhite people<sup>35</sup> and “the dynamics of dependency.”<sup>36</sup> A primary example is dependency in the context of political influence. Marable asserted, for example, that “racial minorities can influence major public policies only when their agenda is sufficiently acceptable to one or both of the major white capitalist parties, which in turn assimilate the proposals into their political program for their own purposes.”<sup>37</sup> As a result, the ability of Black people to shape their own lives and influence broader public policy is limited by the extent to which those goals also hold some power or benefit for white people. The policies that perpetuate such power and benefits perpetuate the underdevelopment of Black communities.

### III. TRANSPORTATION, INFRASTRUCTURE, AND THE UNDERDEVELOPMENT OF BLACK COMMUNITIES

The essence of underdevelopment is the systemic exploitation of Black people to ensure that resources and opportunities are available to white people. Among the systems that feed underdevelopment of the Black community, a key one is transportation policy and infrastructure development, and the resulting impact these policies and actions have on housing, access to opportunity, economic investment, and health. Our nation’s transportation infrastructure was built at the expense of the Black community and contributed to the underdevelopment of Black America. In building our nation’s transportation infrastructure, government wielded social, economic, and political power against Black people.<sup>38</sup> Planners “fail[ed] to holistically consider the impact of public works programs on education, housing, economic development, and health in these communities.”<sup>39</sup> The result is a man-made physical landscape, and transportation policies layered over that landscape, that make many Black

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34. MARABLE, *supra* note 1, at 2.

35. *Id.* at 6.

36. *Id.* at 7.

37. *Id.*

38. See generally Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1265 (2020) (“[F]ederal and state officials purposely targeted Black communities to make way for massive highway projects. In states around the country, highways disproportionately displaced Black households and cut the heart and soul out of thriving Black communities as homes, churches, schools, and businesses were destroyed.”).

39. *Id.* at 1301; see also Robert W. Collin, Timothy Beatley & William Harris, *Environmental Racism: A Challenge to Community Development*, 25 J. BLACK STUD. 354, 357–58 (1995) (discussing the gaps in the American Planning Association’s Code of Professional Conduct that allow planners to poorly serve Black communities).

communities inhospitable for success and economic opportunity. Indeed, the late Congressman John Lewis wrote, “the legacy of Jim Crow transportation is still with us. Even today, some of our transportation policies and practices destroy stable neighborhoods, isolate and segregate our citizens in deteriorating neighborhoods, and fail to provide access to jobs and economic growth centers.”<sup>40</sup> This is the essence of underdevelopment. This Part explores the way race frequently explains which communities receive the benefits of our transportation systems and which communities were forced to host the burdens. Our transportation systems have led to ongoing racial disparities and discriminations that are reinforced daily.

America’s transportation policy and infrastructure—from highways, roads, bridges, to sidewalks, and public transit—makes it harder for Black people to access and take advantage of society’s opportunities.<sup>41</sup> These racially-motivated systems are nothing new. For decades, using public transportation was a daily reminder of the legal and social inferiority of Black people, particularly in the South. On buses, Black people were relegated to seats at the back of the vehicle and required to give up their seats to white people on demand.<sup>42</sup> In train stations, Black people were forced to wait in separate waiting areas, with separate bathrooms and drinking fountains.<sup>43</sup>

Today, transportation policy is a daily reminder of how Black people have been—and continue to be—sacrificed to feed America’s growth and expansion. White “middle-class and affluent neighborhoods [are favored] at the expense of [Black] communities, resulting in [lopsided and] skewed patterns of infrastructure development.”<sup>44</sup> “Although [this] transportation

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40. John Lewis, *Foreword* to HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY, at viii (Robert D. Bullard et al. eds., 2004).

41. RICHARD EZIKE, CONG. BLACK CAUCUS FOUND., TRANSPORTATION, SUSTAINABILITY, AND EQUITY AND THE EFFECT ON THE AFRICAN-AMERICAN COMMUNITY 3 (2016), <https://www.cbfcinc.org/wp-content/uploads/2016/10/CBCFTransportationBriefing.pdf> [<https://perma.cc/T79U-8LFH>].

42. See *Montgomery Bus Boycott*, HIST. (Jan. 27, 2021), <https://www.history.com/topics/black-history/montgomery-bus-boycott> [<https://perma.cc/4Z2N-8MTH>] (highlighting Montgomery, Alabama, city ordinance requiring Black people “to sit in the back half of city buses and to yield their seats to white riders if the front half of the bus, reserved for whites, was full”); see also, e.g., Daniel B. Moskowitz, *No, I Will Not Move to the Back of the Bus: A Supreme Court Decision Involving a Black Woman and a Bus Ride Made History—In 1946*, AM. HIST., Aug. 2017, at 40, 41 (detailing the story of a Black woman in Virginia who was asked to give up her seat for a white passenger but refused).

43. See Elizabeth Guffey, *Knowing Their Space: Signs of Jim Crow in the Segregated South*, 28 DESIGN ISSUES 41, 52–53 (2012) (detailing the complexities of entering and using the “right” facilities in segregated train stations); Thomas J. Sugrue, *Driving While Black: The Car and Race Relations in Modern America*, AUTO. AM. LIFE & SOC’Y, [http://www.autolife.umd.umich.edu/Race/R\\_Casestudy/R\\_Casestudy2.htm](http://www.autolife.umd.umich.edu/Race/R_Casestudy/R_Casestudy2.htm) [<https://perma.cc/WZP4-8WK2>] (“In the South, [B]lack patrons at bus and train stations were cordoned off into separate waiting rooms, with separate bathrooms, drinking fountains, and (when they were provided to [B]lacks at all) separate concession stands.”).

44. EZIKE, *supra* note 41, at 3.

racism<sup>45</sup> is no longer marked by explicit racial divisions, the country's transportation system was planned[, funded]—and is operated—to provide unequal access along race and class lines, limit access to jobs, [health], and opportunity, and force [Black] communities . . . to bear a disproportionate share of environmental harms.”<sup>46</sup> Safe, accessible, and reliable infrastructure is disproportionately built in white neighborhoods connecting those residents to opportunity, while Black communities continue to suffer from underdevelopment.<sup>47</sup> While the country prioritizes heavy investments in highways and suburban commuter rail systems, communities of color are underserved by chronically underfunded public transportation systems.<sup>48</sup> Even an examination of the routes that residents of low-income communities of color must take to reach their buses and trains reveals communities lacking sidewalks and crosswalks.<sup>49</sup>

The nation's discriminatory transportation policies and practices interact with systemic residential and educational segregation to deepen the underdevelopment. In a 2016 Dear Colleague Letter, the then-secretaries of the United States Departments of Housing and Urban Development, Education, and Transportation acknowledged that the intersection of transportation, housing, and education policy helped to create and sustain concentrated poverty and racial segregation that continues to impede

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45. “Transportation racism” refers to racist policies and practices that negatively affect the ability of communities of color to interact, move, maintain, and sustain themselves. See ROBERT D. BULLARD, *HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY* 1–2 (Robert D. Bullard et al. eds., 2004) (“It is time to refocus attention on the role transportation plays in shaping human interaction, economic mobility, and sustainability . . . . [P]eople of color are banding together to challenge unfair, unjust, and illegal transportation policies and practices that relegate them to the back of the bus.”).

46. Archer, *supra* note 38, at 1302; see Corinne Ramey, *America's Unfair Rules of the Road*, SLATE (Feb. 27, 2015, 3:33 AM), <https://slate.com/news-and-politics/2015/02/americas-transportation-system-discriminates-against-minorities-and-poor-federal-funding-for-roads-buses-and-mass-transit-still-segregates-americans.html> [<https://perma.cc/F5CV-26BS>] (exploring the various ways in which race and transportation overlap, including by shutting out communities of color from decisions concerning transportation planning); Robert D. Bullard, *The Anatomy of Transportation Racism*, in *HIGHWAY ROBBERY: TRANSPORTATION RACISM & NEW ROUTES TO EQUITY* 15, 19–20 (Robert D. Bullard et al. eds., 2004).

