

PROPERTY, WEALTH, INEQUALITY AND HUMAN RIGHTS: A FORMULA FOR REFORM

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[A]ll men are created equal . . . endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness.¹

Disparities in wealth between blacks and whites are not a product of haphazard events, inborn traits, isolated incidents or solely contemporary individual accomplishments. Rather, wealth inequality has been structured over many generations through the same systemic barriers that have hampered blacks throughout their history in American society: slavery, Jim Crow, so-called de jure discrimination, and institutionalized racism.²

In Germany they first came for the Communists,
and I didn't speak up because I wasn't a Communist.
Then they came for the Jews,
and I didn't speak up because I wasn't a Jew.
Then they came for the trade unionists,
and I didn't speak up because I wasn't a trade unionist.
Then they came for the Catholics,
and I didn't speak up because I was a Protestant.
Then they came for me—
and by that time no one was left to speak up.³

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1. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

2. MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 12-13 (1995).

3. Pastor Martin Niemöller, *Serendipity*, available at <http://serendipity.magnet.ch/cda/niemoll.html> (last modified Dec. 24, 1997). The following is Pastor Niemöller's exact statement: When Hitler attacked the Jews I was not a Jew, therefore I was not concerned. And when Hitler attacked the Catholics, I was not a Catholic, and therefore, I was not concerned. And when Hitler attacked the unions and the industrialists, I was not a member of the unions and I was not concerned. Then Hitler attacked me and the

INTRODUCTION

This essay scrutinizes the persistence of inequality in the United States through a human rights lens and grapples with the troubling disparities unearthed by two works: *American Apartheid: Segregation and the Making of the Underclass*⁴ and *Black Wealth/White Wealth: A New Perspective on Racial Inequality*.⁵ These two highly enlightening and, simultaneously, deeply troubling and depressing books elucidate the myriad locations at which inequalities persist and the historical, social, psychological, and legal foundations of, and explications for, such disparities in the African American community.⁶

This work proposes a human rights paradigm that provides a methodology to analyze, deconstruct and unravel the existing systematic inequalities in Black/white wealth. First, we examine the historical relationship between Blacks and whites in the United States in the context of property, wealth, and economics. Then, in Part II, we reveal the disturbing reality that not much has changed. Next, we make a two-part suggestion of how to ameliorate, or at least begin to remedy, current economic inequalities by proposing the application of a human rights paradigm of economic discrimination as violence. Finally, we analyze the role of republican liberalism in Black/white economic inequality and reveal how, despite its equality-based dialect, it has translated into a model that has enabled inequality.

I. HISTORY OF INEQUALITY OF BLACKS AND WHITES IN THE U.S.

The history of slavery—and the resultant unique oppression of Blacks in the United States—dates to well before the creation of this nation.⁷ Pinpointing the

Protestant church—and there was nobody left to be concerned.

114 CONG. REC. 31,636 (1968) (statement of German anti-Nazi activist Pastor Martin Niemöller).

4. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE AMERICAN UNDERCLASS* (1993).

5. OLIVER & SHAPIRO, *supra* note 2.

6. As suggested by Kenneth Nunn, we use “Black” and “African American” interchangeably to refer to American citizens who are of African decent. See Kenneth B. Nunn, *Rights Held Hostage: Race, Ideology and the Peremptory Challenge*, 28 HARV. C.R.-C.L. L. REV. 64 n.7 (1993) (explaining that “‘Black’ denotes racial and cultural identity rather than mere physical appearance and is therefore capitalized. The word ‘white,’ on the other hand, is not capitalized because it is not ordinarily used in this sense”). See, e.g., Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1998), reprinted in *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* 103 (Kimberlé Crenshaw et al. eds., 1995).

7. See JUAN F. PEREA ET AL., *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* 91-92 (2000); see also JOE R. FEAGIN, *RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS* 40-41 (2000) (explaining that the first Africans were brought into the English colonies in 1619 by a Dutch ship and were used as indentured servants, wholly unequal to

actual *beginning* of slavery and racism is a difficult task.⁸ However, in the United States, slavery quickly developed into a regular institution⁹ that became foundational to the creation and even the industrialization of the United States. In fact, what a noted sociologist has called the “racist foundation”¹⁰ of the United States was laid in 1787 at the Constitutional Convention at which many of the forefathers espousing freedom were, ironically, themselves slave-owners.¹¹ Once this foundation was laid, the decimation of Black persons’ humanity flowed through the institution of slavery. Not only were slaves routinely tortured and exploited, they were only chattel, personal property to be bought and sold at the master’s whim without regard to family or other human ties.¹²

Thus began the United States’ long history of violence¹³ against Blacks—a history that has systematically denied not only civil, social, and political rights, but also economic and cultural rights.¹⁴ The institutionalization of slavery into the U.S. system marked “the normal labor relation of blacks to whites in the New

the English colonists and that by the 1670s colonial laws legitimized and protected slavery).

8. This is difficult because slavery began well before the creation of the New World and was “institutionalized” in this country at the time of the Constitutional Convention. However, slavery was in existence in other parts of the world and was evident in many different forms varied by culture and time. See FEAGIN, *supra* note 7, at 40. See generally Gil Gott, *Moral Imperialism, Imperial Humanitarianism: History of an Arrested Dialectic*, in MORAL IMPERIALISM A CRITICAL ANTHOLOGY (forthcoming 2001) (on file with authors) (providing a brief history of slavery).

9. See KERMIT L. HALLET AL., AMERICAN LEGAL HISTORY: CASES AND MATERIALS 245 (2d ed. 1996) (stating “[n]ineteenth-century lawmakers invoked race to define personal status. Slavery, for example, attached exclusively to black people” and continued throughout history to subordinate blacks).

10. See FEAGIN, *supra* note 7, at 14 (arguing that as early as the Constitutional Convention, the foundation of the United States was fundamentally flawed: “[t]he framers reinforced and legitimated a system of racist oppression that they thought would ensure that whites, especially white men of means, would rule for centuries to come”). See generally DERRICK A. BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1989).

11. See FEAGIN, *supra* note 7, at 9-14, 41 (explaining that slavery was a central issue in the debates as is evident from historical notes on the content of the debates and suggesting that at least half of the signatories to the Declaration of Independence were slave-owners or were involved in the slave trade).

12. See *id.* at 22 (stating that Blacks were ripped from their homeland, sold as slaves, tortured for insubordination, denied education, separated from their families, subjected to sexual violence, forced to work with no benefit, denied education, and treated as property to be bought and sold at the slave owners’ discretion). See HALL ET AL., *supra* note 9, at 190 (explaining that slaves were property—bought and sold, exploited by their masters, and controlled by the states; however, dually, they were human—subject to criminal prosecution).

13. “Violence,” as we regard it, is not merely physical acts. Violence comes in many forms. See *infra* Part III.B. Compare with Berta Esperanza Hernández-Truyol, *Sex, Culture, and Rights: A Re/conceptualization of Violence for the Twenty-First Century*, 60 ALB. L. REV. 607 (1997).

