

THE BIRTH OF A MONSTER: AN OPEN DISCUSSION ON ANTI-BLACKNESS SEGREGATION TO PRESENT

*Nichelle Womble**

I. INTRODUCTION

When it comes to race, White people claim to be unaware, and a majority *are* unaware, of their racial identity and the implications that it has on social ideologies. The problem with being unaware is it shows how Whites view racial issues and race. Unawareness, or claims of it, show lack of consideration for anything other than the problems they face as White individuals. Not only does it show lack of concern, but the oblivion also allows Whites to neglect the meaning and the influence of their racial identity on society. The problem then becomes that racism is excluded from the foundational structure of society; this leads to it being regarded as a baseless ideology that is dependent on other forces and ultimately is disregarded and ignored.¹

We live in a racialized society where Whites are privileged, and Blacks are underprivileged. A racialized society is one in which the economic, political, and social ideologies are created by the placement of people in racial categories

* Juris Doctor Candidate, 2021, Nova Southeastern University Shepard Broad College of Law, Davie, FL; Master of Education in Sports Management, 2017, University of Miami, Miami, FL; Bachelor of Arts in English, 2015, Southern New Hampshire University, Manchester, NH; Clark Atlanta University, 2012, Atlanta, GA. Director of Communications, National Black Law Student Association, 2020–2021; Director of Communications, National Bar Association Law Student Division, 2020–2021; Lawyer of Color Fellow 2020–2021; Senior Editor, *Southern Journal of Policy and Justice*, Volume XV. I want to thank Dr. Tibbs, Professor of Law at St. Thomas University School of Law, for creating space and forcing uncomfortable conversations. This paper would not have happened without him and his guidance during his Race and the Law course. I also want to thank my parents, Cheryl and Wendell Womble, for always pushing, supporting, and motivating me and my twin boys, Jayden and J'Wan, and for hanging in there with me during this journey which has not been easy. Lastly, I want to express my gratitude to every other individual who has played a role in my journey. This article is dedicated to Breonna Taylor, George Floyd, Trayvon Martin, Oscar Grant, Philando Castile, and the countless others who have lost their lives. May you continue to Rest in Heaven and may your voices continue to shine through all of us.

¹ See generally Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOC. REV. 465, 467 (1997) (discussing races and the interpretation of their societal impacts).

or races.² The human traits used to create the categories are based on social—not biological traits.³ This is a social construct.⁴

There is not one group of traits or genes common to all Blacks and Whites.⁵ It leaves one wondering then, how are social constructs created? Who determines these social constructs, and how individuals are categorized? Is it based on what they have, who they are, what they do, etc.? These questions remain stagnant and, as such, social constructs and racial categories are not fluidly defined.⁶ You are grouped with who you are like, not necessarily who you are, whether it be poor or rich, light or dark skinned, amongst other social constructs.

In a racialized society, the creation of those categories is almost always based upon some sort of recognized societal hierarchy.⁷ Those hierarchies are what define and create the division of social relations amongst those racial categories.⁸ In the hierarchy system, the race placed at the top is always in a superior position to the others, and as a result, receives better economic status including jobs, wealth, health, and positions of power.⁹ The higher ranked race is afforded a higher societal estimation and is considered “smarter” and “better looking.”¹⁰ For that racial group, the higher ranking means being able to choose whether to “exhibit less virulence” since they are in control of their interactions with other races.¹¹ They can also easily establish themselves as the more

² *Id.* at 469.

³ *Id.* (“Races typically are identified by their phenotype, but . . . the selection of certain human traits to designate a racial group is always socially rather than biologically based”); see also Angela Onwuachi-Willig, *Race and Racial Identity Are Social Constructs*, N.Y. TIMES (Sept. 6, 2016, 5:28 PM), <https://www.nytimes.com/roomfordebate/2015/06/16/how-fluid-is-racial-identity/race-and-racial-identity-are-social-constructs> (“Race is not biological. It is a social construct.”).

⁴ Onwuachi-Willig, *supra* note 3.

⁵ *Id.* (“[A] person who could be categorized as black in the United States might be considered white in Brazil or colored in South Africa.”).

⁶ See *id.* (“Unlike race and racial identity, the social, political and economic meanings of race, or rather belonging to particular racial groups, have not been fluid.”). But see Bonilla-Silva, *supra* note 1, at 468.

⁷ See Bonilla-Silva, *supra* note 1, at 469; see also Teresa J. Guess, *The Social Construction of Whiteness: Racism by Intent, Racism by Consequence*, 32 CRITICAL SOC. 649, 655–56 (2006) (“[R]ace relations are a basic feature of social organization . . . based on hierarchy and racial group position.”).

⁸ See Bonilla-Silva, *supra* note 1, at 469; see also Guess, *supra* note 7, at 657 (“Part of our commonsense knowledge about ‘race’ and whiteness in America is that interaction between the ‘races’ is generally perceived in terms of hierarchical relations between blacks and whites.”).

⁹ See Bonilla-Silva, *supra* note 1, at 469–70; see also Guess, *supra* note 7, at 671 (“[P]ublic consciousness produces latent consequences in subordinate groups and it manifests as low self-worth and low self-esteem for the descendants of those who were enslaved, while the descendants of the masters and overseers continue to enjoy, in general, the benefits of white-skin privilege.”).

¹⁰ Bonilla-Silva, *supra* note 1, at 469–70 (explaining that this social estimation allows the higher ranked individuals a “license to draw physical (segregation) as well as social (racial etiquette) boundaries between itself and other race. . . .”); see also Guess, *supra* note 7, at 671 (“[A]mong most descendants of the formerly enslaved, there continues to exist a social hierarchy based on skin color . . . the myth of light-complected people implying something better than, or above, dark-complected people.”).

¹¹ See Bonilla-Silva, *supra* note 1, at 475.

dominant race in every interaction because those in the less dominant class cannot.¹² Classic examples of loss of control over interactions for the dominant race happen during revolts or when Blacks move into White neighborhoods having the audacity, from the White perspective, to send their Black children to private schools.¹³ Stereotypes are born from social ideologies which are then used to justify a race's place in society.

According to Bonilla-Silva, those stereotypes may originate from three different categories: "(1) Material realities or conditions endured by the group, (2) genuine ignorance about the group, or (3) rigid, distorted views on the group's physical, cultural, or moral nature."¹⁴ Stereotypes are not always a perfect fit to a "group's true social position"; however, in order for the stereotype to survive, it must reflect the "group's situation" and the social ideological function it represents.¹⁵ The stereotype's objective is to put individuals in categories and create certain notions about them, whether true or not. This way, the hierarchy remains intact and continues to have a dominant race and an inferior race. When certain notions about specific groups disappear, and their status starts to mirror that of the dominant race, stereotypes disappear too.¹⁶ This is when problems arise because the dominant race never wants to lose their position or feel as though another race is beginning to take over—threatening to make them the minority or inferior.¹⁷ Racial practices that in turn create inequalities in today's America are increasingly secretive.¹⁸ They are "embedded in normal operations of institutions," a practice better known as institutionalized racism.¹⁹ To get around the laws in an imperceptible manner to most Whites, institutionalized racism avoids direct racial terminology.²⁰ The racial disparities between Whites and Blacks are a social reality, though they tend to be threatened as times change. Still, they tend to remain about the same, placing Whites as the

¹² See *id.* (explaining how higher ranked races "have greater control over the form and the outcome of their racial interactions.").

¹³ See *id.* at 475–76, 475 n. 21 (discussing how Whites perceive Blacks as a general threat).

¹⁴ *Id.* at 476.

¹⁵ *Id.* ("Generally, then, stereotypes are reproduced because they reflect the group's distinct position and status in society. As a corollary, racial or ethnic notions about a group disappear only when the group's status mirrors that of the dominant racial or ethnic group in the society.").

¹⁶ See, e.g., *id.* ("[N]otions of the Irish as stupid or Jews as athletically talented have all but vanished since the 1940s, as the Irish moved up the educational ladder and Jews gained access to multiple routes to social mobility.").

¹⁷ See generally Bonilla-Silva, *supra* note 1 (discussing the power struggle between races. The use of "we" versus "them" is an example of how racial practices and societal attitudes have the effect to create races).

¹⁸ See Eduardo Bonilla-Silva & Amanda Lewis, *The "New Racism": Toward an Analysis of the U.S. Racial Structure, 1960s-1990s*, 536 CTR. FOR RES. ON SOC. ORG. 1, 2 (1996).

¹⁹ See Bonilla-Silva, *supra* note 1, at 476.

²⁰ See Bonilla-Silva & Lewis, *supra* note 18, at 2 (explaining that some of the elements comprising "this new racial structure are: 1) the increasingly *covert* nature of racial discourse and racial practices; [and] 2) the avoidance of racial terminology and the ever growing claim by whites that they experience 'reverse racism.'").

dominant race and Blacks as the inferior race.²¹ The struggle remains for the dominant race to remain privileged and the inferior race to try and change the status quo. As Blacks create movements to change the status quo, Whites fire back with their own retaliation. However, as the times continue to change, there are new forms of racism that emerge every day.²² Racism is no longer just overt. There is also now “colorblind” racism by Whites, i.e., “[I] don’t see color.”²³ It is a constant back and forth struggle, but one thing remains the same, though times have changed, whiteness has not.

Racism and discrimination remain topics of focus that continue to shape the lives, experiences, and results of the American people. These aspects continue creating privileges, systematically and socially, for Whites while disadvantaging Blacks. Today’s White person claims to not see color, but is that the truth? Perhaps they do not see color, but maybe a more honest statement is that they do not see *blackness*.

Where did it all begin? To answer these questions, this paper explores “The Birth of a Monster,” better known as “whiteness,” by encompassing white privilege and supremacy. It will paint a picture from segregation to present day, of the development of White identity, in both White people’s minds and our court systems. Further, it will cover how this development has continually shaped the open anti-blackness mindset of today including, policing, the killings of Blacks at the hands of law enforcement, the lack of action by the courts, and the issues around housing, education, healthcare, and jobs.

II. RESEARCH AND THEORY

A. HISTORICAL ANALYSIS

Over time ideologies have changed, stereotypes have evolved, and racism has grown; but one thing has always remained, White as the dominant race and Black as the inferior race.²⁴ There is no distinct answer to how this became the

²¹ See Bonilla-Silva, *supra* note 1, at 468 (“If racism is merely a matter of ideas that has no material basis in contemporary society, then those ideas should be similar to their original configuration, whatever that was. The ideas may be articulated in a different context, but most analysts essentially believe that racist ideas remain the same”); see also Kim I. Mills, *Race Relations in a New Age*, 40 AM. PSYCHOL. ASS’N 28 (2009), <https://www.apa.org/monitor/2009/04/race-relations> (addressing the impact of the United States first Black President, John Dividio expresses that “attitudes toward blacks as a whole will not change overnight. . . . Attitudes, particularly racial prejudice, which serves a number of psychological and material functions, often have a basic core that is resistant to change. . . .”).