47. BULLARD, *supra* note 45, at 19–20.

48. See *id.* at 20 (noting that “[w]hite racism shapes transportation . . . decisions” and has “consequently created a national transportation infrastructure that denies many [B]lack Americans” the same benefits offered to their white counterparts).

49. See *id.* at 8 (“Many of the roads in the [B]lack community did not have street signs, sidewalks, or streetlights.”); BRIDGING THE GAP, *INCOME DISPARITIES IN STREET FEATURES THAT ENCOURAGE WALKING* 1 (2012), [http://www.bridgingthegapresearch.org/\\_asset/02fpi3/btg\\_street\\_walkability\\_FINAL\\_03-09-12.pdf](http://www.bridgingthegapresearch.org/_asset/02fpi3/btg_street_walkability_FINAL_03-09-12.pdf) [<https://perma.cc/8AQE-gBTJ>] (“This study shows that people living in low-income communities are less likely to encounter sidewalks, street/sidewalk lighting, marked crosswalks and traffic calming measures . . . .”); Jay Walljasper, *A Good Place for Everyone to Walk*, AMERICA WALKS, <https://americawalks.org/a-good-place-for-everyone-to-walk> [<https://perma.cc/TES4-DNPX>] (pointing out that Black people “are 60 percent more likely to be killed by cars while walking, and Latinos 43 percent”).

economic mobility and access to opportunity.<sup>50</sup> They confirmed that layering transportation inequality on top of “[r]ising economic segregation means that an increasing number of low-income households are located in distressed neighborhoods where they face challenges such as failing schools, high rates of crime, and inadequate access to services and jobs, making it harder for individuals and families to escape poverty.”<sup>51</sup> Thus, even high-ranking government officials acknowledge this reality. But to understand how to make change going forward, we must first understand how our government has perpetuated racially-motivated inequities in transportation policy. Two particularly salient examples are highway construction and its segregation and destruction of Black communities, and the chronic underfunding of public transportation.

A. *HIGHWAY CONSTRUCTION AND THE SEGREGATION AND DESTRUCTION OF BLACK COMMUNITIES*

Our nation’s highways were built through and around Black communities to physically entrench racial inequality and advance the interests of white residents. Transportation policy both created and solidified our racially segregated landscape, embedding “walls, wedges, and extractors” in Black communities around the country.<sup>52</sup> Construction of the interstate highway system played a key role in creating the spatial and economic conditions prevalent in urban centers today—conditions that influence interracial interactions, economic mobility, and community stability.<sup>53</sup> Indeed, highway construction both “symbolically and physically” encouraged racial segregation and isolation.<sup>54</sup>

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50. See Letter from Julián Castro, Sec’y Hous. & Urb. Dev., John B. King, Jr., Sec’y Educ. & Anthony R. Foxx, Sec’y Transp., Regarding Mobility via Education and Socioeconomic Opportunity 1 (June 3, 2016), <https://www2.ed.gov/documents/press-releases/06032016-dear-colleagues-letter.pdf> [<https://perma.cc/YPW5-KXLC>] (urging local leaders in education, transportation and housing “to work together . . . in helping to guarantee full access of opportunity across the country”).

51. *Id.*

52. Archer, *supra* note 38, at 1275; see THE LEADERSHIP CONF. EDUC. FUND, GETTING HOME: TRANSPORTATION EQUITY AND ACCESS TO AFFORDABLE HOUSING 3 (2011), <http://www.civilrightsdocs.info/pdf/docs/transportation/getting-home-july21.pdf> [<https://perma.cc/8ZZT-TPDF>].

53. PAUL MASON FOTSCH, WATCHING THE TRAFFIC GO BY: TRANSPORTATION AND ISOLATION IN URBAN AMERICA 169 (2007) (“[A]s a physical formation the freeway’s construction helped create the spatial divisions now regarded as natural.”); see also Roger Biles, Raymond A. Mohl & Mark H. Rose, *Revisiting the Urban Interstates: Politics, Policy, and Culture Since World War II*, 40 J. URB. HIST. 827, 829 (2014) (“[T]he Interstate produced harsh and mostly unyielding consequences for urban residents, for their neighborhoods, and for their livelihoods. . . . In central cities, Interstate construction uprooted businesses, churches, schools, and residents.”); BULLARD, *supra* note 45, at 2 (emphasizing “the role transportation plays in shaping human interaction, economic mobility, and sustainability”).

54. See FOTSCH, *supra* note 53, at 4.

The passage of the Federal-Aid Highway Act of 1956<sup>55</sup> facilitated the highway construction and the destruction of Black communities. Federal and state highway builders purposely targeted Black communities to make way for massive highway projects.<sup>56</sup> In states around the country, highways disproportionately displaced and destroyed Black homes, churches, schools, and businesses, sometimes leveling entire communities.<sup>57</sup> Although billed as an opportunity to remove “blight,” highways often tore through once-vibrant communities, ripping the social fabric and inflicting psychological wounds on both those forced to leave their homes and those left behind.<sup>58</sup>

In many communities, highways carved out Black homes, segregating Black neighborhoods from white neighborhoods. For example, in St. Paul, Minnesota, the construction of Interstate 94 displaced one-seventh of the city’s Black residents.<sup>59</sup> As one observer noted, “[v]ery few [B]lacks lived in Minnesota, but the road builders found them.”<sup>60</sup> Similarly, in Pittsburgh, Pennsylvania, a Black community known as the Hill District was devastated in order to build Interstate 579.<sup>61</sup> When Interstate 579 opened to traffic, it cut off the Hill District from Pittsburgh’s thriving downtown area and displaced thousands of Black residents.<sup>62</sup> The Hill District population dwindled from approximately 54,000 in 1950 to approximately 9,500 in 2013.<sup>63</sup> More than 400 businesses were lost.<sup>64</sup> With so many people displaced, the community was “essentially damn[ed].”<sup>65</sup> So it should be no surprise that today,

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55. *Congress Approves the Federal-Aid Highway Act*, U.S. SENATE (June 26, 1956), [https://www.senate.gov/artandhistory/history/minute/Federal\\_Highway\\_Act.htm](https://www.senate.gov/artandhistory/history/minute/Federal_Highway_Act.htm) [<https://perma.cc/6YqJ-X7LT>] (“On June 26, 1956, the Senate and House both approved a conference report on the Federal-Aid Highway Act (also known as the National Interstate and Defense Highways Act.”); Kat Eschner, *Three Ways the Interstate System Changed America*, SMITHSONIAN MAG. (June 29, 2017), <https://www.smithsonianmag.com/smart-news/three-ways-interstate-system-changed-america-180963815> [<https://perma.cc/US3Y-AFWK>] (“[I]n 1956, President Dwight Eisenhower signed the Interstate Highway Act, the piece of legislation that led to the creation of America’s current highway system.”).

56. See RONALD H. BAYOR, *RACE & THE SHAPING OF TWENTIETH-CENTURY ATLANTA* 5, 55–58, 61–62 (1996).

57. In St. Petersburg, Florida, alone, ten Black churches were moved to make way for I-275. Raymond A. Mohl, *Race and Space in the Modern City: Interstate-95 and the Black Community in Miami*, in *URBAN POLICY IN TWENTIETH-CENTURY AMERICA* 100, 135 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993).

58. See Archer, *supra* note 38, at 1265–67.

59. Mohl, *supra* note 57, at 134.

60. *Id.* (quoting ALAN A. ALTSHULER, *THE CITY PLANNING PROCESS: A POLITICAL ANALYSIS* 17–83 (1965)).

61. See Sam Ross-Brown, *Transportation Secretary Foxx Moves to Heal Scars of Urban Renewal*, AM. PROSPECT (Sept. 30, 2016), <https://prospect.org/civil-rights/transportation-secretary-foxx-moves-heal-scars-urban-renewal> [<https://perma.cc/G8Z3-NSPP>] (detailing how thousands of residents of the area also known as “Little Harlem” were displaced by Interstate 579).