14. See FEAGIN, *supra* note 7, at 16-17.

World.”¹⁵ The transition in America from a period of legalized slavery to a period of freedom—deemed generally the “Reconstruction” period—marked not only a shift in location of former slaves from inhuman to human beings,¹⁶ but also marked the related struggle of Blacks in the United States to procure entitlement to the trappings of humanity in a liberal state—freedom, equality, and property ownership.

Out of the post-Civil War/Reconstruction period came the historically significant Reconstruction Amendments:¹⁷ the Thirteenth Amendment abolishing slavery;¹⁸ the Fourteenth Amendment prohibiting States of the Union from depriving persons—a group that included former slaves—from life, liberty or property without due process of law and mandating States to grant all persons within their jurisdiction equal protection of the laws;¹⁹ and the Fifteenth Amendment enfranchising all male citizens regardless of race, color, or prior slavery status.²⁰

Although with passage of these Constitutional Amendments Blacks were no longer slaves, they were still far from equal and were just beginning a long journey—yet to be completed—to attain full rights and freedoms as United States citizens.²¹ If we could freeze-frame society at that moment and measure the existing wealth disparities, the inequalities that persist to the present day would not have been difficult to prognosticate. Slaves’ labor was not compensated; the fruits therefrom were not theirs to keep.²² Slaves were regarded as property and owned very little, if any, property of their own.²³ So, after years of history on this land, under prior existing circumstances, there was no possibility for Blacks

15. HOWARD ZINN, A PEOPLE’S HISTORY OF THE UNITED STATES: 1992-PRESENT (1995), in PEREA ET AL., *supra* note 7, at 92.

16. See OLIVER & SHAPIRO, *supra* note 2, at 13. “The close of the Civil War transformed four million former slaves from chattel to freedmen.” *Id.*

17. See PEREA ET AL., *supra* note 7, at 132. “The fact that these amendments could not have been adopted under any other circumstances, or at any other time, before or since, may suggest the crucial importance of the Reconstruction era in American history.” *Id.* (quoting RECONSTRUCTION: AN ANTHOLOGY OF REVISIONIST WRITINGS 11-12 (Kenneth Stampp & Leon F. Litwack eds., 1969)).

18. U.S. CONST. amend. XIII (abolishing slavery and involuntary servitude).

19. U.S. CONST. amend. XIV, § 1 (mandating that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”).

20. See U.S. CONST. amend. XV (requiring that no U.S. citizen be denied the right to vote “on account of race, color, or previous condition of servitude”). Significantly this amendment enfranchised only men of color, women—both of color and white alike—were denied the right to vote until 1920 when the Nineteenth Amendment was passed. See U.S. CONST. amend. XIX.

21. See HALLET AL., *supra* note 9, at 246 (explaining “[t]he amendments were only partially successful in creating substantive equality for black people”).

22. See FEAGIN, *supra* note 7, at 49.

23. See *id.* at 49 (asserting that slaves were denied most human rights and liberties and were denied property ownership as well as the right to contract giving them no opportunity to accumulate wealth).

to accumulate coveted wealth. With this reality, what awaited the newly freed peoples was the persistence of injustice and racism in the country that they had helped build and grow.

Initially, upon the abolition of slavery, it seemed that massive land distribution in the South would occur—land that was prosperous because of slave labor.²⁴ Such redistribution *could* have afforded former slaves a just and significant start in this country and an opportunity to start on a road towards equality. However, a legally mandated promotion of Black land-ownership did not occur until the passage of the Southern Homestead Act of 1866, which provided for the inclusion of former slaves in a massive public land distribution.²⁵ However, as history would play out, it was in fact whites who overwhelmingly reaped the benefits of the Act with Blacks constituting fewer than a quarter of the land applicants.²⁶

Racism and discriminatory practices such as illegal fees, court challenges, court decisions, and unscrupulous land speculators impeded Blacks' abilities to obtain land ownership.²⁷ Thus, contrary to the expectations generated by the Homestead Act, the majority of Blacks did not become land owners.²⁸ Because land ownership is, and has always been, a primary source of wealth,²⁹ Blacks deprived of such ownership did not have an opportunity to start the wealth accumulation process and were overwhelmingly forced into poverty.

In addition to the lack of opportunity to progress economically, in the over seventy-five year period of slavery African Americans also lacked the opportunity to progress educationally and, in fact, were even prohibited from learning to read (oftentimes by law). These deprivations resulted in a society in which most Blacks were illiterate.³⁰ Consequently, Blacks went from legal slavery to institutionalized oppression—a condition that would be perpetuated in the normative realities of disparate locations with respect to property ownership specifically and economics generally. To be sure, social and legal policy initiatives throughout time have maintained the schisms between Blacks and whites.

24. *See id.* at 15 (explaining that the whites, especially ruling/prominent whites, enjoyed the wealth and leisure brought to them by the exploitation of slaves); HALLET AL., *supra* note 9, at 189-90 (stating that slavery was an integral part of the economy in the South).

25. *See* OLIVER & SHAPIRO, *supra* note 2, at 14 (explaining that this homesteading effort to settle the West was administered by the Freedman's Bureau and gave substantial reason to believe that former "slaves would be transformed from farm laborers to yeomanry farmers").

26. *See id.* However, this Act did result in a quarter of black southern farmers owning their own farms by 1900. *See id.* at 15.

27. *See id.*

28. *See id.*

29. *See id.* at 2. "Wealth" is used to describe the accumulation of inheritable property—particularly land and homestead, while "income" pertains to fluid assets such as money and other intangibles. *See id.*

30. *See* FEAGIN, *supra* note 7, at 49 (explaining that slaves in the United States were "generally forbidden by law to read or write").

Despite widespread racism and discrimination, segregation was not commonplace in southern or northern cities until the early 1900s.³¹ At that time, manifestations of racial discrimination were more evident in employment practices than in housing patterns.³² Indeed, high levels of Black-white integration were the norm,³³ and neighborhoods reflected class rather than race-based stratifications. Accordingly, persons from the same socio-economic classes regularly interacted—both socially and in business—with no real regard to skin color.³⁴ This was especially true among the wealthiest class.³⁵

However, the landscape was different in the rural South, where, at that time, the overwhelming majority of Blacks still lived. In the rural South, Blacks were exploited under the share-cropping system created by white-landowners as the legal alternative to slavery.³⁶ During this period, the Jim Crow system of servitude³⁷ created an environment of such widespread oppression and subordination of Blacks, that residential segregation was unnecessary to create second-class status.³⁸ Therefore, residential segregation evolved at a much slower pace in the South than in the North.³⁹

Nevertheless, the Twentieth Century brought substantial migration of Blacks from the rural South to northern cities, a migration that resulted in the advent of highly segregated, all-Black neighborhoods.⁴⁰ This trend was motivated by well-defined institutional, social, political, and economic forces.⁴¹ Migration of Blacks from the rural South to large metropolitan areas was largely the result of industrialization in the United States, a development that created jobs for southern Blacks.⁴²

Particularly in the large cities of the North, industrialization itself changed the face of the urban environment—a phenomenon that paved the way to

31. See MASSEY & DENTON, *supra* note 4, at 17.

32. See *id.* at 20, 29.

33. See *id.* at 20 (reporting that Blacks rarely comprised more than thirty percent of the total residents in any given urban neighborhood).