²² See generally Ashly Williams, *Modern-Day Racism in the Workplace: Symbolic Diversity or Real Change?*, 1 FROM SCI. TO PRAC. 6, 7–8 (2015) (explaining how microaggressions and symbolic diversity represent modern day racism in the workplace).

²³ See Adia Harvey Wingfield, *Color-Blindness Is Counterproductive*, ATLANTIC (Sept. 13, 2015), <https://www.theatlantic.com/politics/archive/2015/09/color-blindness-is-counterproductive/405037/> (“[T]he language of explicit racism has given way to a discourse of colorblindness.”).

²⁴ See Bonilla-Silva, *supra* note 1, at 470.

norm and where it began, but one thing is for sure, we did not arrive here overnight. Anti-blackness has existed since slavery. Years after slavery, the world seems to have made up its mind. Our courts also continue to get it wrong as they feed into the idea of the monster, or as I call it, whiteness. Most people categorize slavery as the worst time in American history. Once outlawed, many believed things were supposed to get better. Then came segregation,²⁵ and with it, a whole new set of issues emerged.

As slaves were freed and moved into society, Whites, who did not want to co-exist, realized they needed to do something—beginning what we know as segregation and marking the commencement of the birth of the monster.²⁶ At the same time, amendments were being created to solidify the freedom of the emancipated slaves.²⁷ This was a time of turmoil as Whites began their own movement to make sure that life as they knew it would stay the same, keeping them as the superior race.²⁸

Then, the Fourteenth Amendment was born. With it, the Constitution had finally given Black men full citizenship and promised them equal protection under the law.²⁹ In response, starting in 1865, Whites created what would be known as the “Black Codes”;³⁰ a set of laws passed in the South that dictated the lives of Black people, from limiting where they could live, work, and be allowed in.³⁰ This was also the rise of the insurance of cheap labor provided by Blacks, even though slavery had been abolished.³¹

The Black Codes were a prominent example of one race trying to keep another race down.³² Blacks were criminalized for who they were and not for

²⁵ See *Racial Segregation*, ENCYC. BRITANNICA (Jan. 14, 2020), <https://www.britannica.com/topic/racial-segregation> (defining segregation as “the practice of restricting people to certain circumscribed areas of residence or to separate institutions . . . and facilities . . . on the basis of race or alleged race.”).

²⁶ See *id.* (“In the Southern states of the United States . . . legal segregation in public facilities was current from the late 19th century into the 1950s.”).

²⁷ See *The Impact and Legacy of the Emancipation Proclamation*, NAT’L MUSEUM AM. HIST., <https://americanhistory.si.edu/changing-america-emancipation-proclamation-1863-and-march-washington-1963/1863/impact-and-legacy> (last visited Dec. 28, 2020) [hereinafter *Impact of Emancipation Proclamation*] (narrating how in 1865, the Thirteenth Amendment abolished Slavery. This was followed by the Fourteenth Amendment which enforced the equal protection of the law. Then, the Fifteenth Amendment made it unlawful to deny an individual the right to vote based on race).

²⁸ See *14th Amendment*, HIST., <https://www.history.com/topics/black-history/fourteenth-amendment> (last updated Feb. 21, 2020).

²⁹ See *Impact of Emancipation Proclamation*, *supra* note 27.

³⁰ See generally *Black Codes*, HIST., <https://www.history.com/topics/black-history/black-codes> (last updated Oct. 10, 2019) (“[I]n late 1865, Mississippi and South Carolina enacted the first black codes” and with it blacks effectively had no voice); see also *Southern Black Codes*, CONST. RTS. FOUND., <https://www.crf-usa.org/brown-v-board-50th-anniversary/southern-black-codes.html> (last visited Dec. 28, 2020) (describing the history of the Black Codes).

³¹ See *Black Codes*, *supra* note 30; see also *Southern Black Codes*, *supra* note 30 (explaining how the Black Codes allowed for black orphans and children of vagrant parents to be apprenticed to white employers, even “against their will”).

³² See *Southern Black Codes*, *supra* note 30 (“The white legislators saw little reason not to continue the tradition of unequal treatment of black persons.”).

what they did. As the newly freed slaves began trying to gain some economic self-sufficiency and independence, the White landowners feared what would happen if they did gain full independence.³³ Concerns arose as Whites feared that Blacks would rise to superiority, revolt against them because of the hardships they endured during slavery, and destroy their current economic state.³⁴ The fear of what could happen resulted in the White landowners creating a system like the one they had during slavery to control the labor force.³⁵ Mississippi Black Codes required that Blacks have evidence of their employment, in writing, each January for the coming year; and if they left before their employment contract was up, they would be forced to forfeit earlier earned wages and were also subject to being arrested.³⁶

Even though the codes granted Blacks certain rights, including the rights to own property, make contracts, and testify in court, there were still limitations on those rights. Blacks could own property, but it had to be in unincorporated cities, and though they could testify in court, it had to be against other Blacks only.³⁷ These codes were enacted by a political system where Blacks had no voice and therefore, no choice. The Black Codes “were enforced by all-White police and state militia forces” who were often Confederate Civil War Veterans.³⁸

Blacks continued to see little to no change as the Reconstruction period ended. The federal soldiers in charge of making sure all federal laws were enforced left, sparking vigorous efforts by Whites to thwart the little change Blacks did see.³⁹ White Supremacy groups began to emerge starting with the Klu Klux Klan (“the Khlan”).⁴⁰ The Klan was just another effort to suppress

³³ See *id.* (“White Southerners also feared that if freedmen did not work for white landowners, the agricultural economy of the South would collapse. . . . Crimes that whites believed freedmen might commit, such as rebellion, arson, burglary, and assaulting a white woman, carried harsh penalties.”).

³⁴ See *id.* (“[E]conomic worries, prejudices, and fears helped produce the first Black Codes.”).

³⁵ See *id.* (“All Southern Black Codes relied on vagrancy laws to pressure freedmen to sign labor contracts.”).

³⁶ See *id.* (explaining that individuals who did not follow labor contracts “could be arrested and returned to their masters by a judge’s order”); see also F. MICHAEL HIGGINBOTHAM, RACE LAW: CASES, COMMENTARY, AND QUESTIONS 769 (4th ed. 2015) (reiterating the global hardship Blacks endured even “after emancipation from 246 years of slavery”).

³⁷ See *Southern Black Codes*, *supra* note 30 (explaining that Blacks had the right to buy and dispose property and to receive protections under the law in their persons and property. However, they could only settle legal disputes in a separate court system that only allowed Black witnesses to testify and only in regard to cases affecting the person or property of Blacks); see also HIGGINBOTHAM, *supra* note 36, at 769 (explaining that Blacks were still subjected to racial segregation).

³⁸ *Black Codes*, *supra* note 30.

³⁹ See *Reconstruction*, HIST., <https://www.history.com/topics/american-civil-war/reconstruction> (last updated Feb. 10, 2020) (“[R]eactionary forces—including the Ku Klux Klan—would reverse the changes wrought by Radical Reconstruction in a violent backlash that restored white supremacy in the South.”).

⁴⁰ See Jonathan M. Bryant, *Ku Klux Klan in the Reconstruction Era*, NEW GA. ENCYC. (Aug. 11, 2020), <https://www.georgiaencyclopedia.org/articles/history-archaeology/ku-klux-klan-reconstruction-era> (“[C]onservative whites, frustrated with their political failures during 1867, began to

the Black man, kick him while he was down, and ultimately *keep* him down. The Klan was made on violence—that is what they represented.⁴¹

To keep the White man in front, they basically needed to destroy the threat. That threat happened to be the Black man. The Klan burned houses and churches; they killed Black people and left their bodies in the road without much consequence.⁴² One could say that the birth of the Klan was the birth of killing unarmed Black people and getting away with it. This marks the beginning of a still unanswered question; what is the price of a Black man's life? The Klan was created after the Civil War when Whites felt that their power had been taken away. They needed to instill fear and taking the Black man out would give them the power they felt they needed after losing the war.⁴³ For Whites, the restrictions of the Black Codes were not enough. They still felt like Blacks had too much power in a society that belonged to them. As the Klan emerged and efforts to thwart economic gain for Blacks continued to increase, even more Jim Crow laws were passed.⁴⁴

i. The rise of the Jim Crow era

Jim Crow laws had the same agenda in mind—keeping Whites ahead and keeping Blacks behind. The Jim Crow laws were those that enforced racial segregation between the end of the Reconstruction Period in 1877 and 1965.⁴⁵ Towards the beginning of the Jim Crow era, many southerners from big cities were still unaware of the Jim Crow laws and Blacks found more leeway to gain independence.⁴⁶ That independence included moving into the cities and substantially populating white neighborhoods.⁴⁷ As more Blacks relocated, Whites that lived within those city limits began to demand stricter policies to regulate the freedoms of Blacks.⁴⁸

look for new ways to defeat their Republican enemies and control the recently enfranchised freedpeople.”).

⁴¹ See Bryant, *supra* note 40.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See *Jim Crow Laws*, HIST., <https://www.history.com/topics/early-20th-century-us/jim-crow-laws> (last updated Aug. 19, 2020).

⁴⁵ See Erin Blakemore, *Jim Crow Laws Created ‘Slavery by Another Name,’* NAT’L GEOGRAPHIC (Feb. 5, 2020), <https://www.nationalgeographic.com/history/reference/united-states-history/jim-crow-laws-created-slavery-another-name/>; see also *A Brief History of Jim Crow*, CONST. RTS. FOUND., <https://www.crf-usa.org/black-history-month/a-brief-history-of-jim-crow> (last visited Dec. 28, 2020) (“‘Jim Crow’ was a derisive slang term for a black man. It came to mean any state law passed in the South that established different rules for blacks and whites.”).

⁴⁶ See *Jim Crow Laws*, *supra* note 44.

⁴⁷ *Id.*

⁴⁸ *Id.*; see also Melvin I. Urofsky, *Jim Crow Law*, ENCYC. BRITANNICA, <https://www.britannica.com/event/Jim-Crow-law> (last updated July 30, 2020) (“In the cities, where most free African Americans lived, rudimentary forms of segregation existed prior to 1860, but no uniform pattern emerged. In the North free Blacks also laboured under harsh restrictions and often found an even more-rigid segregation than in the South.”).