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* (quoting R. Daniel Lavelle, Hill District’s representative on the Pittsburgh City Council).

approximately 40 percent of the Hill District's residents live below the poverty line.<sup>66</sup> As a final example, though countless more exist, Interstate 95 in Florida tore through the center of Overtown, a large and vibrant Black community considered to be the center of economic and cultural life for Miami's Black population.<sup>67</sup> "One massive highway interchange alone" took up 40 square blocks, devoured the Black business district, and took the homes of about 10,000 people.<sup>68</sup> By the late 1960s, Overtown was dominated by the highway.<sup>69</sup> Once called "the 'Harlem of the South,'" no evidence of the community's prior identity remained.<sup>70</sup>

In other communities, the highway spared Black homes but became a permanent racial barrier between white and Black neighborhoods, further entrenching racial segregation and walling off economic opportunity and investment. In Orlando, Florida, for example, Interstate 4 was built to "provide[] a barrier separating [B]lacks on the west side of town from the central business district and white communities on the east side."<sup>71</sup>

Ultimately, the nation's highway system contributed to today's intense racial segregation and concentrated racialized poverty, and created physical, psychological, and economic barriers that persist to this day. Class and racial inequality, economic deprivation and depression, residential isolation, and segregation are all a part of the legacy of highway politics that focus on growth and expansion at the expense of Black communities, building roads to whites-only suburbs through the heart of Black neighborhoods.

While highways facilitated the economic development of white communities, they also facilitated the physical and economic destruction and underdevelopment of Black communities.<sup>72</sup> Of course, the interstate highway system did not cause every problem facing urban communities. But, undeniably, its construction compounded discrimination, exclusion, and exploitation, and triggered a process that weakened Black neighborhoods.<sup>73</sup>

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66. *Id.*

67. Mohl, *supra* note 57, at 102.

68. *Id.*; see also Raymond A. Mohl, *The Interstates and the Cities: The U.S. Department of Transportation and the Freeway Revolt, 1966-1973*, 20 J. POL'Y HIST. 193, 196 (2008).

69. Mohl, *supra* note 57, at 102.

70. *Id.*

71. *Id.* at 135.

72. See Kevin Douglas Kuswa, *Suburbification, Segregation, and the Consolidation of the Highway Machine*, 3 J.L. SOC'Y 31, 47 (2002) ("Highways made suburban housing available on one end while destroying urban housing on the other.").

73. Archer, *supra* note 38, at 1286. Among the harms to the people and the community are: the disruption of established social and economic relationships, economic losses from the taking of property, the costs of seeking and securing new housing, the physical deterioration of neighborhoods immediately following the announcement of highway construction in the community, plummeting land values prior to state purchase as a result of the announcement of highway construction, and the loss of employment opportunities in the community. See *id.*; KATHARINE L. BRADBURY, ANTHONY DOWNS & KENNETH A. SMALL, *URBAN DECLINE AND THE*

Black communities and their allies refused to stay silent about these effects; by the 1960s, freeway revolts spurred by rising concerns about the destructive impact of the interstate highway system erupted around the country.<sup>74</sup> In response, between 1962 and 1970, Congress enacted a range of legislation to moderate the impact of highway construction and curb some of the worst practices of state highway departments.<sup>75</sup> However, these laws were never designed to protect or revitalize Black communities. The core legislation required regional transportation planning for transportation projects that received federal aid;<sup>76</sup> sought to protect parks, historic districts, and other environmentally sensitive places;<sup>77</sup> and required efforts to secure relocation housing for people displaced by road construction.<sup>78</sup> These were all concerns raised and prioritized by white communities—*not* the Black communities that were segregated, stifled, and suppressed by interstate highways. Indeed, concern for preserving historic sites and neighborhoods, rather than addressing the destruction of Black communities, was the primary motivation behind most of the legislation and where the impact would be primarily felt.<sup>79</sup> In this respect, the legislation reflected the racial and economic power imbalance present in so many other policy discussions and the infrastructure itself.

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FUTURE OF AMERICAN CITIES 68–77 (1982); ANTHONY DOWNS, URBAN PROBLEMS AND PROSPECTS 192–208 (Julius Margolis & Aaron Wildavsky eds., 1970).

74. See Raymond A. Mohl, *Stop the Road: Freeway Revolts in American Cities*, 30 J. URB. HIST. 674, 674–75 (2004) (summing up the antifreeway movement, which “accelerated nationally” as expressways destroyed communities and wreaked environmental damage).

75. Archer, *supra* note 38, at 1270.

76. See Federal-Aid Highway Act of 1962, Pub. L. No. 87-866, 76 Stat. 1145 (current version at 23 U.S.C. § 101 (2018)) (requiring states and localities to work together in developing a cooperative, comprehensive, and continuing urban transportation planning process).

77. See Federal-Aid Highway Act of 1966, Pub. L. No. 89-574, § 15, 80 Stat. 766, 771 (“[T]he Secretary shall use maximum effort to preserve Federal, State, and local government parklands and historic sites and the beauty and historic value of such lands and sites.”); National Historic Preservation Act of 1966, Pub. L. No. 89-665, § 201, 80 Stat. 915, 917–18 (establishing a federal council to help agencies act as stewards of natural resources).

78. See Federal-Aid Highway Act of 1962 § 5 (requiring assurances from State highway departments of relocation of families displaced by clearance of rights-of-way for Federal-aid highways); Federal-Aid Highway Act of 1968, Pub. L. No. 90-495, § 30, 82 Stat. 815, 830–33 (requiring relocation payments and advisory assistance be provided to people, businesses, farmers, and nonprofit organizations displaced by Federal highway programs); Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (“[P]rovid[ing] for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs.”). In addition, beginning in 1966, the newly formed U.S. Department of Transportation—which itself was formed to help curb some of the destructive practices—issued rules and procedures designed to stop many of the worst practices of state highway departments. See Mohl, *supra* note 68, at 194 (discussing ways in which “the federal highway bureaucracy responded to the Freeway Revolt and charted new directions on controversial highway matters”).

79. See Archer, *supra* note 38, at 1311–13.

It is important to acknowledge that highways are not the only way in which segregation was built into the physical environment using transportation infrastructure. For instance, railroads provide an analogous divide. Indeed, Black people “were often historically restricted to neighborhoods separated from whites by railroads, turning the tracks into iron barriers of race and class.”<sup>80</sup> Thus, even popular phrases like “the other side of the tracks” have historical roots in the use of railroad tracks to segregate and destroy communities.<sup>81</sup> In many cities these dividing lines persist to this day as not only “a reflection of decades of discriminatory policies and racism, but also of the power of infrastructure itself to segregate.”<sup>82</sup> Around the country, transportation infrastructure—whether by highway, railroad, or other means—has harmed Black communities by “reinforcing unspoken divides, walling off communities, containing their expansion, [and] physically isolating them from schools or parks or neighbors nearby.”<sup>83</sup>

In fact, multiple forms of transportation infrastructure are often crammed into Black communities and other communities of color, further ensuring the devastating harm. Milwaukee, Wisconsin, is a prime example. Today, Milwaukee is “one of the most [racially] segregated cities in” America.<sup>84</sup> Its Black communities have been “carved up by” highways, railroads, and roads.<sup>85</sup> In each case, the geographic barrier reinforces segregation and decimation caused by other racially-motivated transportation policies and projects.<sup>86</sup> Together, these ill-intentioned projects deepen each other’s harmful impacts.<sup>87</sup>

Implementing the highway system had ripple effects that visited immense harms on Black communities that are home to the roadways, including increased pedestrian fatalities,<sup>88</sup> stigma from state-imposed racial segregation,<sup>89</sup> and deep economic impact.<sup>90</sup> Syracuse, New York provides a particularly useful example of the destructive impact that development of the interstate highway system had on many urban communities. When Interstate 81 was built in Syracuse, it cut through the City’s urban center, decimating a

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80. Emily Badger & Darla Cameron, *How Railroads, Highways and Other Man-Made Lines Racially Divide America’s Cities*, WASH. POST (July 16, 2015, 6:29 AM), <https://www.washingtonpost.com/news/wonk/wp/2015/07/16/how-railroads-highways-and-other-man-made-lines-racially-divide-americas-cities> [<https://perma.cc/XR7Y-Y8UD>].