34. See *id.* at 17-18 (explaining that Blacks shared a common culture with whites, interacted with whites on a regular basis, and often, especially leading African American citizens, maintained “relationships of considerable trust, respect, and friendship with whites of similar social standing”).

35. See *id.*

36. See *id.* at 18.

37. See PEREA ET AL., *supra* note 7, at 141-42. The Jim Crow era replaced slavery and institutionalized discrimination and routine oppression of Blacks in the South. This was due to the attitudes and efforts of whites to enact a series of segregation laws and establish institutionalized discrimination against Blacks. Free Blacks in the South were faced with restrictions and violations of their most basic freedoms, i.e., to assemble, travel, and work. See *id.*

38. See MASSEY & DENTON, *supra* note 4, at 26, 40-41.

39. See *id.* at 26, 40.

40. See *id.* at 18, 26, 40.

41. See *id.* at 10, 18.

42. See *id.* at 26-42.

segregation.⁴³ Industrialization's shift from small shops to large factories created a need for a large number of unskilled laborers who were generally housed in clustered apartments and row houses that were constructed near the industrial districts to house the flourishing work force.⁴⁴ Hence, these conditions signaled the beginning of a downtown core/urban community in the United States. Blacks were sought out—in large numbers—to fill these unskilled labor positions when European immigration slowed,⁴⁵ when union workers were on strike (as strike-breakers),⁴⁶ and when industrial productivity skyrocketed during WWI.⁴⁷ These large numbers of persons were then clustered in the high-density model of housing that evolved into what we now know as the “inner city.”

By the beginning of WWII, this South to North migration laid the foundation for the modern-day “ghettos.”⁴⁸ In fact, WWII brought a rise in industry and the need for unskilled labor soared; subsequently, Black migration to northern cities flourished.⁴⁹ As the population of Blacks steadily increased, the reaction against it culminated.⁵⁰ Predicting what are now viewed as “tipping points,” northern newspapers began printing racial slurs and sensationalized incidents of violence.⁵¹ Indeed, race riots struck major cities, and the incidence of violence escalated.⁵² As a result, white racial views hardened, and racism became prevalent among whites.⁵³ At that time, whites demanded school segregation and forced a color-line in residential housing, creating eventual racialized residential segregation.⁵⁴ Segregation, then, was the result of white desire for separation of the races as well as Black fear and mistrust of whites—forcing Blacks into social/racial isolation.

Thus, racial segregation did not result from consequential migration or Black housing preferences.⁵⁵ In reality, upper and middle class Blacks “complained

43. *See id.* at 26.

44. *See id.*

45. *See id.* at 27-28.

46. *See id.* at 28. “Being denied access to the benefits of white unions, blacks had little to lose from crossing picket lines, thereby setting off a cycle of ongoing mutual hostility and distrust between black and white workers.” *Id.*

47. *See id.* at 28-29 (explaining that the outbreak of WWI in 1914 “increased the demand for U.S. industrial production and cut off the flow of European immigrants, northern factories’ traditional source of labor. In response, employers began a spirited recruitment of blacks from the rural south”).

48. *See id.* at 31. “Ghetto” refers “only to the racial make-up of a neighborhood” overwhelmingly composed of Blacks. *Id.* at 18.

49. *See id.* at 30.

50. *See id.*

51. *See id.*

52. *See id.*

53. *See id.*

54. *See id.* (stating that, in the eyes of whites, Blacks belonged in neighborhoods with other Blacks, regardless of socioeconomic standing, and the color line grew increasingly strong).

55. *See id.* at 33.

bitterly and loudly about their increasing confinement within crowded, dilapidated neighborhoods inhabited by people well below their social and economic status.”⁵⁶ However, whites employed tactics including the use of physical violence to keep middle class Blacks out of “white” neighborhoods and force them to remain in the “ghetto.”⁵⁷ For example, neighborhood “improvement associations,” designed to prevent Black entry into white neighborhoods and maintain the color line were a common organizational strategy used to promote and foster racial segregation.⁵⁸ Among other things, neighborhood “improvement associations” implemented racially restrictive covenants and deeds to ensure “racial homogeneity” in residential neighborhoods.⁵⁹

During and after WWII, discrimination by realtors and lenders maintained segregation through the use of manipulation and racist policy and procedures. After WWII, the need for housing skyrocketed with the baby boom.⁶⁰ During this increase in a need for housing in the “ghetto” areas, realtors made calculated efforts to create “white flight” from areas bordering “ghettos” to maintain segregation and create more housing for Blacks.⁶¹ Realtors also took advantage of Blacks through dishonest lending practices, often setting them up for failure so foreclosure and resale would result.⁶² Additionally, banks and lenders exploited Black borrowers by charging high interest rates and routinely denying Blacks loans to which their white counterparts had access.⁶³

From the 1930s to the 1960s the government supported and encouraged suburban growth through its use of taxation, transportation, and housing policies.⁶⁴ During the suburbanization of the major metropolitan areas in the

56. *Id.*

57. *See id.* at 33-34.

The pattern typically began with threatening letters, personal harassment, and warnings of dire consequences to follow. Sometimes whites, through their churches, realtors, or neighborhood organizations, would take up a collection and offer to bury the black homeowner out, hinting of less civilized inducements to follow if the offer was refused.

Id. at 34.

58. *Id.* at 35. *See also* RICHARD H. CHUSED, *CASES, MATERIALS AND PROBLEMS IN PROPERTY* 443-45 (2d ed. 1999).

59. MASSEY & DENTON, *supra* note 4, at 36. These practices were eventually declared illegal. *See, e.g.,* Shelley v. Kraemer, 334 U.S. 1 (1948); CHUSED, *supra* note 58, at 443-55; JOSEPH WILLIAM SINGER, *PROPERTY LAW: RULES, POLICIES, AND PRACTICES* 621, 638-42 (2d ed. 1997).

60. *See* MASSEY & DENTON, *supra* note 4, at 44.

61. *See id.* at 37 (defining these methods of opening up neighborhoods to African-American entry for the purpose of reaping the profits as “blockbusting”).

62. *See id.* at 36-39. Significantly, these practices are still flourishing today.

63. *See id.* at 38.

64. *See* OLIVER & SHAPIRO, *supra* note 2, at 16 (explaining that taxation policy gave companies tax incentives for relocating to the suburbs; transportation policy encouraged mass-production of vehicles, facilitated construction of highways and freeways, and subsidized cheap fuel; housing programs/policies enabled construction and purchase of single-family homes); *see*

United States, discrimination kept Blacks from entering the housing market on the same terms and with the same loans as whites. Middle class Blacks faced barriers, such as discriminatory real estate, banking and FHA practices that were intentionally and systematically constructed by whites to keep Blacks from escaping the ghetto.⁶⁵

Despite the success of these practices and policies in the creation of a suburban United States, Blacks, because of systematic discrimination, were largely denied access to and were unable to take advantage of this accumulation of wealth quintessentially represented by “the suburban tract home.”⁶⁶ Not only did the realtors and lenders engage in discriminatory practices, the trend was continued and indeed institutionalized when the Federal Housing Administration (FHA) was established by the U.S. government in 1934.⁶⁷ With the FHA came the modern mortgage system which allowed individual families to purchase homes with a small down payment, a low interest rate, and a long payback period.⁶⁸ Under the FHA programs, a house payment was generally cheaper than rent.⁶⁹

However, Blacks were routinely denied access to FHA programs because of institutional discriminatory practices. For instance, to ensure “neighborhood stability,” the FHA’s published and mandated practices facilitated and continued

also MASSEY & DENTON, *supra* note 4, at 44 (explaining that “[i]n making this transition from urban to suburban life, middle-class whites demanded and got massive federal investments in highway construction that permitted rapid movement to and from central cities by car. The surging demand for automobiles accelerated economic growth and contributed to the emergence of a new, decentralized spatial order”).