With the push for stricter policies, the laws began to spread like wildfires. Public areas like parks were now prohibited for Blacks to enter, and places like theaters and restaurants were now segregated.⁴⁹ Whites had their own areas and Blacks had theirs. Segregation continued to expand, and the Jim Crow laws affected every aspect of the daily lives of Black individuals. Whites wanted to make sure what was already theirs remained that way by ensuring that Blacks would not gain independence or thrive to the point where they could become the better race. Jim Crow laws required that waiting rooms in professional settings be segregated, along with “water fountains, restrooms, building entrances, elevators, cemeteries, even amusement-park cashier windows.”⁵⁰ The laws prohibited Blacks from living in white neighborhoods. The laws also enforced segregation in “public pools, phone booths, hospitals, asylums, jails and residential homes for the elderly and handicapped.”⁵¹ Whites’ message was clear. In their minds, they allowed Blacks to be free and as such, they set the restrictions on what freedom actually meant. They would not allow life as they knew it to be disrupted.

People fought back against segregation and the Jim Crow laws but, the courts continued to get it wrong and played a part in keeping Whites ahead and Blacks behind. The many ways in which courts got it wrong start with the Civil Rights cases of 1883.⁵² There, the Supreme Court struck down the Civil Rights Act of 1875 as it was *ultra vires* as applied to private citizens because it granted Blacks equal treatment on public transportation, public accommodations, and service on juries.⁵³ The Supreme Court held that there was no legal right to public accommodations; it was only a social privilege, and regulated by state laws, rather than federal laws.⁵⁴ Justice Bradley held that the Fourteenth Amendment prohibited only official state-sponsored discrimination and could not reach discrimination practiced by privately owned places of public accommodation.⁵⁵ The Court put the power back into the states whose government was run by Whites.

The Court allowed White people to maintain their power and their superiority. It begs the question—how is a race supposed to get ahead when the mentality of the courts remains as it did during slavery? Make no mistake, the Court knew what it was doing with its interpretation of the law. Even though times were changing, the mentality was still the same: this is the White man’s land. And, with a White court, the Justices made sure that their lives were also

⁴⁹ Urofsky, *supra* note 48 (“The segregation principle was extended to parks, cemeteries, theatres, and restaurants in an effort to prevent any contact between Blacks and whites as equals.”).

⁵⁰ *Jim Crow Laws*, *supra* note 44.

⁵¹ *Id.*

⁵² *See generally* The Civil Rights Cases, 109 U.S. 3 (1883) (explaining a series of landmark cases in which the Supreme Court of the United States struck down the Civil Rights Act of 1875).

⁵³ *Id.* at 18–19.

⁵⁴ *Id.* at 22.

⁵⁵ *See id.* at 23–24.

protected against the threat of another race rising up. Ida B. Wells explained: “The gist of that decision was that Negroes were not wards of the nation but citizens to the individual states, and should therefore appeal to the state courts for justice instead of the federal courts.”⁵⁶

Before there was Rosa Parks, there was Ida. B Wells, an activist fighting against the injustices of the Jim Crow laws. Ida “purchased a first-class ticket” for a train and “passed through the smoking second-class car and entered the first-class ladies’ car at the rear of the train. She later testified that one of the six second-class passengers was smoking and the car was ‘filled with tobacco smoke.’”⁵⁷ The conductor came around to collect tickets and after taking hers, he handed it back and explained that he could not take it there; she would have to go to the other car.⁵⁸ Ida then explained she was in the women’s car and intended to stay because there was no first-class for Blacks as required by the state statute, which caused a violent altercation.⁵⁹ It is described as follows:

[T]he conductor attempted to drag her from the car while she held onto the seat in front of her and braced her feet against it. He finally summoned two other railroad employees to aid him in dragging her to the second-class car while white passengers applauded. When they got her to the other car, which was now filled with smokers and black passengers, she decided to get off the train with her dress torn and her first-class ticket still in hand.⁶⁰

The lower court held in her favor and against the railroad for violating the statute which was huge for Black individuals. They began to think that courts were moving in the right direction. However, the Tennessee Supreme Court would later reverse that decision.⁶¹ Chief Justice Peter Turney of Winchester “drafted the opinion of reversal for a unanimous Supreme Court finding that in compliance with the statute, the ‘offered’ second-class smoking car and first-class non-smoking car “were alike in every respect.”⁶² Also, “the company had done all that could rightfully be demanded.”⁶³ Turney went on to write, “[w]e know of no rule that requires railroad companies to yield to the disposition of passengers to arbitrarily determine as to the coach in which they shall take passage.”⁶⁴ The Court stated that it believed the intention of Wells was not to be

⁵⁶ Russell Fowler, *Ida B. Wells at the Tennessee Supreme Court*, 51 TENN. B. ASS’N (Nov. 1, 2015), <https://www.tba.org/index.cfm?pg=LawBlog&blAction=showEntry&blogEntry=22871>.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*; see *Chesapeake, O. & S. R. Co. v. Wells*, 4 S.W. 5, 5 (Tenn. 1887).

⁶² *Chesapeake*, 4 S.W. at 5; see also Fowler, *supra* note 56.

⁶³ *Chesapeake*, 4 S.W. at 5.

⁶⁴ *Id.*

comfortable but instead to be defiant and cause problems.⁶⁵ It found that because Blacks were given a separate car, whether smoking or not, that was good enough to be considered following the law.⁶⁶ With this ruling, the railroad company now had the opportunity to sell tickets to Black people at a first-class price without giving them a first-class car and thus placing them in second-class instead. Once again, the Court turned a blind eye on discriminatory practices.⁶⁷

Courts did not stop their efforts to put down Black people during the era of Jim Crow and Segregation or with the case of *Ida B. Wells*. Eventually, the United States Supreme Court went on to rule that segregation was in fact constitutional in the infamous case of *Plessy v. Ferguson*.⁶⁸ Frederick Douglass believed in the one drop rule—one drop of black blood means a person is black.⁶⁹ A person who looks black will be considered Black. It does not matter whether their ancestors were white or had blonde hair.⁷⁰ That is where *Plessy v. Ferguson* kicks in. Plessy, who was approximately eighty percent White and twenty percent Black, was arrested for refusing to leave a train seat reserved for Whites and challenged the racial Car Act of Louisiana.⁷¹ The question there became: how is the constitutionality of a law determined if the Court cannot identify who to enforce the law against?⁷²

The Court found a distinction between protecting formal political equality and social equality.⁷³ Racially based political distinctions are not permitted under the Fourteenth Amendment, but certain customs and traditions allow “reasonable” social distinctions.⁷⁴ The Court suggested that this is a social issue and, as such, the states can control, within their police powers (health, safety, and general welfare), how they regulate those rights.⁷⁵ The Supreme Court held that the Thirteenth and Fourteenth Amendments could not be litigated under this issue because this would be running the slavery question into the ground and people would start claiming the issue of slavery on anything they wanted.⁷⁶ Justice Harlan’s dissent states that “[t]he thin disguise of ‘equal’ accommodations . . . will not mislead any one, nor atone for the wrong this day done,” and “[t]he destinies of the two races . . . are indissolubly linked together, and the interests

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Fowler, *supra* note 56.

⁶⁸ See *Plessy v. Ferguson*, 163 U.S. 537, 551 (1896) (noting that this case was later overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954)).

⁶⁹ See F. James Davis, *Who is Black? One Nation’s Definition*, PBS (1991), <https://www.pbs.org/wgbh/pages/frontline/shows/jefferson/mixed/onedrop.html>.

⁷⁰ Jennifer Latson, *The Biracial Advantage*, PSYCH. TODAY (May 28, 2019), <https://www.psychologytoday.com/us/articles/201905/the-biracial-advantage> (explaining “[t]he legacy of America’s ‘one-drop rule’—the idea that anyone with any black ancestry was considered black—lingered.”).

⁷¹ See *Plessy*, 163 U.S. at 538–39.

⁷² See *id.* at 552.

⁷³ See *id.* at 544–52.

⁷⁴ *Id.* at 550.

⁷⁵ See *id.* at 544.

⁷⁶ See *id.* at 542–43.

of both require that the common government of all shall not permit the seeds of race hate to be planted under the sanction of law.”⁷⁷

The interpretation of the Fourteenth Amendment is that the Constitution is colorblind and cannot be understood to ratify a caste system. However, neither the Constitution nor the Court is colorblind. The Court was simply showing its possessive investment in the White man by maintaining that Blacks are not entitled to the reputation of their White counterparts. *Plessy*, is the case that ruled separate but equal as constitutional, thus making segregation legal.⁷⁸ The idea behind it was that so long as the Court gives the Black man *something*, they do not have to make it the best. This is, in a nutshell, the mindset of separate but equal. And of course, while things remained separate, they were never actually equal. Housing was not equal, facilities were not equal, education was not equal, and the list goes on.⁷⁹

ii. Segregated education

The Supreme Court did not stop there. They expanded the separate but equal doctrine by giving the states authority to regulate private activities—including education. With the Supreme Court’s rulings, the states became all-powerful, while the federal government became almost powerless in fighting against and prohibiting discrimination.⁸⁰ Blacks and Whites were placed in different facilities, and while Whites received the better education, Blacks received subpar teaching.⁸¹ The effects of this were felt at every level. For instance, Whites had new educational books while Blacks received run down books, if they had any at all. As a result of years of segregation, inevitably, teachers in Black schools were also less prepared and educated than those in White schools.⁸² Once again, because Blacks had schools, the quality of their

⁷⁷ *Plessy*, 163 U.S. at 560, 562 (Harlan, J., dissenting).

⁷⁸ *See id.* at 559.

⁷⁹ *See Segregation in the United States*, HIST., <https://www.history.com/topics/black-history/segregation-united-states> (last updated May 16, 2019) (explaining how segregation required separate housing, education, and other services for people of color).

⁸⁰ HIGGINBOTHAM, *supra* note 36, at 356 (explaining how rulings of the courts put the power in the states’ hands and took it away from the federal government).

⁸¹ *See Segregation in the United States*, *supra* note 79.

Colleges were segregated and separate black institutions like Howard University in Washington, D.C. and Fisk University in Nashville, Tennessee were created to compensate. Virginia’s Hampton Institute was established in 1869 as a school for black youth, but with white instructors teaching skills to relegate blacks in service positions to whites.