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. This is at a “rate that is 60 percent higher than non-Hispanic [w]hites, at 2.65 per 100,000 persons.” EZIKE, *supra* note 41, at 6.

89. Archer, *supra* note 38, at 1296–98.

90. *Id.* at 1268.

primarily Black and Jewish neighborhood called the 15th Ward in the name of “slum clearance” and redevelopment.<sup>91</sup> When the displaced Black residents from the 15th Ward moved to other city neighborhoods, white residents fled to the suburbs.<sup>92</sup> As middle- and upper-class residents moved to the suburbs, the low-income people of color remained trapped in the city.<sup>93</sup>

The cycle is self-perpetuating: People who live in poverty have a harder time succeeding *because* they are surrounded by others in poverty.<sup>94</sup> Today, Syracuse has the highest rate of concentrated racialized poverty in the nation and bears all the hallmarks of generational poverty: few businesses, lack of economic opportunity, poor-quality schools, and violence.<sup>95</sup> Housing for poor families remains crowded around I-81’s elevated overpass, and nearly two-thirds of poor Black people in Syracuse live in high-poverty neighborhoods.<sup>96</sup> Moreover, approximately 62 percent of Latinx people in Syracuse live in high-poverty neighborhoods.<sup>97</sup> Only about 30 percent of Black people in the Syracuse metro area own their own homes, while 71 percent of white people do.<sup>98</sup>

In addition to high concentrations of poverty, Syracuse is also intensely racially segregated,<sup>99</sup> with I-81 serving as a “line of demarcation between”

91. See ANTHONY ARMSTRONG, POVERTY & RACE RSCH. ACTION COUNCIL, DECONSTRUCTING SEGREGATION IN SYRACUSE? 3–4 (2018) (“When construction started, the path of the expressway decimated a primarily [B]lack and Jewish neighborhood—the 15th Ward—and spurred white flight to the suburbs.”); Joseph F. C. DiMento, *Stent (or Dagger?) in the Heart of Town: Urban Freeways in Syracuse, 1944–1967*, 8 J. PLAN. HIST. 133, 145–48 (2009) (outlining Syracuse’s efforts to demolish the 15th Ward as part of “slum clearance and urban renewal”).

92. See ARMSTRONG, *supra* note 91, at 4 (highlighting how construction of I-81 “spurred white flight to the suburbs”); Alana Semuels, *How to Decimate a City*, ATLANTIC (Nov. 20, 2015), <https://www.theatlantic.com/business/archive/2015/11/syracuse-slums/416892> [<https://perma.cc/D2XX-5G8Y>] (“Black residents moved to the South Side when the 15th Ward was demolished, which in turn motivated white residents to move to the suburbs.”).

93. Semuels, *supra* note 92 (“As upper- and middle-class residents moved to the suburbs, the very poor remained in the city, and increasingly saw themselves surrounded by more poor people.”).

94. See, e.g., Raj Chetty & Nathaniel Hendren, *The Impacts of Neighborhoods on Intergenerational Mobility I: Childhood Exposure Effects*, 133 Q.J. ECON. 1107, 1159–60 (2018) (“Neighborhoods affect children’s long-term outcomes through childhood exposure effects: every extra year a child spends growing up in an area where permanent residents’ incomes are higher increases his or her income.”); see also Raj Chetty, Nathaniel Hendren & Lawrence F. Katz, *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, 106 AM. ECON. REV. 855, 858 (2016) (“We find robust evidence . . . suggesting that every extra year of exposure to a low-poverty environment during childhood is beneficial.”).

95. See Semuels, *supra* note 92 (noting that people who stayed in “high-poverty” neighborhoods in Syracuse often were “exposed to more and more poverty and all the problems associated with it”).

96. See *id.* (discussing the current state of housing and demographics in Syracuse).

97. See *id.*

98. *Id.*

99. Tim Knauss, *Report: Syracuse and Onondaga County Suffer from ‘Hyper-Segregation’*, SYRACUSE.COM (Mar. 22, 2019), [https://www.syracuse.com/news/2014/11/report\\_syracuse\\_and\\_onondaga\\_county\\_suffer\\_from\\_hyper-segregation.html](https://www.syracuse.com/news/2014/11/report_syracuse_and_onondaga_county_suffer_from_hyper-segregation.html) [<https://perma.cc/gLWM-X9KM>]

white communities and people of color.<sup>100</sup> The highway separates “the city’s . . . most vibrant neighborhoods” with up to “six lanes of traffic[,] . . . feeder ramps and access roads.”<sup>101</sup> Notably, I-81 separates University Hill, which includes several hospitals, Syracuse University, and some schools within the State University of New York’s system, from a low-income neighborhood.<sup>102</sup> Some have even compared I-81 to the Berlin Wall, separating “the haves and the have nots.”<sup>103</sup> “For blocks in either direction of the interstate, parking garages and surface lots dominate the landscape. The aging highway cuts off many streets on the city’s grid. . . . [T]ak[ing] an incredibly important piece of this city off of the development map.”<sup>104</sup> The Black communities in Syracuse have been underdeveloped by the construction of the highway.

Significantly, the increased traffic from highways have also led to disproportionate air pollution in Black communities in the Northeast and Mid-Atlantic.<sup>105</sup> “Neighborhoods that are [within] 0.2 to 0.3 miles from a highway are most affected by air pollution.”<sup>106</sup> Marginalized communities “are more likely to live within [0.09 miles of] major roads and experience traffic related air pollution.”<sup>107</sup> Living near a major highway, and the increased air pollution it produces, leads to a higher risk of respiratory diseases, such as asthma and lung disease; heart disease; “adverse reproductive outcomes;” and

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(“A Brookings Institution demographer ranked the Syracuse metropolitan area as the ninth most segregated city in the country in a 2010 analysis . . .”).

100. See Daniel C. Vock, *A Road Runs Through It*, GOVERNING, July 2014, at 50, 52–53, [https://drjdbij2merew.cloudfront.net/GOV/GOV\\_Mag\\_July14.pdf](https://drjdbij2merew.cloudfront.net/GOV/GOV_Mag_July14.pdf) [<https://perma.cc/NCF7-S245>]; Semuels, *supra* note 92.

101. Vock, *supra* note 100, at 52.

102. See *id.* at 53 (discussing how several schools on University Hill border the I-81); Patrick Lohmann, *Syracuse Housing Authority Plan Uses I-81 Project to Resurrect City Center, Combat Poverty*, SYRACUSE.COM (Mar. 22, 2019), [https://www.syracuse.com/news/2016/12/syracuse\\_housing\\_authority\\_plan\\_uses\\_i-81\\_project\\_to\\_resurrect\\_city\\_center.html](https://www.syracuse.com/news/2016/12/syracuse_housing_authority_plan_uses_i-81_project_to_resurrect_city_center.html) [<https://perma.cc/4Q8N-9WD3>] (noting “a low-income neighborhood that has existed for decades in the shadow of Interstate 81”).

103. Angie Schmitt, *Building Highways Made Racial Segregation Worse. Can Removing Them Undo That Legacy?*, STREETS BLOG USA (June 7, 2018), <https://usa.streetsblog.org/2018/06/07/building-highways-made-racial-segregation-worse-can-removing-them-undo-that-legacy> [<https://perma.cc/3NWK-QJ97>] (quoting former Syracuse City Council president Van Robinson).

104. Vock, *supra* note 100, at 52 (quoting Syracuse developer Robert Doucette).

105. See MARIA CECILIA PINTO DE MOURA & DAVID REICHMUTH, UNION OF CONCERNED SCIENTISTS, *INEQUITABLE EXPOSURE TO AIR POLLUTION FROM VEHICLES IN THE NORTHEAST AND MID-ATLANTIC* (2019), <https://www.ucsusa.org/resources/inequitable-exposure-air-pollution-vehicles#ucs-report-downloads> [<https://perma.cc/QN42-MFWP>] (“On average, communities of color in the Northeast and Mid-Atlantic breathe 66 percent more air pollution from vehicles than white residents. . . . Exposures for African American residents are 61 percent higher than for white residents.”).