65. *See* MASSEY & DENTON, *supra* note 4, at 57-59; OLIVER & SHAPIRO, *supra* note 2, at 15-18.

66. OLIVER & SHAPIRO, *supra* note 2, at 16-17 (illustrating that government agents routinely factored in racial composition of a household or community and then placed Blacks in the lowest category as undesirable for benefits/assistance); *see also* KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 195-203 (1985) (explaining that the Home Owners Loan Corporation (HOLC), which was created to refinance mortgages in danger of default or foreclosure, and appraising properties and entire communities for individual and group loans, systematically and almost completely eliminated Black access to government loans/benefits and access to suburban opportunities).

67. *See* MASSEY & DENTON, *supra* note 4, at 52 (stating that the FHA loan program was created by the National Housing Act of 1937); OLIVER & SHAPIRO, *supra* note 2, at 17 (explaining that the Federal Housing Administration (FHA) was implemented to “bolster the economy and increase employment by aiding the ailing construction industry”). *See generally* JACKSON, *supra* note 66.

68. *See* OLIVER & SHAPIRO, *supra* note 2, at 17; *see also* MASSEY & DENTON, *supra* note 4, at 52-53 (explaining that the FHA loan program in conjunction with a similar and equally discriminatory program—the Veterans Administration Program—reshaped the residential housing market and pumped millions of dollars into the housing industry at this time).

69. *See* OLIVER & SHAPIRO, *supra* note 2, at 17; *see also* MASSEY & DENTON, *supra* note 4, at 53.

racial segregation by using discriminatory rating systems, racially restrictive covenants, and subdivision regulations.⁷⁰ In fact, overt discrimination but use of restrictive covenants lasted until 1948 when the U.S. Supreme Court outlawed the use of racially restrictive covenants in *Shelley v. Kraemer*.⁷¹ Nonetheless, through persistent “redlining”⁷² and continued discriminatory practices, Blacks—as a class with limited resources because of the discussed historical development—had limited access to FHA benefits.⁷³ Consequently, the lack of access to suburbia forced Blacks to stay in inner-cities and ghettos.⁷⁴ This barrier to suburbia effectively “locked out” Blacks from perhaps the greatest wealth accumulation period/opportunity in U.S. history.⁷⁵

In addition to discriminatory housing practices, by the beginning of the 1950s, most of the important public and private services and facilities were highly racially segregated.⁷⁶ Typical labor relations were discriminatory by practice, placing Blacks disproportionately in menial, low paying labor positions with little opportunity for advancement.⁷⁷ Further facilitating marginalization of Blacks was routine and oftentimes mandated school segregation—existing at all educational levels—from elementary to professional school.⁷⁸ A drastic change seemed to emerge during the 1950s to 1960s when the Civil Rights Movement swept across the nation, demanding equal treatment of Blacks.⁷⁹ The Civil

70. See OLIVER & SHAPIRO, *supra* note 2, at 18; see also MASSEY & DENTON, *supra* note 4, at 53-54.

71. 334 U.S. 1 (1948).

72. See BLACK’S LAW DICTIONARY 1283 (7th ed. 1999) (defining “redlining” as “[c]redit discrimination ([usually] unlawful discrimination) by a financial institution that refuses to make loans on properties in allegedly bad neighborhoods”).

73. See MASSEY & DENTON, *supra* note 4, at 54.

74. See *id.*; see also OLIVER & SHAPIRO, *supra* note 2, at 18.

75. MASSEY & DENTON, *supra* note 4, at 54 (stating the FHA discriminatory policies/practices resulted in the majority of FHA mortgages going to whites—with Blacks largely left out); OLIVER & SHAPIRO, *supra* note 2, at 18.

76. See DANIEL A. FARBER ET AL., CONSTITUTIONAL LAW: THEMES FOR THE CONSTITUTION’S THIRD CENTURY 33-34, 46-47 (2d ed. 1998) (finding racially segregated facilities included hotels, buses, theaters and swimming pools); see also HALL ET AL., *supra* note 9, at 510 (discussing the segregated public toilets, schools, and theater seats in the South). Even under the best of circumstances, Blacks were not socially equal to whites, and in the nineteenth century “[i]n matters of public schooling, voting, and marrying, the legal order reflected an underlying social assumption that, for the most part, blacks were not to mix with whites.” *Id.* at 246.

77. See FARBER ET AL., *supra* note 76, at 34 (explaining that banks oftentimes would not lend money to Black-owned businesses and that businesses owned by whites typically hired Blacks for menial, low-paying jobs).

78. See *id.*

79. See PEREA ET AL., *supra* note 7, at 162-63 (listing a few of the notable achievements of the Civil Rights Movement: the Montgomery Alabama bus boycott and the direct challenge to segregation in Birmingham—both of which were planned and executed under the Southern Christian Leadership Conference spearheaded by Black leaders such as Martin Luther King, Jr.,

Rights Movement brought with it legislative achievements comparable to the Reconstruction Era and is often referred to as the “Second Reconstruction.”⁸⁰ However, just as in the Reconstruction Era, the attempts at equality proved to be, at best, inadequate to realize true equality.⁸¹

During these decades, racial practices in higher education were the first to be contested, and eventually discriminatory admissions practices were denounced by the Supreme Court.⁸² However, segregation in secondary education was a legal way of life until 1954, when the U.S. Supreme Court held in *Brown v. Board of Education*⁸³ that racial segregation was unconstitutional.⁸⁴ In fact, it was not until the 1960s that the government took action to prevent these discriminatory practices and policies in housing,⁸⁵ education⁸⁶ and employment.⁸⁷ Despite these efforts—and our entry into the twenty-first century—inequality persists.⁸⁸

II. THE PERSISTENCE OF INEQUALITY

After thoroughly researching and preparing the preceding section, we found this section unusually difficult to write. This is not because it is the most complex or because the information is difficult to come by; rather, the difficulty stems from the disheartening realization that not much has changed. Yes, times have changed, statutes have been enacted, and equality has been proclaimed, but

Fred Shuttlesworth, C.K. Steele, Ralph Abernathy, A. Phillip Randolph and Ella Baker—and organized student sit-ins at the university level advocating human rights, civil rights and political reform).

80. *Id.* at 164.