Id.

⁸² *See* Peter Irons, *Jim Crow’s Schools*, AFT, <https://www.aft.org/periodical/american-educator/summer-2004/jim-crows-schools> (last visited Dec. 28, 2020) (“[M]ore black children attended school in the Jim Crow states, stayed longer in school, and earned higher scores on achievement tests. Yet they still lagged far behind white children, whose schools were bigger and better and whose teachers had more training”); *see also Beginnings of Black Education*, VA. HIST., <https://www.virginiahistory.org/collections-and-resources/virginia-history-explorer/civil-rights->

education did not matter. All that mattered was that they had teachers and a place to study. It did not matter, however, whether the school was falling apart, so long as Whites felt like they followed the law, even if it meant doing the bare minimum. In the educational arena, *Berea College v. The Commonwealth of Kentucky* is a critical case.⁸³ *Berea College* offered an integrated school that provided education to both Blacks and Whites in the same facility.⁸⁴ The Court's decision used the expansive views of the government and its powers to destroy the remaining resistance to the Jim Crow laws.⁸⁵

The *Berea College* Court toggled with a 1904 Kentucky statute that prohibited any organization, institution, or person from operating an integrated school, college, or institution where the people accepted to receive an education were both white and black.⁸⁶ There, the Court ignored the fact that the college had received its charter before this statute was even put into place.⁸⁷ The college's argument failed because the state's police powers were so broad that it could very well require separation of races.⁸⁸ As a corporation, the college relied on the money from the state, therefore making it proper for the state alone to regulate it.⁸⁹ The argument was that because the college was chartered by the state, at any time the state has the right to revoke the charter and should therefore be able to control all aspects of the institution. The courts giving the state this power of selective incorporation provides benefits to one race or group of people at the unfortunate expense of another group who is being denied the comparable privilege.⁹⁰ Thus, once again creating a privilege for Whites at the expense and to the disadvantage of Black individuals and their education. Making police powers as broad as they were, gave the state authority over private institutions and it allowed it to continue the rhetoric that mixing Whites and Blacks would lower the mental and physical capacity of the White offspring if integrated with the Blacks.⁹¹ Once again, the Supreme Court promulgated the belief that keeping Whites ahead and holding Blacks down was the goal.

movement-virginia/beginnings-black (last visited Dec. 28, 2020) (explaining the drastic differences between white and black schools).

⁸³ See *Berea Coll. v. Commonwealth of Kentucky*, 211 U.S. 45 (1908); see also *Beginnings of Black Education*, *supra* note 82.

⁸⁴ See *Berea Coll.*, 211 U.S. at 46 (affirming that it was a violation of the law for an institution to teach Black and White students in the same institution).

⁸⁵ See *id.* at 58.

⁸⁶ See HIGGINBOTHAM, *supra* note 36, at 359; see also *Berea Coll.*, 211 U.S. at 46.

⁸⁷ See *Berea Coll.*, 211 U.S. at 56–57.

⁸⁸ See *id.* at 53 (citation omitted) (finding that the college, “as a corporation created by [the] state [of Kentucky], has no natural right to teach at all. Its right to teach is such as the state sees fit to give to it. The state may withhold it altogether or qualify it.”).

⁸⁹ *Id.* at 57 (citation omitted) (“[A] power reserved to the legislature to alter, amend or repeal a charter authorizes it to make any alteration or amendment of a charter granted subject to it, which will not defeat or substantially impair the object of the grant, or any rights vested under it . . .”).

⁹⁰ See HIGGINBOTHAM, *supra* note 36, at 359.

⁹¹ *Id.* at 362.

Is the real issue that integration will lower Whites' mental capacity? It is undeniable that education and knowledge are power. Whites do not fear becoming "dumb," they fear Blacks getting mental and intellectual stimulation through more education. With an education, Black people would have more access to a world from which Whites are trying to keep them out of. Education is the keystone. Better education leads to better jobs, more money, better living conditions, and ultimately better opportunities. When this happens, Blacks begin to become the stronger race.

iii. Segregated housing

Moving into the housing issue, cities established zoning laws prohibiting Black families from moving into areas that were dominated by White families. In 1917, the Supreme Court held in *Buchanan v. Warley*, that said zoning laws were unconstitutional because they interfered with the owners' property rights.⁹² Despite the Court's ruling, Whites found loopholes in the Court's decision.⁹³ In the 1920s, Secretary of Commerce Herbert Hoover used said loopholes to make sure that Whites would be able to maintain the perceived threat of Black families away from their neighborhoods.⁹⁴ He created a federal zoning committee that was used to persuade local housing boards to pass rules that would prevent low-income families, who were predominantly Black, from moving into middle and high-income neighborhoods where White families lived.⁹⁵ Once again, these efforts kept Black people out of flourishing White neighborhoods and thus directly affected employment opportunities, economic status, health, and education for Black families.

The government's facade was that they pretended to help while maintaining Black people at arm's length. Many families were displaced during the Great Depression and left without homes or a place to go.⁹⁶ The Public Works

⁹² See *id.* at 383; see also *Buchanan v. Warley*, 245 U.S. 60, 73 (1917) (finding that "the property rights of the plaintiff in error are directly and necessarily involved" when they are prevented from selling "to a person of color who was willing and ready to acquire the property.").

⁹³ See HIGGINBOTHAM, *supra* note 36, at 383 (explaining how loopholes in court rulings gave more power).

⁹⁴ Salim Furth, *A Brief History of Zoning in America—and Why We Need a More Flexible Approach*, E21 (Aug. 5, 2019), <https://economics21.org/history-zoning-america-flexible-housing-approach> (explaining that the origins of zoning regulations have an obscure agenda, including slowing down the flow of classes).

⁹⁵ *Id.* ("Hoover . . . saw government planning as a clear improvement over free-market urban development. Thus, he convened a panel of zoning experts to write a Standardized State Zoning Enabling Act (SZA) that states could copy.").

⁹⁶ Ofo Ezeugwu, *How A Half Century of Redlining Successfully Segregated American Neighborhoods*, HUFFINGTON POST (Mar. 17, 2017, 9:48 AM), https://www.huffpost.com/entry/how-a-half-century-of-redlining-successfully-segregated_b_58cbe254e4b0537abd956fc3 (explaining that many businesses followed white people to the new zoning areas, leaving Blacks subjected to "levels of high unemployment and diminishing neighborhoods that were being disinvested in and ignored.").

Administration oversaw the building of homes for those displaced families.⁹⁷ However, their focus was on White families and their help to Black families was limited and only in segregated areas.⁹⁸ Starting in the 1930s, redlining began—a tactic used to keep Black families from obtaining mortgages and purchasing homes.⁹⁹ The areas that were marked in red were considered hazardous or dangerous areas and were predominantly occupied by Black people.¹⁰⁰ The redlining tactics, kept Black families in poverty since no money was coming in and its residents had no access to loans with reasonable interest rates.¹⁰¹ Redlining brought on unimaginable despair and struggle for members of those communities. Businesses also stayed away from those communities, furthering the gap.¹⁰² This, once again, left Black families with no opportunity to flourish.

iv. Desegregating schools

Public education is the most important function of state and local governments. A person cannot be expected to succeed in today's society if denied the opportunity of an education. Segregation has a harmful impact on school-aged children and leaves them feeling inferior, which affects their motivation to learn.

The Supreme Court, in *Brown v. Board of Education*, found the doctrine of “separate but equal” wholly inapplicable in the area of public education.¹⁰³ They found this to be a paradox—separate schools are inherently unequal.¹⁰⁴ *Brown* overruled *Plessy* but never discussed it. The *Brown* decision declared that state laws requiring separation in all southern states were unconstitutional; and with it the end of Jim Crow laws.¹⁰⁵

⁹⁷ *A History of Residential Segregation in the United States*, 34 INST. FOR RES. ON POVERTY 2, 3 (2019), <https://www.irp.wisc.edu/wp/wp-content/uploads/2019/03/Focus-34-4a> (“The Public Works Administration was the first federal agency to address the housing shortage, while also providing construction jobs for those who were out of work.”).

⁹⁸ *See id.* at 4 (explaining how “[t]he Public Works Administration . . . built a whites-only project, displacing African Americans who then had to double up with relatives, or find less adequate housing elsewhere.”).

⁹⁹ Ezeugwu, *supra* note 96 (“Upon receiving the city assessment and security maps, generated by the FHA, private banks would take a red marker and literally outline neighborhoods on the map that were given the lowest grades, hence redlining.”).

¹⁰⁰ *Id.* (explaining how colors were used to signify specific areas).

¹⁰¹ *See id.* (explaining how Black Americans were more prone to predatory lending after being excluded from the mortgage market, thus leading to “generations of despair and poverty.”).

¹⁰² *Id.* (explaining how industries relocated to the predominantly white suburbs).

¹⁰³ *See Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954) (“We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place.”).

¹⁰⁴ *See HIGGINBOTHAM, supra* note 36, at 458 (explaining how the inherently discriminatory “separate but equal” doctrine deprived does subjected to it of their rights to equal protection under the Fourteenth Amendment).

¹⁰⁵ *See Brown*, 347 U.S. at 495 (declaring segregation in public schools unconstitutional); *see also Brown v. Board of Education (1954)*, BILL OF RIGHTS INST., <https://billofrightsinstitute.org/educate/educator-resources/lessons-plans/landmark-supreme-court-cases-lessons/brown-v-board-of-education-1954> (last visited Dec. 28, 2020) (“In 1954, sixty years after *Plessy v. Ferguson*, the Supreme Court ruled unanimously in *Brown v. Board of Education* that ‘separate but equal’ was

After *Brown*, the Supreme Court decided that separation of the races is a racial classification that requires higher standard of scrutiny.¹⁰⁶ The Court based its decision on the actual effects of segregated education.¹⁰⁷ It found that even where there is equality of “tangible” factors, intangible factors prevented children who were restricted to all-black schools from receiving equal educational opportunities, thus generating feelings of inferiority.¹⁰⁸

The problem with *Brown* was that it focused exclusively on education and thus failed to provide a basis for declaring segregation unconstitutional in other contexts.