106. COURTNEE MELTON, THE SYCAMORE INST., *HOW TRANSPORTATION IMPACTS PUBLIC HEALTH* 2 (2017), <https://www.sycamoreinstitutetn.org/wp-content/uploads/2017/02/How-Transportation-Impacts-Public-Health.pdf> [<https://perma.cc/K4UQ-RKQB>].

107. *Id.*

death.<sup>108</sup> Thus, segregative transportation policy not only cuts off Black communities from economic growth, education, and public safety, but endangers lives.

*B. THE CHRONIC UNDERFUNDING OF PUBLIC TRANSPORTATION*

The development of the interstate highway system was a public policy choice that shifted priorities away from building a robust public transit system.<sup>109</sup> In addition to destroying Black neighborhoods, this policy choice continues to disadvantage Black people who are disproportionately unable to afford a car and live in communities that are disconnected from work, school, and opportunity. The same people who devised and built the highway system also underfunded public transit infrastructure in the areas decimated by the highways.<sup>110</sup> “Thus, the only means available for the remaining, low-income residents to commute to jobs and [other opportunities] were unreliable and inadequate.”<sup>111</sup> To focus on the highways, they reduced funding to subways and bus systems.<sup>112</sup> The lack of adequate funding for these public services continues and further aggravates the transportation-related hardships that residents in these neighborhoods face. In this way, transportation policy continues to reinforce the disadvantages initially created by construction of the highway system while also inflicting new harms.

1. Funding Imbalance

States generally prioritize highway spending over transit investment in dense, diverse cities, and suburbs. Indeed, “[t]he lion’s share of transportation dollars is spent on roads, while urban transit systems are often

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<sup>108</sup>. *Id.*

<sup>109</sup>. See ROTHSTEIN, *supra* note 27, at 189 (“[T]he decision to invest limited transportation funds in highways rather than subways and buses has had a disparate impact on African Americans.”).

<sup>110</sup>. The cancellation of Baltimore’s Red Line light rail system is a notable recent example. In June 2015, Larry Hogan, the Governor of Maryland, effectively cancelled the Red Line—a planned light rail that would have improved east-west mass transit in the city—when he announced that he would not authorize state funding for the project. Michael Dresser & Luke Broadwater, *Hogan Says No to Red Line, Yes to Purple*, BALT. SUN (June 25, 2015, 11:25 PM), <https://www.baltimoresun.com/politics/bs-md-hogan-transportation-20150624-story.html> [<https://perma.cc/2H56-S9KJ>]. Instead, the state funding originally earmarked for the Red Line was redirected to a transportation initiative in rural and suburban areas outside of Baltimore. *Id.* This decision had a disparate impact on Black residents of Baltimore. Complaint at 3, Balt. Regional Initiative Developing Genuine Equality, Inc. v. Maryland, U.S. Department of Transportation, Departmental Office of Civil Rights, <https://www.naacpldf.org/wp-content/uploads/Baltimore-Red-Line-Complaint.pdf> [<https://perma.cc/59NS-KQUS>] [hereinafter BRIDGE Complaint] (using the administrative complaint process, the NAACP Legal Defense and Educational Fund, Inc. challenged the racially disparate impact of Governor Hogan’s funding decision).

<sup>111</sup>. Archer, *supra* note 38, at 1290–91.

<sup>112</sup>. See BRADBURY ET AL., *supra* note 73, at 73.

left in disrepair.”<sup>113</sup> Generally, federal spending on surface transportation is split with 80 percent going to highways and 20 percent towards public transportation.<sup>114</sup> In addition, states frequently lower their public transit expenditures to less than 20 percent of their overall spending by “restrict[ing] use of . . . gasoline tax revenues to funding highway programs only.”<sup>115</sup>

Another example of this imbalance is the funding allocations within the Fixing America’s Surface Transportation Act (“FAST Act”).<sup>116</sup> The FAST Act is a \$305 billion highway bill that was the first long-term national transportation spending package in a decade.<sup>117</sup> It authorized \$305 billion over fiscal years 2016–2020 for transportation initiatives.<sup>118</sup> However, highway funding accounted for \$207.4 billion of that funding.<sup>119</sup> Although the FAST Act also allocated funding for public transportation, that number pales in comparison to the highway allocation. The FAST Act authorized \$61.1 billion in funding for public transportation.<sup>120</sup> This amount was split between several programs, including: Urbanized Area Formula Program; State of Good Repair Program; Capital Investment Grants Program; Rural Area Formula Program; Bus and Bus Facilities Formula Grants Program; and Enhanced Mobility of Seniors and Individuals with Disabilities Program.<sup>121</sup> The State of Good Repair Program provides funding primarily for repairing and upgrading rail transit systems.<sup>122</sup> This program received \$12.97 billion.<sup>123</sup> In comparison, the Bus and Bus Facilities Formula Grants Program, which provides funding for

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113. Robert D. Bullard, *Addressing Urban Transportation Equity in the United States*, 31 *FORDHAM URB. L.J.* 1183, 1186 (2004).

114. See THOMAS W. SANCHEZ, RICH STOLZ & JACINTA S. MA, HARV. UNIV. CIV. RTS. PROJECT & CTR. FOR CMTY. CHANGE, *MOVING TO EQUITY: ADDRESSING INEQUITABLE EFFECTS OF TRANSPORTATION POLICIES ON MINORITIES* 11 (2003), <https://www.civilrightsproject.ucla.edu/research/metro-and-regional-inequalities/transportation/moving-to-equity-addressing-inequitable-effects-of-transportation-policies-on-minorities/sanchez-moving-to-equity-transportation-policies.pdf> [<https://perma.cc/RL5U-6XSD>].

115. *Id.*

116. Fixing America’s Surface Transportation Act, Pub. L. No. 114-94, §§ 1101, 1104, 129 Stat. 1312, 1322–25, 1329–32 (2015).

117. See *Fixing America’s Surface Transportation (FAST) Act: Highway Research, Technology Deployment, and Education*, U.S. DEP’T OF TRANSP.: FED. HIGHWAY ADMIN. (Dec. 2, 2019), <https://highways.dot.gov/research/legislation-budget/legislation/fixing-america%E2%80%99s-surface-transportation-fast-act#:~:text=On%20December%204%2C%202015%2C%20President,funding%20certainty%20of%20surface%20transportation> [<https://perma.cc/MKR9-94UD>].

118. *Id.*

119. See FAST Act, § 1101(a)(1) (setting out funding levels for fiscal years 2016–2020, which aggregate to \$207.43 billion).

120. JOHN NEFF, AM. PUB. TRANSP. ASS’N, *APTA PRIMER ON TRANSIT FUNDING: THE FIXING AMERICA’S SURFACE TRANSPORTATION ACT AND OTHER RELATED LAWS, FY 2016 THROUGH FY 2020*, at 16 tbl.2 (2016), <https://www.apta.com/wp-content/uploads/APTA-Primer-on-Transit-Funding-FAST-Act-and-Other-Related-Laws.pdf> [<https://perma.cc/RP99-BQLQ>].

121. *Id.* at 14.

122. *Id.* at 88–89.