81. *See id.*

82. *See* FARBER ET AL., *supra* note 76, at 43-50. *See, e.g.,* Sweatt v. Painter, 339 U.S. 629 (1950) (ordering the University of Texas Law School to admit a Black student, recognizing the significance of intangible differences between “white” schools and “black” schools and reporting that segregation itself contributed to intangible differences); Sipuel v. Bd. of Regents, 332 U.S. 631 (1948) (striking down Oklahoma’s failure to provide legal education opportunities to Blacks); Missouri *ex. rel.* Gaines v. Canada, 305 U.S. 337 (1938) (challenging the denial of a Black student to the University of Missouri School of Law and its subsequent creation of a Black law school, Lincoln University).

83. 347 U.S. 483 (1954).

84. *See* HALL ET AL., *supra* note 9, at 445 (explaining that “*Brown* was the culmination of case law that had been developing throughout the century” and stating that “[s]uccessful challenges to discrimination in political institutions, public education, and law enforcement laid the foundation for *Brown*”).

85. Fair Housing Act of 1968, 42 U.S.C. §§ 3600-3631 (1994).

86. Civil Rights Act of 1964, 42 U.S.C. §§ 2000c-2000c(8) (1994).

87. Civil Rights Act of 1964, 42 U.S.C. § 2000(e) (1994). *See generally* JOEL WM. FRIEDMAN & GEORGE M. STRICKLER, JR., THE LAW OF EMPLOYMENT DISCRIMINATION 28-81 (3d ed. 1993).

88. *See* FEAGIN, *supra* note 7, at 23.

the reality is that the present is not simply reflective of, but disturbingly similar to the past. To be sure, the racism that plagued our history stubbornly persists.

The endurance of racism from past to present and the resultant condition of present day economic disparities between Blacks and whites can best be illustrated by an old metaphor about a fair race. As the story goes, there were two relay teams, both of identical overall ability and speed, notwithstanding individual variations among team members. Imagine then, that before the beginning of the race, ankle weights are placed on all of the members of one of the teams. The race commences with one team at an obvious disadvantage. Then, halfway through the race, in an attempt to even the playing field, we freeze all the action and take the weights off the disadvantaged team. We unfreeze and the race continues. The question then is whether taking off the weights is, alone, enough to make this a fair race. Was it, in the end, a just competition?⁸⁹ History has answered this for us; without affirmatively remedying the disparate historical treatment, the disadvantaged team will not catch up, the playing field does not magically become level.

After trudging through history and then examining the present state of equality (or better stated—persistent inequality), these weights seem to be an apt metaphor for the history of relations between Blacks and whites. The realities of inequality exist today, years after, in our imagining, we began believing that we had purged our collective complicities in this tragedy. We view the passage of the civil rights laws that prohibit discrimination as the proverbial “taking off” of the weights, and, because we all know that *de jure* disparate treatment is wrong, we condemn it. Therefore, we fantasize that racial inequality is a thing of the past.

However, the economic disparities between Blacks and whites are enough to tell us that “taking weights off” after years of oppression and marginalization does not equalize society; a mere law does not, because it cannot, take away the effects of years of inequality and subordination.⁹⁰ Although racism and its most harmful effects occurred during the early part of U.S. history, they endure today. Harms of the past are felt at present,⁹¹ exacerbated by the new, more sophisticated and nuanced trappings of bigotry that are inflicted on Blacks today. To make a bad situation worse, the impact falls largely upon those who are at the bottom of the socio-economic ladder, as “the accumulation of disadvantages . . . pass[es] from generation to generation.”⁹²

89. See LESTER C. THUROW, *THE ZERO-SUM SOCIETY: DISTRIBUTION AND THE POSSIBILITIES FOR ECONOMIC CHANGE* 188 (1980).

90. See FEAGIN, *supra* note 7, at 23 (explaining that “[o]ver the many generations since the late 1600s . . . [Blacks] have usually been unable to build up the economic, educational, and cultural resources necessary to compete effectively with white individuals and the greater socioeconomic resources they typically enjoy”).

91. See *id.* (explicating that through a system of generational inheritance of “undeserved enrichment” by whites and “unjust impoverishment” by Blacks, our current system of unequal wealth and opportunity for Blacks has persisted).

92. See OLIVER & SHAPIRO, *supra* note 2, at 12 (quoting WILLIAM JULIUS WILSON, *THE*

Indeed, notwithstanding the Fair Housing Act of 1968 high levels of Black-white segregation continued to persist in large urban areas and in suburbia where the population of Blacks was far smaller than the presence of other groups.⁹³ *American Apartheid*⁹⁴ extensively examines the continued racial segregation in America and the resultant perpetuation of the Black “underclass” as a result of such segregation.

The book reveals how “racial segregation—and its characteristic institutional form, the [B]lack ghetto, are the key structural factors responsible for the perpetuation of [B]lack poverty in the United States.”⁹⁵ It then explains that “[r]esidential segregation is the principal organizational feature of American society that is responsible for the creation of the urban underclass.”⁹⁶ In fact, perpetual segregation has created the structural emergence of a “culture that devalues work, schooling, and marriage and that stresses attitudes and behaviors that are antithetical and often hostile to success in the larger economy.”⁹⁷ Of course, one could also speculate that the devaluation of work could be rooted in the fact that during slavery work was uncompensated and since then only marginally so. Similarly, any devaluation of education and marriage could be grounded on the reality of Blacks’ existence during slavery when they could not even be taught to read nor allowed to marry and form formal family units lest those units be disrupted upon the sale of a family member.

Thus, despite laws, social awareness, and even the Civil Rights Movement, segregation has continued and is still prevalent today.⁹⁸ Segregation in the past twenty-years has ensured that, despite attempts at equal opportunity in areas such as labor, employment, housing, and education, Blacks do not begin at nor progress on a playing field equal to that of whites. However, until the last decade, segregation has been largely ignored by policy makers, theorists, and scholars.⁹⁹

In the recent past, equal opportunity programs such as affirmative action and the prosperity among some middle-class Blacks created the misperception that racism is no longer a problem and equality no longer exists in employment, education, housing, and other relevant facets of life.¹⁰⁰ In fact, many middle-

TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987)).

93. See MASSEY & DENTON, *supra* note 4, at 10 (explaining that one third of the population of all Blacks in the United States was concentrated among sixteen large metropolitan areas).

94. See generally *id.*

95. *Id.* at 9. See also FEAGIN, *supra* note 7, at 24 (explaining that despite the “end of apartheid in the United States in the 1960s” racism and oppression have persisted—“often in violation of civil rights laws”).

96. MASSEY & DENTON, *supra* note 4, at 9.

97. See *id.* at 8.

98. See FEAGIN, *supra* note 7, at 23 (explaining that despite the successes of the Civil Rights Movement and desegregation era, civil rights laws are largely unenforced, and African Americans still face large-scale discrimination in employment, housing, and most other arenas in society).