Even after *Brown*, there was not much enforcement of the law from the states. The Court decided it needed to do something to speed the process along. That is when *Brown v. Board of Education II* came about in 1955.¹⁰⁹ There, the Court did several significant things. First, it gave federal district courts primary responsibility for supervising desegregation because of their “proximity to local conditions and the possible need for further hearings.”¹¹⁰ Although there were no precise guidelines for carrying out desegregation, it gave general equitable principles and “all deliberate speed.”¹¹¹ Did this language legitimize resistance? In practice, it played out as a plaintiff whose constitutional rights had been violated by state action having entitlement to immediate relief. The Court feared chaos and violence and considered the public interest in eliminating desegregation “in a systematic and effective manner.”¹¹²

Desegregation did not really begin until Congress tied funds to it in 1965 by denying funds to schools that did not desegregate.¹¹³ The financial leverage of the government created a path for effective implementation of *Brown*. Where there is resistance, the power of law must be coerced, and financial incentives seem more effective at shaping conduct. This can be seen positively as a check on the disturbing power of judicial review. If courts fail to rally larger political

unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.”).

¹⁰⁶ See *History of Equal Protection and the Levels of Review*, LAW SHELF, <https://law-shelf.com/coursewarecontentview/history-of-equal-protection-and-the-levels-of-review/> (last visited Dec. 28, 2020) (explaining that strict scrutiny was applied in cases regarding laws which discriminated on the basis of race or national origin).

¹⁰⁷ *Brown v. Board of Education (1954)*, *supra* note 105 (noting that the Court cited professional tests by two psychologists that demonstrated the negative effects of segregation on children).

¹⁰⁸ *Id.*

¹⁰⁹ See generally *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (determining how to best enforce the holding in *Brown I*).

¹¹⁰ *Id.* at 299.

¹¹¹ *Id.* at 300–01.

¹¹² *Id.* at 300.

¹¹³ See HIGGINBOTHAM, *supra* note 36, at 475; see also Catherine A. Paul, *Elementary and Secondary Education Act of 1965*, VCU LIBR., <https://socialwelfare.library.vcu.edu/programs/education/elementary-and-secondary-education-act-of-1965> (last modified Apr. 29, 2018) (“This law brought education into the forefront of the national assault on poverty and represented a landmark commitment to equal access to quality education.”).

systems to its decisions, they will have less effect, or be perceived negatively as the weakness of the institution.

Of course, one can imagine White people were not happy about these decisions. One of the biggest issues that arose from the *Brown* decisions was the busing of students. Busing was used by Whites to maintain the status quo, making it harder for Black children to get into those integrated schools. *Swann v. Charlotte-Mecklenburg Board of Education* was a result of those issues with busing.¹¹⁴ There, the Court approved broad discretion for district courts to fashion desegregation remedies and said they can use proportionality as the desegregation target (9-38% Blacks).¹¹⁵ The Court fashioned that one-race schools are not proof of segregation (not dual system) and District Courts have broad discretion to enforce desegregation.¹¹⁶ The National Association for the Advancement of Colored People (“NAACP”), on behalf of Vera and Darius Swann, the parents of a six-year-old child, sued the Charlotte-Mecklenburg school district to allow their son to attend Seversville Elementary School, which was the closest school to their home.¹¹⁷ “James McMillan, the federal district judge in the case, ruled in favor of the Swanns and oversaw the implementation of a busing strategy that integrated the district’s schools.”¹¹⁸ “McMillan’s decision was appealed to the Supreme Court, which upheld it.”¹¹⁹ White individuals were not happy about busing. This kindled fights, riots, and confrontations between White individuals and police who were sent to protect the Black children.¹²⁰

v. The end of segregation

Out of the busing controversies came gentrification; the process of renovating homes and businesses in low income urban neighborhoods by upper and middle class families which in turn raises property values and displaces low

¹¹⁴ See *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971).

¹¹⁵ *Id.* at 16.

¹¹⁶ *Id.* at 25–26.

¹¹⁷ See *id.* at 7; see also *Swann v. Charlotte-Mecklenburg Board of Education*, ENCYC. BRITANNICA, <https://www.britannica.com/event/Swann-v-Charlotte-Mecklenburg-Board-of-Education> (last visited Dec. 28, 2020) [hereinafter *Swann Encyc.*] (noting the efforts of the United States Supreme Court to desegregate public schools).

¹¹⁸ See *Swann Encyc.*, *supra* note 117.

¹¹⁹ *Id.*; see also *Swann*, 402 U.S. at 32.

¹²⁰ See Sonya Ramsey, *The Troubled History of American Education after the Brown Decision*, ORG. AM. HISTORIANS., <https://www.oah.org/tah/issues/2017/february/the-troubled-history-of-american-education-after-the-brown-decision/> (last visited Dec. 28, 2020) (“[B]using reflected the racial inequities in the nation’s public schools as white parents protested against busing in cities as diverse as Boston and Detroit. Busing also exhibited the gendered nature of racism as angry white mothers across the nation shouted racial epithets at black children on the buses”); see also *1971 - Swann v. Charlotte Mecklenburg*, CHARLOTTE MECKLENBURG LIBR., <https://www.cmstory.org/exhibits/history-timeline-turbulent-times-1960-1979/1971-swann-v-charlotte-mecklenburg> (last visited Dec. 28, 2020).

income families that can no longer afford to live there.¹²¹ As Black people were integrated and bused into the city, White people moved out to areas further away and created suburban areas while Black families were stuck in a deteriorating inner city.¹²² Teachers began moving out of the inner city and into the suburbs, once again, affecting the education of Black students.¹²³ Once children in White families moved out, the parents moved back to the city, renovating homes and causing property values to raise. The low-income Black families were again left out in the dark. Black families were foreclosed out of homes. Poverty struck again and Whites continued to prove their superiority by making sure Blacks remained inferior.

In 1964, President Johnson signed the Civil Rights Act which legally ended discrimination and segregation.¹²⁴ In 1965, the Voting Rights Act ended the efforts across the nation that tried to keep Black individuals from voting.¹²⁵ Then, in 1968, the Fair Housing act came into place ending discrimination in renting and selling homes.¹²⁶ However, it seems like no matter what laws and

¹²¹ Gentrification is a process of “involuntary residential displacement caused by the return of affluent gentry from suburbia to well-located but deteriorated inner city areas.” See Henry McGee & Donald C. Bryant Jr., *Gentrification and the Law: Combatting Urban Displacement*, 25 WASH. U. J. URB. & CONTEMP. L. 43, 46 (1983); see also *Background: Gentrification and Displacement*, U. TEX., <https://sites.utexas.edu/gentrificationproject/gentrification-and-displacement-in-austin/> (last visited Dec. 28, 2020).

¹²² During the 1960s, White families moved from cities to suburbs when they realized Blacks moved into their neighborhoods. See Alana Semuels, *White Flight Never Ended*, ATLANTIC (July 30, 2015), <https://www.theatlantic.com/business/archive/2015/07/white-flight-alive-and-well/399980/>.

¹²³ See *id.* (“In the 1960s, white families moved from cities to suburbs when they saw black neighbors move in next door.”). See e.g., Emily Badger et. al., *The Neighborhood Is Mostly Black. The Home Buyers Are Mostly White*, N.Y. TIMES (April 27, 2019), <https://www.nytimes.com/interactive/2019/04/27/upshot/diversity-housing-maps-raleigh-gentrification.html>

At the start of the 21st century, these neighborhoods were relatively poor, and 80 percent of them were majority African-American. But as revived downtowns attract wealthier residents closer to the center city, recent white home buyers are arriving in these neighborhoods with incomes that are on average twice as high as that of their existing neighbors.

Id.

¹²⁴ President Johnson, in 1964 during a televised event, signed into law the Civil Rights Act. *President Johnson signs Civil Rights Act*, HIST., <https://www.history.com/this-day-in-history/johnson-signs-civil-rights-act> (last updated June 29, 2020); see also *Civil Rights Act*, ENCYC. BRITANNICA (June 29, 2020), <https://www.britannica.com/event/Civil-Rights-Act-United-States-1964>.

¹²⁵ See *President Johnson signs Civil Rights Act*, *supra* note 124 (“President Lyndon B. Johnson signs into law the historic Civil Rights Act in a nationally televised ceremony at the White House.”); see also *Civil Rights Act*, *supra* note 124.

¹²⁶ The Fair Housing Act was passed days after the assassination of Martin Luther King Jr. See *Fair Housing Act*, HIST., <https://www.history.com/topics/black-history/fair-housing-act> (last updated Sept. 12, 2018); see also *Fair Housing Act*, ENCYC. BRITANNICA (Apr. 4, 2020), <https://www.britannica.com/topic/Fair-Housing-Act>.

acts were passed, White people continued to assure that Black individuals were not able to advance and gain superiority.

Over fifty years of continued legal segregation led to the mindset White individuals have today— “White has power and privilege over everyone.” White identity has been set and engraved nationwide by the constant backing it has received from both the courts and the government.

B. THE MOVE INTO PRESENT DAY

Many strides have been made between segregation and present day however, this progress does not compare to the setbacks suffered. Every time Black people take one step forward, White people are making sure that Blacks do not become too powerful, ultimately making Whites inferior. Patterns seen during segregation, and the ones so many people fought against during the Civil Rights Movement, can still be seen plaguing the Black community today. Policing and police brutality, health, education, housing discrepancies, and job discrepancies are still evident to this day.

Segregation led to many issues. Health issues still plague the Black community. Many more Black people die from health-related issues as compared to their White counterparts. The discrepancies in health show how the inequalities between races inherent to segregation continue today. The discrimination and discrepancy in education causes less educated Blacks to work in low paying and high health risk jobs.¹²⁷ Several factors play into health issues, but past and present racism plays a major role in why Blacks lack the same health status as Whites.

Segregation leading into gentrification where the communities were disproportionate have caused Blacks to become increasingly more susceptible to illnesses. Lead, a material used in the homes in Black communities, are a major cause of illness.¹²⁸ Whites also control Black’s income and as a result, Black individuals cannot afford homes in areas with better building materials.¹²⁹

¹²⁷ See Vernellia R. Randall, *Inequality in Health Care Is Killing African Americans*, ABA (Oct. 1, 2009), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/fall2009/inequality_in_health_care_is_killing_african_americans/ (“Due to discrimination and limited educational opportunities, blacks disproportionately work in low-pay, high-health-risk occupations.”).

¹²⁸ *Health Effects of Gentrification*, CDC (Oct. 5, 2019), <https://www.cdc.gov/healthyplaces/healthtopics/gentrification.htm>

Studies indicate that vulnerable populations typically have shorter life expectancy; higher cancer rates; more birth defects; greater infant mortality; and higher incidence of asthma, diabetes, and cardiovascular disease. In addition, increasing evidence shows that these populations have an unequal share of residential exposure to hazardous substances such as lead paint.

Id.