123. *Id.* at 16.

capital expenses to purchase and rehabilitate buses and to build related facilities, received \$3.74 billion.<sup>124</sup> Unsurprisingly, Black people are more likely to take the bus than rail transit while white commuters are more likely to take rail transit.<sup>125</sup>

The focus on highways—as opposed to more accessible buses, subways, and light rails—has helped to keep steady work just out of reach for many Black communities. Communities of color and low-income communities use public transit at higher rates than white and wealthy communities do. Black and Latinx people account for 54 percent of public transit users, including 62 percent of bus riders.<sup>126</sup> And, Black people are almost six times as likely as whites to use public transit.<sup>127</sup> This is especially true with respect to urban transit as “over 88 [percent] [of Black people] live in metropolitan areas and over 53 [percent] live inside central cities.”<sup>128</sup> The disparities are also a function of need, as 24 percent of Black households do not own a car.<sup>129</sup>

Even within the realm of public transportation funding, there are funding disparities—particularly as it affects buses, a means of public transportation overwhelmingly used by Black commuters. “Bus transit receives only 31 percent of the capital funds spent nationwide for transit, although it carries more than 60 percent of the trips.”<sup>130</sup> This difference is exacerbated by requirements that federal funding be spent for capital expenditures.<sup>131</sup> Public “[t]ransit authorities create and exacerbate the polarization by providing two types of transit: superior service for affluent riders and inferior service for captive riders from low-income neighborhoods.”<sup>132</sup> These transit systems take their low income “captive riders” for granted and focus on luring affluent motorists out of their cars at high public subsidy cost, effectively having their minority and low-income riders subsidize their wealthy ones.<sup>133</sup>

In Baltimore, Maryland, for example, over the course of four decades, numerous proposals for rail lines “connect[ing] [Black] neighborhoods to better opportunities have been scuttled because finances were short and

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124. *Id.* at 16, 73.

125. HUGH M. CLARK, CJI RSCH. CORP., WHO RIDES PUBLIC TRANSPORTATION 22 (2017), <https://www.apta.com/wp-content/uploads/Resources/resources/reportsandpublications/Documents/APTA-Who-Rides-Public-Transportation-2017.pdf> [<https://perma.cc/SV4T-YVJK>].

126. Sean B. Seymore, Note, *Set the Captives Free! Transit Inequity in Urban Centers, and the Laws and Policies Which Aggravate the Disparity*, 16 GEO. MASON U. C.R. L.J. 57, 65 (2005).

127. *Id.*

128. Bullard, *supra* note 113, at 1190 (footnote omitted).

129. SANCHEZ ET AL., *supra* note 114, at 9.

130. *Id.* at 14. Heightening the issue is the fact that rail is capital-intensive, whereas bus is labor-intensive. *Id.*

131. *Id.*

132. Seymore, *supra* note 126, at 66.

133. John Pucher & John L. Renne, *Socioeconomics of Urban Travel: Evidence from the 2001 NHTS*, TRANSP. Q., Summer 2003, at 49, 67.

building expressways to serve suburbanites was a higher priority.”<sup>134</sup> As recently as 2015, the governor of Maryland refused to fund and cancelled a proposal for Baltimore’s Red Line light rail system, a mass transit line that would have served some of the city’s most congested and yet poorly served areas.<sup>135</sup> Instead, the governor redirected the state funding earmarked for the Red Line to a transportation initiative in rural and suburban areas outside of Baltimore.<sup>136</sup> This decision had a disparate impact on Black residents of Baltimore, who would have comprised 60 percent of the Red Line corridor, as described in a challenge to the decision under Title VI of the Civil Rights Act of 1964.<sup>137</sup> The Red Line would have “connect[ed] West Baltimore’s predominantly [Black] neighborhoods to job centers”—a connection that is sorely needed within many neighborhoods within the Red Line’s service area.<sup>138</sup> For instance:

Unemployment rates in the neighborhoods along Edmondson Avenue are extremely high: 17.5 percent in Poppleton; 17.9 percent in Allendale; 22.7 percent in Edmondson Village and in Harlem Park/Sandtown-Winchester; and 24.1 percent in Greater Rosemont—compared to the city’s overall unemployment rate of 14.2 percent. Travel poses a barrier for jobseekers in these neighborhoods; less than two percent of jobs within the city of Baltimore, let alone the metropolitan region, are located in these communities. The regional job centers are located downtown, in Woodlawn, and in other outlying suburban areas, which are difficult to reach on the public bus routes which are currently the only available form of public transportation.<sup>139</sup>

Halting funding on the Red Line was a dead end to the very transportation access that West Baltimoreans desperately need.

Similar examples exist around the country. In Montgomery, Alabama, the city effectively dismantled its public bus system, used primarily by Black and low-income people, at the same time that federal tax dollars were being used to boost construction of suburban highways.<sup>140</sup> In Buffalo, New York, a Black woman named Cynthia Wiggins was killed when she was “forced to cross a seven-lane highway in order to get from the bus stop to her job in a suburban mall because the mall barred city buses,” which are used primarily by Black communities, “from driving into its parking lot (although suburban and

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134. ROTHSTEIN, *supra* note 27, at 189.

135. BRIDGE Complaint, *supra* note 110, at 8.

136. *Id.* at 34–35.

137. *Id.* at 9.

138. *Id.* at 9–10.

139. *Id.* (footnotes omitted).

140. Bullard, *supra* note 113, at 1191–92.

tourist buses were permitted).<sup>141</sup> In 1993, Macon-Bibb County, Georgia, despite having a population evenly divided between Black and white residents, devoted \$33.65 million to roads, streets, and highways, while spending less than \$1.4 million on public transportation.<sup>142</sup> Over 90 percent of the bus riders in the county were Black, and 28 percent of Black households did not own cars.<sup>143</sup> The county was ultimately sued for discriminating against Black residents and residents with disabilities.<sup>144</sup>

Recent high-profile litigation has focused on discriminatory investments in government-funded transportation. In Atlanta, Georgia, the Metropolitan Atlanta Transportation Equity Coalition (“MATEC”) sued the Metropolitan Atlanta Rapid Transit Authority (“MARTA”) for “provid[ing] disparate service to . . . minority communities[, including] less transit service[s], fewer clean compressed natural gas buses and bus shelters, . . . inadequate security at . . . stations in minority neighborhoods,” and disproportionate fare increases.<sup>145</sup> A 2019 referendum to expand the public transit system by connecting it to the suburban area was rejected.<sup>146</sup> In New York City, the New York Urban League sued the City to challenge a 20 percent proposed rate hike on subway and bus fares in comparison to a nine percent fare increase on commuter rail lines.<sup>147</sup> “At the time, racial and ethnic minorities made up about 60 [percent] of riders on the subway” and public bus system, “but only about 20 [percent] of the commuter rail passengers.”<sup>148</sup> Similar disparities continue. For example, the Metropolitan Transit Authority planned to implement regular subway and bus fare increases without providing any

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141. Rich Stolz, *Race, Poverty & Transportation*, POVERTY & RACE RSCH. ACTION COUNCIL, Mar.–Apr. 2000, at 1–2, <https://www.prrac.org/newsletters/marapr2000.pdf> [<https://perma.cc/4UEW-AUM5>].

142. ROBERT D. BULLARD, GLENN S. JOHNSON & ANGEL O. TORRES, *THE ENV'T JUST. RES. CTR., SPRAWL ATLANTA: SOCIAL EQUITY DIMENSIONS OF UNEVEN GROWTH AND DEVELOPMENT* 28–29 (1999), <http://facultyweb.kennesaw.edu/uzimmerm/docs/Bullard%20et%20al%20Sprawl%20Atlanta.pdf> [<https://perma.cc/93GY-NXES>].

143. *Id.*

144. See Motoko Rich, *Transit Case Attracts Activists After Discrimination Complaint*, WALL ST. J. (Dec. 17, 1997, 12:01 AM), <https://www.wsj.com/articles/SB882299718433904500> [<https://perma.cc/X6TA-T33G>].

145. Evelyn Blumenberg, *Social Equity and Urban Transportation*, in *THE GEOGRAPHY OF URBAN TRANSPORTATION* 332, 344 (Genevieve Giuliano & Susan Hanson eds., 4th ed. 2017) (citation omitted).

146. Laura Bliss, *Atlanta's Big Transit Vote Is a Referendum on Race*, BLOOMBERG CITYLAB (Mar. 20, 2019), <https://www.bloomberg.com/news/articles/2019-03-15/gwinnett-county-will-decide-atlanta-s-transit-future> [<https://perma.cc/C7A4-QYY6>].

147. Patrick Moulding, Note, *Fare or Unfair? The Importance of Mass Transit for America's Poor*, 12 GEO. J. ON POVERTY L. & POL'Y 155, 169–70 (2005).