99. See MASSEY & DENTON, *supra* note 4, at 3.

100. See PEREA ET AL., *supra* note 7, at 165.

class Blacks are often regarded as the success stories of these equality programs.¹⁰¹ In reality, however, middle-class Blacks face daily discrimination in the workplace and during routine encounters with their white counterparts.¹⁰² “Moreover, through institutionalized discrimination whites not only restrict individual mobility but also social, economic, and political mobility, to protect white privilege and power. This seems to be the underlying reason for institutionalized racism.”¹⁰³

That is the perverse point of segregation; the entrenchment of a racial hierarchy of power and privilege. Segregation does not have to do with money, although money—or lack thereof—is certainly one of its manifestations. Segregation is entrenched across socio-economic strata. In Massey and Denton’s words, “[r]esidential segregation is not a neutral fact; it systematically undermines the social and economic well-being of [B]lacks in the United States.”¹⁰⁴ In their opinion, the power of the majority defines reality, its comfort levels constitute integration, and its vision designs desirability.

Other non-neutral facts in Black-white economic disparities in this country are underscored by *Black Wealth/White Wealth*.¹⁰⁵ This work unveils the complicity of the government in crafting disparity and perpetuating subordination that effectuates persistent inequality.¹⁰⁶ These other non-neutral facts systematically undermine the social and economic well-being of Blacks in society simply by ensuring an inability to catch up in the already heavily skewed race to equality.¹⁰⁷ This cycle perpetuates itself in the inner city where, despite an official end to *de jure* segregation, systemic poverty and poor educational opportunities keep Blacks entrapped in destitution at a disproportional rate.¹⁰⁸

101. See Joe R. Feagin & Melvin P. Sikes, *Living with Racism: The Black Middle-Class Experience*, in PEREA ET AL., *supra* note 7, at 165-70.

102. See *id.* at 166-70; see also ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS* (1995).

103. *Id.* at 168.

104. MASSEY & DENTON *supra* note 4, at 2. See also Nancy A. Denton, *The Role of Residential Segregation in Promoting and Maintaining Inequality in Wealth and Property*, 34 IND. L. REV. 1199 (2001).

105. OLIVER & SHAPIRO, *supra* note 2.

106. See generally *id.*

107. See, e.g., KENNETH B. CLARK, *DARK GHETTO: DILEMMAS OF SOCIAL POWER* (1965) (arguing that the ghetto is an intentional creation—colonization of Blacks—by white society, specifically those in power, in an attempt to render and reinforce powerlessness on Blacks).

108. See OLIVER & SHAPIRO, *supra* note 2, at 11-12. The authors explain that: many blacks have fallen by the wayside in their march toward economic equality. A growing number have not been able to take advantage of the opportunities now open to some. They suffer from educational deficiencies that make finding a foothold in an emerging technological economy near to impossible. Unable to move from deteriorated inner-city and older suburban communities, they entrust their children to school systems that are rarely able to provide them with the educational foundation they need to take the first steps up a racially skewed economic ladder. Trapped in communities of despair, they face increasing economic and social isolation from both their middle-class

To be sure, overall, there has been an increase in Black wealth. However, Blacks have continuously fallen further behind the wealth of whites—revealing continued inequality between the races.¹⁰⁹ Given the bleak progress made throughout the years, perhaps we ought to re-think our visions and strategies for eradicating racial inequalities. Conceivably, it is time to admit that our civil rights norms have not gone far enough, or at least that, in their application, they have not yielded the intended results. Indeed, if equality is to be attained, we must reconceptualize our approach to wealth disparities and continued economic marginalization of Blacks.

III. A PROPOSAL FOR A HUMAN RIGHTS PARADIGM TO ADDRESS RACIAL INEQUALITIES

After traveling through such a depressing, yet realistic, path of both the historical and persistent economically-based discrimination and oppression of Blacks, in this section we recommend two related proposals for the eradication of segregation, wealth disparity, and persistent inequality.¹¹⁰ First, we suggest the adoption of the international human rights paradigm and consider that civil and political rights are interdependent with and indivisible from social, cultural, and economic rights.¹¹¹ Our second suggestion recommends that society view economic and wealth disparities as violence.¹¹²

A. *The Indivisibility of Rights Paradigm*

Our first suggestion is that we adopt the international human rights paradigm—a paradigm much more generous than the United States' current constitutional structure—to view this scenario of inequality. This paradigm says human beings have rights *because* they are *human beings*. It is a proclamation of entitlement to full personhood for all people.

International human rights norms help because the framework itself encompasses the civil and political rights—fundamental first generation rights that we recognize in the United States' Bill of Rights—as well as social, cultural, and economic rights (rights not recognized in the U.S. system) as interrelated with and integral to the attainment of human dignity. Furthermore, this paradigm recognizes not only the rights of individuals, but also the rights of communities including the rights of minority communities that exist within majority societies such as Blacks in white Anglo-majority society. Ostensibly, unlike in United States domestic law, in the international human rights context, this panoply of

counterparts and white Americans.

Id.

109. *See id.* at 12.

110. This is a reconfiguration of the comments given at the AALS Conference on Property, Wealth, and Inequality 2001 Symposium; Berta Esperanza Hernández-Truyol, Comments at the AALS Conference on Property, Wealth, and Inequality (2001).

111. *See* discussion *infra* Part III.A.

112. *See* discussion *infra* Part III.B.

rights is recognized as indivisible and interdependent.

In its 1996 *Human Development Report*, the United Nations described economic needs and equality as equivalent to civil freedoms or rights.¹¹³ This is in stark contrast to the U.S. view that regards civil rights as “primary” human rights—and thus heavily protects them—while economic needs are regarded as having less value and import.¹¹⁴ The United Nations plainly stated that “[e]veryone should have access to these opportunities to participate in economic, social, cultural, and political life. They are a basic right.”¹¹⁵

Significantly, in the past few years, attention in the United States has begun to shift towards violations of economic and social rights.¹¹⁶ The importance of economic rights and the growing recognition of the need for U.S. adoption of these rights is becoming evident and is gaining momentum among leading NGOs, as well as some grass roots human rights organizations.¹¹⁷ For instance, in its recent publication reporting on “culture and impunity,” Human Rights Watch, a leading NGO in the International Human Rights regime, reported on “the American workplace” and how American economic rights fits into the scheme of Human Rights,” an arena not normally undertaken by the organization.¹¹⁸ In the United States, notwithstanding an increased push for the full affirmation of the economic and social rights that were recognized in the Universal Declaration on Human Rights¹¹⁹ (Universal Declaration), these rights remain relegated to “second-class status.”¹²⁰

The indivisibility and interdependence human rights paradigm is relatively young, having been first envisioned in 1947 when the authors of the Universal Declaration incorporated this “holistic vision of rights” into the human rights regime—extending beyond political and civil participation to economic, cultural and social development.¹²¹ Based on the premise that economic, social, cultural, and political rights are essential, the Universal Declaration asserted that

113. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT, 1996, at 86 (1996) [hereinafter U.N. HDR 1996]. “The opportunities that are vital in human life are of many different kinds These opportunities are of three broad types—economic, social and political [T]he three categories are closely interrelated, and expanding one type of opportunity often helps expand others.” *Id.*

114. See Eyal Press, *Human Right—The Next Step*, NATION, Dec. 25, 2000, at 13-14 (explaining that overwhelmingly the view of dominant Western policy-makers is that “issues like education, food, and housing have no place in the traditional pantheon of rights”).