¹²⁹ *Id.*

Another issue is the food availability in each community. In the inner city and more urban areas, one often finds high fat fast food joints on almost every corner.¹³⁰ Grocery stores are spread out. However, suburban areas offer more expansive and healthy choices as well as more grocery store chains. Growing up, I was always taught “you are what you eat.” If Black neighborhoods are given the very food that kills people from overconsumption, they are a walking time bombs at risk for strokes and heart attacks. “Health status disparities are a direct result of policies, practices, procedures, and laws—institutional discrimination—that protect white privilege at the expense of black health.”¹³¹ Other “social determinants” that contribute to health include money, education, housing, criminal justice, health care, physical environment, stress and racism and discrimination.¹³²

Compounding the racial discrimination experienced generally is the institutional discrimination in health care affecting access to health care and the quality of health care received. Racial discrimination in health care delivery, financing, and research continues to exist. Racial barriers to quality health care manifest themselves in many ways, including (1) economic discrimination, which rations health care on ability to pay; (2) insufficient hospitals and health care institutions and clinics; (3) insufficient physicians and other providers; (4) racial discrimination in treatment and services; and (5) culturally incompetent care.¹³³

Whites seem to be better off when it comes to economics. Health is also one of those issues where White individuals continue to exercise privilege and are put in a position of superiority.

Another area where Black families continue to see issues is in housing. Gentrification is an issue that still affects many cities today. Areas like Chicago, Baltimore, and Miami have Black families living in the inner-city poor areas where access to education, health care, and safe housing suffer.¹³⁴ These areas also see the most crime. This is due, in part, to the lack of community programs for the younger individuals, leaving them with nothing to turn to but the

¹³⁰ See Sarah Treuhaft & Allison Karpyn, *The Grocery Gap: Who Has Access to Healthy Food and Why It Matters*, THE FOOD TRUST 7 (2010), <https://www.policylink.org/resources-tools/the-grocery-gap-who-has-access-to-healthy-food-and-why-it-matters> (explaining that there is a lack of grocery stores but a great abundance of fast food restaurants in low income neighborhoods).

¹³¹ See Randall, *supra* note 127.

¹³² See *id.*

¹³³ See *id.*

¹³⁴ Tracy Jan, *Redlining was banned 50 years ago. It's still hurting minorities today*, WASH. POST (Mar. 28, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/> (highlighting how “the lingering effects of redlining are clear, with the pattern of economic and racial residential segregation still evident in many U.S. cities.”).

streets.¹³⁵ Instead of redlining, Black communities today face reverse red lining which is the practice of denying credit to certain people and neighborhoods through discriminatory practices.¹³⁶ One cannot ignore the likely correlation between the discriminatory practices and those that enforce them. Neighborhoods are attacked with predatory lending where lenders target protected racial groups, elders, and others for unusually bad credit terms.¹³⁷ This is just another way to keep Black people down and not allow them to get ahead by using White privilege and power. That privilege and power is allowing Whites to control the market and economics of Black people.

Though segregation in schools was outlawed 65 years ago, there is still evidence of segregation and separate and unequal education. Those discrepancies come at the expense of the education of Black people. “More than half of the nation’s schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite.”¹³⁸ In addition, school districts are often segregated by income.¹³⁹ “The nexus of racial and economic segregation has intensified educational gaps between rich and poor students, and between white students and students of color.”¹⁴⁰

How are Black people supposed to get ahead if the issues that were outlawed 65 years ago still affect them to this day? Education is one of the most important aspects of life, as it has proven to help increase the economy. Whites’ monopoly over education works to keep Black individuals down, controlling when they can and cannot flourish.

Policing and police violence against the unarmed Black community is also a big problem. These areas highlight how the White race continues to perpetrate the problem. Policing was always used as a social control mechanism, and almost everyone in the police force was and still is White.¹⁴¹ Courts have also

¹³⁵ See generally *id.* (explaining that gentrified areas that were previously redlined, have seen greater economic activities leading to more integration between Blacks and Whites, greater economic equality, and a greater improvement of downtown areas.).

¹³⁶ See *id.* (suggesting that gentrification could be promoting “a movement towards increased segregation in the next census period”).

¹³⁷ See *Reverse Redlining, Discrimination, and For Profit Education*, NATIONAL CONSUMER LAW CENTER (Aug. 9, 2011), <https://www.studentloanborrowerassistance.org/reverse-redlining-discrimination-and-for-profit-education/> (“The flip side is reverse redlining, the practice of targeting these same communities or protected classes for predatory lending. The creditor may not even offer better terms to other borrowers, but the key element of reverse redlining is the targeting of protected racial groups, elders, and others for unusually bad credit terms.”).

¹³⁸ See Keith Meatto, *Still Separate, Still Unequal: Teaching about School Segregation and Educational Inequality*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/learning/lesson-plans/still-separate-still-unequal-teaching-about-school-segregation-and-educational-inequality.html>.

¹³⁹ *Id.* (“More than half of the nation’s schoolchildren are in racially concentrated districts, where over 75 percent of students are either white or nonwhite.”).

¹⁴⁰ *Id.*

¹⁴¹ See Dan Keating & Kevin Uhrmacher, *In Urban Areas, Police are Consistently Much Whiter Than the People They Serve*, WASH. POST (June 4, 2020), <https://www.washingtonpost.com/nation/2020/06/04/urban-areas-police-are-consistently-much-whiter-than-people-they->

given great power to law enforcement and the states since the Jim Crow era, where it was White police officers who were in charge of the enforcement of those Jim Crow laws.¹⁴² Jim Crow laws, and the location and construction of urban areas, was a way to make it easier for social control based upon containment; with police officers enforcing the laws and creating social control by force.¹⁴³ Segregation also reinforced these problems because Black neighborhoods tended to have a heavier police force. The same can be said today.

Government supported racial discrimination and segregation are factors that deeply affect the practices of policing, especially in the Black communities.¹⁴⁴ There has been a legacy of biased practices by police that has led to an authoritative and strained relationship between police and Black individuals. Decisions by police, when it comes to the Black community, have been based more on a show of power and social control; rather than based on public service, protecting, and serving.¹⁴⁵ Policing in Black neighborhoods, versus White neighborhoods, has always been different.¹⁴⁶ Police in Black neighborhoods are always looking to catch someone red-handed. Though there tends to be just as many drugs in white neighborhoods, the war on drugs and policing is always geared more towards Blacks, which explains the discrepancy in the amount of Blacks, versus the amount of Whites, jailed.¹⁴⁷ Innocent Blacks are incarcerated because of officers looking to solve a crime, rather than impart justice. The disproportionality stems back to the Black Codes, where Blacks were locked up for who they were, and not necessarily for what they did.¹⁴⁸ More recently, the war on drugs is the new Jim Crow: allowing discrimination and legal segregation. From the war on drugs, one of the biggest controversies has been the rise of racial profiling.¹⁴⁹ It plays out with officers feeling entitled to pull individuals

serve/?arc404=true (“In some communities, the population is relatively balanced between white and nonwhite, but the vast majority of the police are white.”).

¹⁴² See Connie Hassett-Walker, *The Racist Roots of American Policing: From Slave Patrols to Traffic Stops*, CHICAGO REPORTER (June 7, 2019), <https://www.chicagoreporter.com/the-racist-roots-of-american-policing-from-slave-patrols-to-traffic-stops/> (“For about 80 years, Jim Crow laws mandated separate public spaces for blacks and whites, such as schools, libraries, water fountains and restaurants – and enforcing them was part of the police’s job. Blacks who broke laws or violated social norms often endured police brutality.”).

¹⁴³ Sandra Bass, *Policing Space, Policing Race: Social Control Imperatives and Police Discretionary Decisions*, 28 SOCIAL JUSTICE 156, 156 (2001).

¹⁴⁴ *Id.* at 157–58 (“[F]ederal, state, and local governments as well as private actors have historically engaged in a range of discriminatory practices to create and preserve racial discrimination and segregation.”).

¹⁴⁵ See generally *id.* at 156 (“The interactive relationship between race, space, and policing has been of social and political significance since the earliest days of American history.”).

¹⁴⁶ See *id.* at 157 (highlighting how police has treated the races differently stemming from their treatment of Blacks during the Jim Crow era).

¹⁴⁷ *Id.* at 163 (explaining the targeting and discrepancies between White and Black neighborhoods with the war on drugs).

¹⁴⁸ See *supra* explanatory parenthetical accompanying note 33.

¹⁴⁹ See Bass, *supra* note 143, at 164 (“In recent years, the police practice of racial profiling has emerged as one of the most controversial drug war strategies.”).

over because they are Black, and driving in a neighborhood they are perceived not to belong in.¹⁵⁰

The killings of unarmed Black people by the police are also a major issue. Officers most often rely on the excuse that they feared for their life. We must ask: how can an unarmed Black person create a threat to an officer when the officers are the ones who are armed? Why do officers shoot without notice, when individuals move to follow the officer's command? What is the purpose of having their guns drawn before they have even approached a Black individual? There are no answers that can explain, or justify, their fear of Black individuals. One thing is for sure, officers are more powerful than any man, or woman, standing before them with nothing to use as a weapon but their bodies. There is simply *no excuse*.

Courts have also ruled in the police's favor time and time again, making it seem like their actions are justified. Social control has worked to take out the Black person, instill fear in the entire community, and show the Black community who is "boss." Biases, such as gang affiliation of Black people, dominate public perceptions of the Black race. "[T]he more segregated a place, the more intense the personal bias of its police officers; the more pronounced that bias, the more it creeps into their interactions with black residents, with sometimes deadly results."¹⁵¹ A study by Boston University School of Public Health, assessing in which states unarmed Black people are more likely to be shot and killed by police, revealed that "Wisconsin topped the researchers' list with a state racism index of 74.9, followed by Minnesota (70.0), New Jersey (68.5), Illinois (67.8) and Connecticut (63.9)."¹⁵² Montana scored the lowest at 25.9, followed by Hawaii, Kentucky, New Hampshire, and Nevada, which all had scores below 35.¹⁵³ One of the study's authors noted that the more racially segregated areas are, the more striking the ratio of Black to White police shootings of unarmed victims.¹⁵⁴

Police continue to heighten the tension between themselves and the Black community, but it seems like the courts are not helping the situation either. The courts have allowed police to maintain social control of the Black community. The mindset remains that White is the superior race. Not prosecuting police officers for killing unarmed Black individuals sends the message that a Black person has no value. Simply put, how does the court put a price on the Black

¹⁵⁰ *See id.* (highlighting how "[r]acial profiling initially referred to the police practice of conducting traffic stops for petty offences under the pretext that individuals stopped are likely involved in more serious criminal activity").