148. *Id.* at 169.

alleviation for New Yorkers living in poverty, despite providing discounts “to other groups regardless of . . . income.”<sup>149</sup>

But more granular decisions, such as where to place public transit stops, also discriminate against people of color. Many wealthy and white communities actively push elected officials not to place transit stops in their neighborhoods despite their benefits, because of a desire to block low-income people of color from entering their neighborhoods.<sup>150</sup> Organized opposition from wealthy white residents has occurred in Atlanta,<sup>151</sup> San Francisco,<sup>152</sup> and Washington, D.C.<sup>153</sup> The opposition is premised on a range of explicitly and implicitly racist reasoning. For example, a shopping mall in Richmond, California, requested a bus stop be moved to prevent Black students from a nearby school from accessing the mall.<sup>154</sup>

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149. Sara Amri, Note, *Fighting for Fair Fares in New York City Through Civil Society Enforcement of Title VI*, 26 J.L. & POL'Y 165, 165 (2018).

150. Sarah Schindler, *Architectural Exclusion: Discrimination and Segregation Through Physical Design of the Built Environment*, 124 YALE L.J. 1934, 1961–63 (2015).

151. *Id.* at 1962; see Jason Henderson, *Secessionist Automobility: Racism, Anti-Urbanism, and the Politics of Automobility in Atlanta, Georgia*, 30 INT'L J. URB. & REG'L RSCH. 293, 299–300 (2006) (“In suburban Cobb County[, Atlanta], the chairman of a local anti-tax organization declared that ‘MARTA-style mass transit would lead to an increase in crime and the construction of low-income housing in Cobb County.’ . . . Most interviewees for this research acknowledged that white racism complicated decision-making about transit. Suburban elected officials acknowledged that a substantial portion of their constituents held racist views. One county official mentioned that at public meetings in her Atlanta suburb, residents loudly protested against the MARTA bus service because [B]lacks would steal TVs.” (citation omitted) (first quoting Editorial, *Too Soon to Quit on Mass Transit*, ATLANTA CONST., Nov. 8, 1998, at A12; then citing Interview with Cherokee County Commissioner (June 14, 2001))).

152. Schindler, *supra* note 150, at 1962; JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 255 (2005) (“Some white suburbs of San Francisco opted out of the Bay Area Rapid Transit system, fearing it might encourage African Americans to move in. . . . Parks, tennis courts, and playgrounds may be few or located on minor roads where visitors will be unlikely to find them. . . . San Marino, an elite suburb of Los Angeles, ‘closes its parks on weekends to make sure the neighboring Asian and Latin communities are excluded,’ thus keeping out everyone, even its own residents.” (quoting Frederique Krupa, *Los Angeles: Buying the Concept of Security*, SIMPLE-IS-BEAUTIFUL.ORG (1993), <http://www.simple-is-beautiful.org/fredek/lagc.html> [<https://perma.cc/KQY4-2TMJ>])).

153. Schindler, *supra* note 150, at 1962; Lior Jacob Strahilevitz, *Exclusionary Amenities in Residential Communities*, 92 VA. L. REV. 437, 487–88 (2006) (“[I]n the process of planning the Washington, D.C., subway, citizens in various relatively affluent areas opposed the establishment of subway stations because of concerns that inner city denizens would ride the subways into their neighborhoods. Affluent neighborhoods in other parts of the country have done likewise, foregoing otherwise desirable investments in valuable amenities like well-maintained public roads, parks, and even street signs because of fears that such amenities would attract undesirables.” (footnote omitted)).

154. *A Tale of Two Cities*, SUN REP., Jan. 9, 1995, at 7 (reporting on the request of a shopping mall manager in Richmond, California that transit authorities halt the use of a bus stop in front of the mall because of the manager’s belief that young people, mostly Black, block the mall doorways and interfere with customers).

The net result of these discriminatory policies is to limit the access and mobility of Black people, who are more likely to rely on public transit as their primary form of transportation.<sup>155</sup> When combined with housing segregation, transportation isolation and funding disparities feed economic inequality by ensuring that promising employment opportunities remain unreachable for far too many Black people as jobs have shifted from urban centers to suburban communities where transportation access is inadequate.<sup>156</sup> For example, in Philadelphia, Pennsylvania, where 47 percent of Black households do not have access to a car, there has been extensive job flight.<sup>157</sup> “[M]ore than 70 percent of jobs in the . . . region are [now] located in the suburbs, with many accessible only by car and located far from affordable housing.<sup>158</sup> Thus, many people in Philadelphia’s Black communities remain stranded and disconnected from opportunities.

## 2. Impact on Health and Well-Being

The general discrimination against the forms of public transit used primarily by low-income Black people has numerous secondary effects, including on health and well-being.<sup>159</sup>

Lack of access to transportation is a significant barrier to health care access.<sup>160</sup> More than 3.6 million Americans do not get medical care each year because of lack of transportation.<sup>161</sup> Communities of color are at a greater risk for facing transportation as a barrier to accessing health care because they “do

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155. Regina Austin, “Not *Just for the Fun of It!*”: *Governmental Restraints on Black Leisure, Social Inequality, and the Privatization of Public Space*, 71 S. CAL. L. REV. 667, 669 (1998) (“[T]he restraints may operate not on a leisure activity itself, but on the mobility required to engage in the activity. For example, the routing patterns of some urban public transportation systems deliberately make it difficult for central-city residents to get to outlying leisure venues like shopping malls and beaches.”); Schindler, *supra* note 150, at 1961–63.

156. See BRIDGE Complaint, *supra* note 110, at 9–10; see Bullard, *supra* note 113, at 1201 (“Between 1990 and 1997, jobs on the fringe of metropolitan areas grew by 19% versus 4% job growth in core areas.”).

157. Andrea B. Korb, *SEPTA, Philadelphia, and Transportation Equity in America*, 3 GEO. J.L. & MOD. CRITICAL RACE PERSP. 119, 120 (2011).

158. *Id.* As in many other instances, this led to a suit against the regional transportation authority (“SEPTA”) focusing on the relative allocation of funds to different aspects of the regional transit system. Defendants prevailed on summary judgment. Comm. for a Better N. Phila. v. Se. Pa. Transp. Auth., No. 88–1275, 1990 WL 121177, at \*1 (E.D. Pa. Aug. 14, 1990), *aff’d mem.*, 935 F.2d 1280 (3d Cir. 1991) (unpublished table decision).

159. See HEALTH OUTREACH PARTNERS, *TRANSPORTATION & HEALTH ACCESS: WHERE ARE WE NOW AND WHERE CAN WE GO?* 5–6 (Sonia Lee, Alexis Wielunski, & Kristen Stoimenoff eds., 2016), <https://outreach-partners.org/wp-content/uploads/2017/02/Transportation-Resource-Booklet.pdf> [<https://perma.cc/3ZH3-AGJM>]; MELTON, *supra* note 106, at 1–2.

160. HEALTH OUTREACH PARTNERS, *supra* note 159, at 5–6; see MELTON, *supra* note 106, at 1 (finding that people “are less likely to access needed services when they face transportation difficulties”).

161. HEALTH OUTREACH PARTNERS, *supra* note 159, at 6.

not have access to safe, reliable, and affordable transportation.”<sup>162</sup> “Individuals who depend on public transportation with lengthy transit routes, multiple transfers, inadequate or irregular service, or the inability to pay for transit are at an increased risk of foregoing needed services.”<sup>163</sup>

As a result, lack of access to transportation can result in “[d]elayed or missed medical appointments,” “[i]nterrupted delivery of care,” “[d]ifficulty making and keeping follow-up appointments,” “[i]ncreased use of emergency department care,” and “[p]oor health outcomes.”<sup>164</sup> On the flip side, access to quality public transportation enables the opposite: “[p]ublic transportation that is convenient, fast, and easy to navigate is associated with increased access to health care services and healthy food.”<sup>165</sup> Relatedly, inadequate transportation exacerbates the impact of food deserts. In 2009, the Department of Agriculture found that over 23.5 million Americans live in poor neighborhoods located more than a mile from a grocery store.<sup>166</sup> And a study by the Urban Institute found that one of the biggest challenges for people in food deserts was the lack of adequate transportation to a grocery store.<sup>167</sup> Thus, chronic underfunding in public transportation and discriminatory overfunding of highways has not only limited the economic health of Black communities, but the very existence of Black lives.