115. U.N. HDR 1996, *supra* note 113, at 86.

116. See Press, *supra* note 114, at 14-18 (explaining that activists—both organized and grass roots human rights groups are starting to draw attention to economic and social rights violations in the United States).

117. See generally *id.*

118. *Id.*

119. Universal Declaration on Human Rights, G.A. Res. 217, U.N. GAOR, 3d Sess., Supp. No. 127, U.N. Doc. A/810 (1948).

120. See Press, *supra* note 114, at 13.

121. U.N. HDR 1996, *supra* note 113, at 86.

“[e]veryone . . . is entitled to . . . the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”¹²² It further suggested that all people are entitled to own property¹²³ and provided that “[n]o one shall be arbitrarily deprived of his property.”¹²⁴ Additionally, the Universal Declaration’s overall emphasis was that all people are entitled to equal rights regardless of race and often various classifications.¹²⁵ The States’ hope was that this Declaration would eventually become the foundation of one binding human rights convention.¹²⁶

Since this first comprehensive document, numerous international human rights conventions and declarations have recognized, included, and defined economic rights as inherent to human development and the true attainment of equality. This vision places social, economic, and cultural rights within the “primary” human rights conceptualization.

In 1965, states signed onto the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).¹²⁷ This document was motivated by the persistence of racial discrimination¹²⁸ still in existence and “by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,” proclaiming that “the existence of racial barriers is repugnant to the ideals of any human society.”¹²⁹ Thus, the aspiration of the convention was to “adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination.”¹³⁰

In 1966, during consideration of the anticipated covenant to embrace the Universal Declaration’s aspirations, a North/South and East/West as well as a

122. Universal Declaration on Human Rights, *supra* note 119, at art. 22.

123. *See id.* at art. 17, 1.

124. *Id.* at art. 17, 2.

125. *Id.* at art. 2 (stating that there should be no distinction based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” in the entitlement to freedoms and rights).

126. *See generally* Berta Esperanza Hernández-Truyol & Sharon Elizabeth Rush, *Culture, Nationhood, and the Human Rights Ideal*, 33 U. MICH. J.L. REFORM 233 (2000).

127. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, S. TREATY DOC. NO. 95-2, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) [hereinafter CERD].

128. *See id.* at part I, art. 1. The treaty defined “racial discrimination” as: any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

129. *Id.* at preamble.

130. *Id.*

capitalism/communism divide emerged.¹³¹ This divide resulted in the bifurcation of the unified system envisioned in the Declaration into two separate conventions: the International Covenant on Civil and Political Rights ("ICCPR")¹³² and the Covenant on Economic, Cultural, and Social Rights¹³³ ("Economic Covenant").¹³⁴ The United States ratified the ICCPR undertaking to "ensure . . . *all* individuals"¹³⁵ within its boundaries "the right to self-determination"¹³⁶ and "[b]y virtue of that right . . . they freely pursue their economic, social and cultural development."¹³⁷

Similarly, the Economic Covenant obligated States to honor economic and social rights.¹³⁸ The treaty recognized that economic, cultural, and social rights are indivisible and "derive from the inherent dignity of the human person."¹³⁹ Further, the Covenant reinforced that "in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights."¹⁴⁰ Significant in this regard is the fact that the Economic Covenant includes the right to property.

131. See Berta Esperanza Hernández-Truyol, *Human Rights Through a Gendered Lens: Emergence, Evolution, Revolution*, in 1 WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW 3 (Kelly D. Askin & Doreen M. Koenig eds., 1998).

132. International Covenant on Civil and Political Rights, Dec. 9, 1966, S. TREATY DOC. NO. 95-2, 999 U.N.T.S. 171 (entered into force Mar. 23, 1979; ratified by the United States June 8, 1992) [hereinafter ICCPR].

133. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. TREATY DOC. NO. 95-2, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976) [hereinafter ICESCR].

134. See Hernández-Truyol & Rush, *supra* note 126, at 246.

135. ICCPR, *supra* note 132, at Part II, art. 2, 1 (emphasis added).

136. *Id.* at Part I, art. 1, 1.

137. *Id.*; see also *id.* at Part III, art. 22, 1 (determining that in pursuit of economic rights, "[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests").

138. See generally ICESCR, *supra* note 133, at Part II, art. 2, 1. See also Press, *supra* note 114, at 16.

[T]he UN Committee on Economic, Social and Cultural Rights has issued a series of "General Comments" outlining the minimal obligations that all states are expected to fulfill. With regard to education, the committee calls on all governments to provide "a detailed plan of action for the progressive implementation" of "compulsory education free of charge for all," noting that if a state lacks the resources to furnish this basic human need, "the international community has a clear obligation to assist."

Id.

139. ICESCR, *supra* note 133, at preamble.

140. *Id.* See also *id.* at Part III, art. 7(a)(i), (ii), (b), (c) (recognizing the enjoyment and favorable conditions of work ensuring, at a minimum, fair wages, equal value and remuneration for work, and equal pay, safe and healthy working conditions, decent living for themselves and their families, equal opportunity in employment and promotion).

Additionally, reflecting the indivisibility of rights construct, the Economic Covenant emphasizes the need for education and equal opportunity within education in order for persons to fulfill overall well-being.¹⁴¹ Although the Economic Covenant created an ambitious template for economic equality and empowerment, the United States regrettably has never ratified it. Rather, Washington has persistently tried to prevent recognition of these rights in this and subsequent conventions.¹⁴²

Later, in 1986, the Declaration on the Right to Development (DRD or Development Declaration), reiterating the indivisible and interdependent nature of all human rights,¹⁴³ highlighted the right to pursue economic development.¹⁴⁴ Ultimately, the Development Declaration called for the elimination of racism,

141. See *id.* at Part III, art. 13, 1 (recognizing equal right to education; agreeing that education “shall be directed to the full development of the human personality and the sense of its dignity;” focusing on the respect for human rights and fundamental freedoms—asserting that economic, political, civil, social, and cultural rights are interdependent and indivisible; and promoting the “understanding, tolerance and friendship” between and among racial, ethnic and religious groups).

142. See Hernández-Truyol & Rush, *supra* note 126, at 246-47; Press, *supra* note 114, at 16.

The prevailing view in the US foreign policy establishment among some prominent human rights advocates has been that issues like housing, jobs, and healthcare involve questions of governmental policy, not principle, and cannot realistically be guaranteed as universal rights, particularly in poor countries with limited resources. Civil and political rights are negative liberties, the argument runs, requiring governments not to interfere actively in citizens’ lives, while economic and social rights impose positive obligations on states—obligations that cost money to enforce.

Id. But see Universal Declaration on Human Rights, *supra* note 119, at art. 22 (recognizing that when it comes to enforcing economic and social rights, “the organization and resources of each State” must be taken into consideration); African Charter on Human and People’s Rights, *adopted* by the Organization of African Unity at Nairobi, Kenya, on June 27, 1981, 21 I.L.M. 59 (entered into force on Oct. 21, 1986) [hereinafter African Charter]; American Convention of Human Rights, S. TREATY DOC. NO. 95-2, 9 I.L.M. 673, *opened for signature* Nov. 22, 1969 (entered into force July 18, 1978) [hereinafter American Convention]; see also Charter of the Organization of American States, Apr. 30, 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 (entered into force Dec. 13, 1951) [hereinafter OAS].