¹⁵¹ Gene Demby, *How Segregation Shapes Fatal Police Violence*, NPR (Mar. 2, 2018, 9:04 AM), <https://www.npr.org/sections/codeswitch/2018/03/02/589483471/how-segregation-shapes-fatal-police-shootings>.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

person's life? It does not. It seems that the courts choose the officer's life and the White life over the Black life.

In 2016, Philando Castile was fatally shot by an officer while sitting in the car with his fiancé and daughter.¹⁵⁵ The officer excused the shooting by saying Castile moved, causing him to fear for his life.¹⁵⁶ However, video of the interaction shows something completely different. It shows that the officer stopped Castile based on the racial profiling of a robbery suspect in the area.¹⁵⁷ Both the suspect and Castile had wide noses. When the officer asked Castile for his license and information, Castile complied, telling the officer that he was just reaching for his information.¹⁵⁸

The officer already had his gun drawn when he walked up to the vehicle.¹⁵⁹ The officer had already assumed Castile was the suspect. When Castile went to reach for his pocket, the officer fired multiple times, killing him in front of his fiancé and his young child.¹⁶⁰ Not surprisingly, the officer was cleared of all charges, which included using a firearm for excessive force and second-degree murder. The officer, who said he feared for his life, never saw a gun, was never threatened by Castile, and could never even claim that Castile was hostile. Castile had a firearm, but it was found in his pocket after the body was moved.¹⁶¹

The injustice does not stop with Castile. The day before he was murdered, Alton Sterling was killed in Louisiana for selling CDs.¹⁶² At what point did selling CDs give grounds for officers to fear for their lives? Officers confronted Sterling, tased him, and then pinned him to the ground, holding his arms.¹⁶³ As he was on the ground, a gun was discovered in his possession.¹⁶⁴ Instead of disarming a man being held down by officers, Officer Blane Salamoni shot him

¹⁵⁵ See *Philando Castile Death: Police Footage Released*, BBC (June 21, 2017), <https://www.bbc.com/news/world-us-canada-40357355> (“Jeronimo Yanez shot Philando Castile during a traffic stop in Falcon Heights last July, and the aftermath was live-streamed on Facebook by his girlfriend.”).

¹⁵⁶ *Id.* (“Mr. Yanez says he feared for his life and Mr Castile did not follow orders.”).

¹⁵⁷ See German Lopez, *Philando Castile Minnesota Police Shooting: Officer Cleared of Manslaughter Charge*, VOX (June 16, 2017, 4:15 PM), <https://www.vox.com/2016/7/7/12116288/minnesota-police-shooting-philando-castile-falcon-heights-video> (“[O]fficer said Castile and his girlfriend just look like people that were involved in a robbery . . . [and] added that Castile looks more like one of our suspects, just cause of the wide-set nose.”) (internal quotations omitted).

¹⁵⁸ *See id.*

¹⁵⁹ See *Philando Castile death: Police footage released*, *supra* note 155 (noting that when Castile disclosed that he had a firearm, Officer Yanez reached for his own weapon).

¹⁶⁰ *See id.* (noting that Officer Yanez pulled the trigger multiple time into the interior of the vehicle).

¹⁶¹ *See id.* (returning an acquittal verdict).

¹⁶² See *Philando Castile and Alton Sterling - Latest US Police Shooting Black Victims*, BBC (July 7, 2016), <https://www.bbc.com/news/world-us-canada-36733673> (stating that Sterling was a father of five who sold CDs and DVDs at the park where he was fatally shot).

¹⁶³ See Greg Allen, *Justice Department Declines to Prosecute Police Officers in Killing of Alton Sterling*, NPR (May 3, 2017, 4:31 PM), <https://www.npr.org/2017/05/03/526779519/justice-department-declines-to-prosecute-police-officers-in-killing-of-alton-ste> (detailing that Mr. Sterling was tased multiple times, both before and after he was on the ground).

¹⁶⁴ *See id.* (describing that Sterling was on the ground when the officer discovered the gun and shot him).

multiple times.¹⁶⁵ In 2018, it was decided that he would not be charged with murder, and instead was fired.¹⁶⁶ History with this officer, however, was very telling of what would happen. Officer Blane Salamoni had a history of excessive force and use of profanity on the job—so much that it caused his colleagues to question him, and his actions, on numerous occasions.¹⁶⁷

The monster continues to haunt the Black community, even in 2020. Individuals are still protesting in the streets and on social media demanding justice. People are sharing graphic videos on the internet in an effort to get justice. These videos often times show unarmed Black men and women being killed.

On May 25, 2020, George Floyd died while calling out for his dead mother, and screaming “I can’t breathe,” while Officer Derek had his knee on Floyd’s neck for a total of 8 minutes.¹⁶⁸ As if Chauvin’s knee was not enough, Officers Thomas J. Lane and Alexander Keung kept their bodyweight on Floyd’s back and legs, while Officer Tou Thao antagonized the screaming onlookers who were begging these officers to get off and help George Floyd.¹⁶⁹ What was his crime? Using a \$20 counterfeit bill for payment in a convenience store, which George Floyd is believed not to have known about.¹⁷⁰ Another unarmed Black man, who did not struggle or resist, was killed at the hands of officers who did not care and were unafraid of the possible consequences since, in America, those consequences are few and far in-between. Everyone saw the video. Cities went up in flames.¹⁷¹ Yet, those charges still took days to come down and, with

¹⁶⁵ See *id.* (stating the officer fired the gun multiple times); and see Vanessa Romo, *Officer Who Killed Alton Sterling is Fired, The One Who Pinned Him Down is Suspended*, NPR (May 30, 2018, 8:25 PM), <https://www.npr.org/sections/thetwo-way/2018/03/30/598455551/officer-who-killed-alton-sterling-is-fired-the-one-who-pinned-him-down-is-suspen> (stating that Officer Howie Lake II wrestled Sterling to the ground).

¹⁶⁶ See Romo, *supra* note 165 (stating that according to the Department of Justice, there was insufficient evidence to charge both officers which meant that the officer who killed Sterling was fired and the officer who pinned him down was suspended).

¹⁶⁷ See Eric Levenson, *Baton Rouge Police Chief Apologizes for Hiring the Officer Who Killed Alton Sterling*, CNN (Aug. 1, 2019, 4:20 PM), <https://www.cnn.com/2019/08/01/us/alton-sterling-baton-rouge-police/index.html> (stating that Officer Salamoni “had a history of misbehavior prior to Sterling’s shooting” and “regularly shouted profanities and abused individuals with unnecessary uses of force”).

¹⁶⁸ See Brad Parks, *George Floyd’s Death Was ‘Murder’ and the Accused Officer ‘Knew What He Was Doing,’ Minneapolis Police Chief Says*, CNN (June 24, 2020, 10:08 AM), <https://www.cnn.com/2020/06/24/us/minneapolis-police-chief-comment-george-floyd-trnd/index.html> (describing how the officer knew what he was doing when he pressed his knee against Floyd’s neck).

¹⁶⁹ See Brakkaton Booker, *Body Camera Video of George Floyd and Police Offers New Details of Deadly Encounter*, NPR (Aug. 14, 2020, 3:22 PM), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/08/14/902539820/body-camera-video-of-george-floyd-and-police-offers-new-details-of-deadly-encoun> (stating that Officers Derek Chauvin, Alexander Keung, Tou Thao, and Thomas Lane were also involved with Floyd’s death).

¹⁷⁰ See *id.* (noting that officers confronted Floyd on the “suspicion” that he used a counterfeit twenty-dollar bill to purchase cigarettes).

¹⁷¹ See Helier Cheung, *George Floyd Death: Why US Protests Are So Powerful This Time*, BBC (June 8, 2020), <https://www.bbc.com/news/world-us-canada-52969905> (kindling demonstrations across the U.S.).

the way things have generally gone, chances are dim that those charges will hold up in court.

Breonna Taylor, an EMT with her full life still ahead of her, was killed in her apartment by police while asleep with her boyfriend.¹⁷² What was her crime? Nothing.¹⁷³ Early on March 13, in Louisville, Kentucky, a suspected drug dealer by the name of Jamarcus Glover was arrested by police.¹⁷⁴ Unfortunately, for Breonna Taylor the story does not end there. Rather it ends with an inexcusable tragedy: her death. Across town, even after Mr. Glover's arrest, a tactical unit set up outside of Ms. Taylor's apartment and "[o]fficers used a battering ram to break down Taylor's door, triggering a chain of events that would leave the unarmed 26-year-old woman fatally shot in a barrage of seemingly out-of-control police gunfire."¹⁷⁵ Police were executing a no-knock warrant because they believed Ms. Taylor had ties to Mr. Glover. Although the police have continuously stated that they knocked several times without answer, this has since been disputed by a neighbor.¹⁷⁶ Based on several news reports, and key statements by a Postmaster, the warrants used were also faulty.¹⁷⁷

After police busted down the door, officers exchanged fire with Mr. Walker, Ms. Taylor's boyfriend, a licensed gun owner who called 911 believing the drug raid was a burglary.¹⁷⁸ During the exchange, Ms. Taylor was shot eight times.¹⁷⁹ She died on her hallway floor.¹⁸⁰ "Mr. Walker surrendered and was arrested on charges of attempted murder of a police officer."¹⁸¹ Let's think

¹⁷² See Amina Elahi, *Shooting of Unarmed Black Woman In Kentucky Raises A Lot Of Questions*, NPR (May 13, 2020, 4:07 PM), <https://www.npr.org/2020/05/13/855611039/shooting-of-unarmed-black-woman-in-kentucky-raises-a-lot-of-questions> (stating Breonna and her boyfriend Kenneth Walker were asleep).

¹⁷³ See Scott Glover et. al., *A key Miscalculation by Officers Contributed to the Tragic Death of Breonna Taylor*, CNN (July 23, 2020, 7:40 PM), <https://www.cnn.com/2020/07/23/us/breonna-taylor-police-shooting-invs/index.html> (discussing that the police operation, at Breonna's residence, was "tragically flawed").

¹⁷⁴ See *id.* (noting that although Jamarcus Glover was arrested for allegedly dealing crack cocaine, he was no kingpin).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* (explaining that to obtain a no knock warrant "[p]olice are supposed to precisely articulate for judges why such actions are needed in a given case . . . [f]or each of his five warrants, Jaynes used identical language seeking to justify the no-knock entry"); see also Matthew Brown & Tessa Duvall, *Fact Check: Louisville Police Had a 'No-Knock' Warrant for Breonna Taylor's Apartment*, USA TODAY (June 30, 2020 5:54 PM), <https://www.usatoday.com/story/news/factcheck/2020/06/30/fact-check-police-had-no-knock-warrant-breonna-taylor-apartment/3235029001/> ("[T]here are questions around whether this no-knock warrant was even constitutional.").