#### IV. BREAKING THE LINK BETWEEN UNDERDEVELOPMENT AND TRANSPORTATION POLICY

To move beyond underdevelopment, Manning Marable emphasized the need to “articulate a theory of social transformation” powerful enough to overcome deeply embedded systems of white supremacy.<sup>168</sup> Marable believed that without structural change racial disparities would continue and deepen.<sup>169</sup> This is true for transportation policy, where race regularly explains which communities enjoy the benefits of transportation development and which communities must live with the burdens. Racial inequities in transportation will only deepen without radical structural change.

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162. *Id.* at 5.

163. MELTON, *supra* note 106, at 1.

164. HEALTH OUTREACH PARTNERS, *supra* note 159, at 6.

165. MELTON, *supra* note 106, at 1.

166. ECON. RSCH. SERV., USDA, ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 35 (2009), [https://www.ers.usda.gov/webdocs/publications/42711/12716\\_ap036\\_1\\_.pdf?v=4725.2](https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf?v=4725.2) [<https://perma.cc/XQ46-UZE7>].

167. CAROLINE RATCLIFFE, ELAINE WAXMAN, CARY LOU, HANNAH HASSANI & VICTORIA TRAN, URBAN INST., DISRUPTING FOOD INSECURITY: STEPS COMMUNITIES CAN TAKE 8, 12–13 (2019), [https://apps.urban.org/features/disrupting-food-insecurity/Strategies\\_full%20olist.pdf](https://apps.urban.org/features/disrupting-food-insecurity/Strategies_full%20olist.pdf) [<https://perma.cc/U5LR-PNLV>].

168. MARABLE, *supra* note 1, at 9.

169. Mullings, *supra* note 30, at xiii.

Critical race theorists have long called for a Third Reconstruction to meaningfully advance racial justice. The post-Civil War Reconstruction was America's first attempt to make good on its founding promise of civil and political equality.<sup>170</sup> Scholars call this the First Reconstruction.<sup>171</sup> It was ushered in by the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution<sup>172</sup> and effected a fundamental shift in America. These Reconstruction Amendments changed the relationship between the federal government, the state governments, and their citizens—especially formerly enslaved people.<sup>173</sup>

The Civil Rights Movement is often called the Second Reconstruction because it sought to continue the work of Reconstruction.<sup>174</sup> The U.S. Supreme Court's "adoption of the 'separate but equal doctrine[,] . . . restrictive interpretations of . . . post-Civil War legislation," legally-countenanced Jim Crow, "the enactment of the [B]lack codes," and wide-ranging state-sponsored racial terror combined to diminish the promise of the Civil War Amendments and necessitate this Second Reconstruction.<sup>175</sup> The Supreme Court's decision in *Brown v. Board of Education*<sup>176</sup> and the enactment of the Civil Rights Act of 1964,<sup>177</sup> the Voting Rights Act of 1965,<sup>178</sup> and the Fair Housing Act of 1968,<sup>179</sup> are considered the hallmarks of the Second Reconstruction. However, that critical period of advancing racial justice has long ended with much work left to be done.

It is time for a Third Reconstruction to address historic and systemic racism and inequality, create radically different legal and institutional regulatory forms, and center human dignity, and community equity as central to the American agenda. This Third Reconstruction would finally and meaningfully address how race, class, and place intersect to shape people's lives, in transportation policy as well as in other systems. Scholars and

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170. See ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION*, at xix (2019) ("During Reconstruction, the United States made its first attempt, flawed but truly remarkable for its time, to build an egalitarian society on the ashes of slavery.").

171. See Belton, *supra* note 18, at 246.

172. *Id.* at 246 n.125.

173. FONER, *supra* note 170, at xix–xx ("[T]he Reconstruction amendments greatly enhanced the power of the federal government, transferring much of the authority to define citizens' rights from the states to the nation. They forged a new constitutional relationship between individual Americans and the national state . . ."). The Thirteenth Amendment ended the stain of slavery and subjugation. *Id.* at xix. The Fourteenth Amendment established birthright citizenship and guaranteed basic legal protections to the new citizens. *Id.* And the Fifteenth Amendment legally gave half of the formerly enslaved people the right to vote. *Id.*

174. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 9–10 (3d ed. 1974).

175. Belton, *supra* note 18, at 246.

176. *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

177. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241.

178. Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437.

179. Civil Rights Act of 1968, Pub. L. No. 284, §§ 801–819, 82 Stat. 73, 81–89.

advocates have called for a reimagining of the law in order to achieve equal justice for Black people, with a focus on addressing structural and institutional racism as hallmarks of this Third Reconstruction.<sup>180</sup> This includes both a focus on transforming law and public policy, but also on building a social movement that challenges racial inequality and hierarchy.

In calling for “a Third Reconstruction vision of prison abolition,”<sup>181</sup> Professor Paul Butler envisioned the need for “a coordinated effort to address institutional racism and inequality” through public policy, legal doctrines, and social movements.<sup>182</sup> Similarly, other scholars have advocated “for a Third Reconstruction in which the constitutional order would . . . guarantee equal protection to broad classes of people mired in poverty or confronting systemic stigmatization” and called for “system-wide principles of social justice.”<sup>183</sup> The call has also conceived of a Third Reconstruction as an opportunity to devote more “attention to the substantive and affirmative requirements of the government in ensuring the treatment of former slaves as full human beings” and to center human dignity.<sup>184</sup> Ultimately, advocates hope that a Third Reconstruction would “eliminat[e] the role that whiteness and [B]lackness play in determining who belongs and who does not.”<sup>185</sup>

A shift in transportation policy is a critical step in reversing the underdevelopment of Black communities, but alone is not sufficient. Our country must embrace transportation inequality as a critical civil rights issue that impacts housing, voting, health, education, and economic opportunity. And we must also transform how our civil rights laws are interpreted and deployed.

Modern civil rights laws must be applied in a way that “focus[es] on distributive equality [in order to] ensur[e] that ‘[Black] communities do not accrue fewer benefits and bear greater costs’ than other[s].”<sup>186</sup> The country must deploy civil rights law in a way that can dismantle systems and structures of racial inequality and challenge the discrimination at the intersection of race, class, and place that we see in transportation policy. Right now, the focus of each law is intensely siloed. We must re-envision these laws as tools for community equity. But this effort is hampered because the laws are designed to challenge discriminatory decisions after they have been made, accept

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180. See generally Butler, *supra* note 18, at 1475 (advocating for a Third Reconstruction to address the racial problems in the American criminal justice system); Meares, *supra* note 18 (arguing for a Third Reconstruction to enforce the consistent treatment of all citizens); Belton, *supra* note 18 (calling for a Third Reconstruction to achieve Congress’ goal of workplace equality).

181. Butler, *supra* note 18, at 1476.

182. *Id.* at 1475.

183. Bruce Ackerman, *De-Schooling Constitutional Law*, 123 YALE L.J. 3104, 3128 (2014).

184. Rhonda V. Magee Andrews, *The Third Reconstruction: An Alternative to Race Consciousness and Colorblindness in Post-Slavery America*, 54 ALA. L. REV. 483, 502–03 (2003).

185. Lisa A. Crooms-Robinson, *Is the Third Time the Charm? Reconstructing Personhood and Reimagining “We the People”*, 43 HUM. RTS., no. 2, 2018, at 2, 5.

186. Archer, *supra* note 38, at 1304 (quoting Blumenberg, *supra* note 145, at 350).

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modern racial inequality as a neutral baseline, and are limited in their ability to redress the decades of accumulated structural racism.

## V. CONCLUSION

This Essay argues that utilizing civil rights laws is necessary to dismantle traditional power systems and discrimination at the intersection of race, class, and place in America. To ensure that the development of Black communities receives equal footing with that of white communities, we must invoke the deep, structural change that Marable espouses. We must address historically embedded and systemic racial inequality and re-envision civil rights law as a tool for community equity to break the chains of government-sponsored and government-sanctioned underdevelopment.