¹⁷⁸ See Glover et. al., *supra* note 173; see also Elahi, *supra* note 172 ("It was after midnight, and they thought someone was breaking in to rob them.").

¹⁷⁹ See Brown & Duvall, *supra* note 177 ("Taylor was shot at least eight times and fatally wounded.").

¹⁸⁰ See Glover et. al., *supra* note 173.

¹⁸¹ *Breonna Taylor: Louisville Officer to be Fired for Deadly Force Use*, BBC (June 20, 2020), <https://www.bbc.com/news/world-us-canada-53111709>

about this for a minute. Mr. Walker was in his own home sleeping, when shots rang throughout. He was then arrested on charges of attempted murder. The irony cannot be ignored; *he* was the one desperately needing protection from the violence of the police. The officers involved remain free.¹⁸² This is privilege: the ability to still be walking free after unlawfully taking the life of another person.

What the cases above indicate is that police are more concerned with exercising power and control, than they are with protecting and serving. So many more people, whose names will go down in history, have died at the hands of police, and the common theme remains the same: control and power. With control and power, comes a display of whiteness, white privilege, and social control, all stemming from the belief of white supremacy, all of which, continue to perpetrate violence decades after Jim Crow ended.

i. Whiteness

From segregation to present day, issues of racial inequalities have plagued the Black community. From Jim Crow to court decisions, White individuals have tried everything they could to hold Black people down. Each of those issues contributed to the birth of the “white identity.” As this article has highlighted, history has been marked by White people having a level of access and privilege that Black people are not afforded. As racial identity was established, so was white privilege and white supremacy, better known as “Whiteness.”

“Power . . . is generated in and through the reproduction of structures of domination [and] . . . [t]he resources which constitute structures of domination are of two sorts—allocative and authoritative.”¹⁸³ Allocative refers to “raw materials, instruments of production, technology, and produced goods” created by joining raw materials and production.¹⁸⁴ Authoritative refers to “the modes of production and reproduction of social systems and the organization of life chances.”¹⁸⁵ From this, it follows that “[a]llocative resources provide capability to generate command over objects, goods or material phenomena; [and] authoritative resources refer to the capacity to generate command over actors and persons.”¹⁸⁶ This is how three structural dimensions of social systems can be identified: “signification, domination, and legitimation.”¹⁸⁷

¹⁸² See Darcy Costello & Ryan W. Miller, *Breonna Taylor Family Attorneys Push for Charges ‘Hopefully’ Before October*, USA TODAY (Aug. 13, 2020 11:19 AM) <https://www.usatoday.com/story/news/nation/2020/08/13/breonna-taylor-family-met-kentucky-attorney-general-daniel-cameron/3363792001/> (“Attorneys for the family of Breonna Taylor on Thursday renewed their calls for charges to be brought against the officers involved in her death.”).

¹⁸³ Guess, *supra* note 7, at 662.

¹⁸⁴ *Id.* at 663.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

Signification is based upon symbolic orders that would include language and communication process in the interactions between races; domination is created within the political and economic institutions of a society; and legitimation is reflected in a society's legal institutions and is based upon normative regulations.¹⁸⁸ It is this structuring that has created the racialized society we live in today.

Race norms and rules are the cause of informed social interactions. Dominance, which is the second stage of the process, is seen in racialization by Whites. "Domination over the life chances of non-whites was accomplished through the economic disadvantage associated with slavery, reconstruction, Jim Crow and continuing forms of discrimination based on 'race.'"¹⁸⁹ Finally, legitimation refers to white privilege.

ii. White privilege

White privilege is unperceivable by the very people who are privileged. When a White person gets a better paying job over a Black person, the first thing a White person will say is "well maybe they were not qualified or did not have the education." Most of the time, however, that is not the case and the Black person who missed out on the job was very qualified.¹⁹⁰

"White privilege is an institutional, rather than personal, set of benefits granted to those . . . who, by race, resemble the people who hold power positions in our institutions."¹⁹¹ One of the greatest privileges afforded to White people, dating back to segregation, is greater access to economic resources and access to power over people of color. This privilege, though, is unrecognized by its holders, who fail to realize that White privilege is so strong that it was included in the Constitution when Black people were purposely excluded since, Blacks were considered property. Additionally, history shows the practice of withholding education from African Americans to curtail Blacks from reproducing their culture or function in a literate society. Finally, the biggest one is the passing of laws that promoted inequality through segregation. White people did that. How can they not recognize their privilege?

This White privilege has provided White people the opportunity to discount Black individuals. Black people fight against police brutality, job inequality, housing inequality, educational inequality, and the list goes on. But still, some ignore the existence of White privilege.

¹⁸⁸ *Id.*

¹⁸⁹ Guess, *supra* note 7, at 663.

¹⁹⁰ See Quentin Forttrel, *White Workers are More Likely Than Black or Latino Americans to Have a Good Job – Even With the Same Level of Education*, MARKETWATCH (Oct. 21, 2019) <https://www.marketwatch.com/story/white-workers-are-more-likely-than-black-or-latino-americans-to-have-a-good-job-even-with-the-same-level-of-education-2019-10-17> (explaining that White workers have better jobs and get paid more than black and Latinos who have the same educational qualifications).

¹⁹¹ FRANCES E. KENDALL, UNDERSTANDING WHITE PRIVILEGE 62 (2d ed. 2013).

Today, that privilege plays out in many ways. Rhetoric is one of them. Statements such as “lighten up and stop taking things so seriously,” is one statement which ignores the weight of the history Black people carry. “You were not a slave,” “you are lucky to be in this country,” or “you have it easy so if you do not like it leave,” ignore *how* and *why* Black people are here to begin with. White people minimize the Black experience because they have never lived it. Statements like “I’m not followed around in the store by a guard, so what makes you think you are being followed by the guard?” ignore the privilege of their Whiteness. White people insert themselves into conversations where the issue has drifted to a person of color and make statements such as “it is not a race issue but an issue about class.” Their ignorance is loud as they pin racial issues as class issues to further live in the avoidance of their privilege. If they do not acknowledge it, they never have to be held accountable for it.

iii. White supremacy

White supremacy is the other end to that monster known as Whiteness. White supremacy is the belief that the thoughts and ideas of White people are superior to the thoughts and ideas of Black people.¹⁹² “White supremacy culture is an artificial, historically constructed culture, which expresses, justifies and binds together the United States’ own White supremacy system. It is the glue that binds together White-controlled institutions into systems, and White-controlled systems into the global White supremacy system.”¹⁹³

White supremacy takes many different forms and was most evident in the actions and beliefs of the Klan. The factors that encompass white supremacy include:

[P]erfectionism, a sense of urgency, defensiveness, valuing quantity over quality, worship of the written word, belief in only one right way, paternalism, either/or thinking, power hoarding, fear of open conflict, individualism, belief that I’m the only one (who can do this ‘right’), the belief that progress is bigger and more, a belief in objectivity, and claiming a right to comfort.¹⁹⁴

White supremacy is a form of terrorism most often deployed against Black people. The ideals of White supremacy are simple: 1) Whites should be dominant over people of other ethnic backgrounds; 2) Whites should live by themselves, in a Whites-only society; 3) white people have their own superior

¹⁹² See generally *White Supremacy*, ADL, <https://www.adl.org/resources/glossary-terms/white-supremacy> (last visited Dec. 28, 2020) (explaining how “[a]s a full-fledged ideology, white supremacy is far more encompassing than simple racism or bigotry”).

¹⁹³ Tema Okun, *White Supremacy Culture*, DRWORKSBOOK, <http://www.dismantlingracism.org/white-supremacy-culture.html> (last visited Dec. 28, 2020).

¹⁹⁴ *Id.*

“culture”; and 4) white people are genetically superior to other people. The belief that Whites should be dominant over other races has been abundantly evident with Whites doing everything in their power to make sure Blacks do not advance in life, including controlling economics, health, and education.¹⁹⁵

White Supremacy and terrorism have shown their claws in two recent cases of untethered violence against Black people: in South Carolina, it was a church shooting by Dylan Roof;¹⁹⁶ in Virginia, it was James Alex driving into a crowd of Black Lives Matter activists, killing some and injuring others.¹⁹⁷ Both are examples of social control aimed at the worship and voice of Black people. Whites have used these tactics since the inception of the Klan, working to eliminate the Black race and maintain superiority.

III. CONCLUSION

Whiteness is a monster birthed during segregation. No matter how White people choose to see their identity, from a racial standpoint, it cannot be denied the existence of *whiteness* is dependent on the conversation of *anti-blackness*. Whiteness includes both white privileges, bestowed upon White people by our institutions; and white supremacy, the more violent approach to trying to get rid of a race. Court rulings gave way to White individuals and White privilege for generations. The problem never stopped. In fact, it just continues to get worse—as proven by the current interactions between law enforcement and the Black community.

It is through the generations of discriminatory interactions and decisions in the U.S., that we have arrived at birth of the monster called Whiteness, and to the open conversation on anti-Blackness.

¹⁹⁵ See White Supremacy, *supra* note 192.

¹⁹⁶ See Eric Levenson & Tina Burnside, *Dylann Roof Believed He'd be Freed From Prison After a Race War, Attorneys Say in Appeal*, CNN (Jan. 29, 2020), <https://www.cnn.com/2020/01/29/us/dylann-roof-appeal/index.html>; see also Jennifer Berry Hawes, *Two Years After the Emanuel AME Church Shooting, Fear of White Supremacists Spreads Again*, POST AND COURIER (Aug 19, 2017), https://www.postandcourier.com/church_shooting/two-years-after-the-emanuel-ame-church-shooting-fear-of-white-supremacists-spreads-again/article_5087b410-8419-11e7-988b-3f87a4aa62e3.html (describing the impact of the shooting and continuing racial divide amongst Charleston).

¹⁹⁷ See Minyvonne Burke & Marianna Sotomayor, *James Alex Fields Found Guilty of Killing Heather Heyer During Violent Charlottesville White Nationalist Rally*, NBC NEWS (Dec. 7, 2018), <https://www.nbcnews.com/news/crime-courts/james-alex-fields-found-guilty-killing-heather-heyer-during-violent-n945186>.