143. See Declaration on the Right to Development, G.A. Res. 128, U.N. GAOR, 41st Sess., Supp. No. 53, at 187, art. 6, 1-2, U.N. Doc. A/41/53 (1986) [hereinafter Declaration on Development] (declaring that all human rights and fundamental freedoms are indivisible and interdependent, and expressing that “equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.”). See generally Press, *supra* note 114 (expressing the importance of this interdependence of rights).

144. See Declaration on Development, *supra* note 143, at 186, preamble (recognizing that “development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of the active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom”).

discrimination, apartheid, and segregation.¹⁴⁵ Further, and contrary to the U.S. position, the Development Declaration stated that the right to development—economic, political, civil, social, and cultural—“is an inalienable human right”¹⁴⁶ and “enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms.”¹⁴⁷ The Development Declaration placed the responsibility for the creation of conditions favorable to realizing economic, social, cultural, civic, and political development on each individual State.¹⁴⁸

More recently, in 1993, the World Conference on Human Rights reinforced this emphasis on the protection of all human rights including equality and economic, social, and cultural development,¹⁴⁹ specifically denouncing institutionalized racism.¹⁵⁰

This international vision of economic rights as “primary” human rights urges a reconstruction of the U.S. model to include as fundamental *any* form of economic right. Indeed, such an indivisibility and interdependence approach poignantly explicates the reality that our successes—as in the political achievements of Blacks as United States citizens, and our failures, embodied in the segregation and wealth disparities that have been discussed here, cannot be isolated from one another. Undoubtedly, the right to vote means very little if one is systematically oppressed, hungry, homeless, uneducated, unemployed, underemployed, or unable to care for one’s family.

Because, under the international human rights model, economic rights are interdependent with and indivisible from civil and political rights, the need to remedy segregation and wealth disparities becomes more urgent, more real, more

145. *See id.*

146. *Id.* at 186, art. 1, 1.

147. *Id.* at 186, preamble.

148. *See id.* at 186, art. 3, 1; *id.* at 187, art. 6, 3 (placing responsibility on individual states to “take steps to eliminate obstacles to development resulting from failure to observe civil and political rights as well as economic, social and cultural rights.”); *see also id.* at 187, art. 8, 1.

States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income Appropriate economic and social reforms should be made with a view to eradicating all social injustices.

Id.

149. *See generally* World Conference on Human Rights: Vienna Declaration and Programme of Action, U.N. Doc. A/CONF.157/23 (1993) [hereinafter Vienna Declaration]; Report of the International Conference on Population and Development, U.N. Doc. A/CONF.171/13 (1994) [hereinafter Cairo Conference]; Beijing Declaration and Platform for Action, United Nations Fourth World Conference on Women, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration]; Report of the World Summit for Social Development, U.N. Doc. A/CONF.166/9 (1995) [hereinafter Social Summit].

150. *See* Vienna Declaration, *supra* note 149, at I(1), I(19) (considering the elimination of racism and discrimination a primary objective in the promotion of human rights).

concrete. As many human rights theorists recognize, all levels of rights are necessary for human development.¹⁵¹ But, in the United States, over the past three decades, the gap between rich and poor has increased, as has the disparity between Black wealth and white wealth.¹⁵² These realities are evidence of the need to protect and promote not only civil and political rights but also social and economic rights.¹⁵³ Because economic rights are part of the fabric of personhood and human dignity, we would, as a nation, be better off if we viewed economic and social rights as part of the tapestry of rights that are fundamental, in addition to civil and political rights. Only the protection and promotion of *all* rights will enable all persons—Black and white—to achieve equality to live the “good life.”¹⁵⁴

B. Reconceptualizing Economic and Wealth Disparities as Violence

In order to analyze the problems of inequality, the other suggestion, which flows from the use of the international human rights construct, is to view these economic and wealth disparities through a prism of violence. This approach has been very successful in motivating diverse communities to work against injustice in the international sphere.¹⁵⁵ Historically, the anti-violence paradigm formed the foundation of early treaties protecting minority populations.¹⁵⁶ To be sure, the Geneva Conventions furthered the condemnation of certain forms of violence against particular populations in wartime.¹⁵⁷ With Nuremberg and more recently

151. See generally Hernández-Truyol & Rush, *supra* note 126; see also AMARTYA SEN, DEVELOPMENT AS FREEDOM (1999); THE QUALITY OF LIFE (Martha Nussbaum & Amartya Sen eds., 1993).

152. See Press, *supra* note 114, at 14. See generally MASSEY & DENTON, *supra* note 4; OLIVER & SHAPIRO, *supra* note 2.

153. See Press, *supra* note 114, at 13-14. Press urges the U.S. to join International Human Rights efforts by arguing that

[a]t a time of rising inequality and growing concern about the consequences of unregulated global capitalism, making the right to education, shelter and other basic necessities coequal with civil and political rights is not only long overdue; it may also be the only way for the human rights movement to recapture the power and urgency that faded somewhat after the end of the cold war. In much of the world, after all, the struggle for access to basic necessities like education and medical care has become every bit as urgent as the struggle free for speech or fair trials.

Id.

154. This is consistent with Oliver and Shapiro's notion that economic well-being is an important factor in the “good life.” OLIVER & SHAPIRO, *supra* note 2, at 2.

155. See Hernández-Truyol, *supra* note 131, at 14. See generally THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A DOCUMENTARY HISTORY (compiled by M. Cherif Bassiouni).

156. See Hernández-Truyol, *supra* note 131, at 5-6.

157. See, e.g., Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 6 U.S.T. 3516, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950; entered into force for the United States Feb. 2, 1956) (dealing with the law governing humanitarian law); Geneva Convention

with Yugoslavia and Rwanda, culminating with the formation of the International Criminal Court, there has been a wholesale condemnation of violence perpetrated against specifically targeted populations during times of war, including a condemnation of violence perpetrated against persons because of their race, sex, ethnicity, or religious affiliations.¹⁵⁸

During the 1993 Human Rights Conference in Vienna, women learned firsthand of the utility of the violence paradigm.¹⁵⁹ At that time, the paradigm seemed to unite women from all walks of life—from the North and the South, the East and the West—in the condemnation of violence against women. It was then that women *en masse* claimed that women's rights are human rights.¹⁶⁰ Thus, a world conference on human rights that had failed even to place women on the agenda turned its focus on women—a focus that continued in Cairo,¹⁶¹ Copenhagen¹⁶² and Beijing.¹⁶³ Despite these successes and notwithstanding the condemnation of physical and psychological violence, women's economic disenfranchisement and destitution worldwide continued. In response to this incoherence, in 1996, Hernández-Truyol suggested in *Sex, Culture and Rights: A Re/Conceptualization of Violence for the Twenty-First Century*,¹⁶⁴ that economic subordination of women worldwide be viewed as violence as it is an effective, mobilizing, coalition building tool.¹⁶⁵

Similarly, now, there is a need for a “re/vision of facts that constitute violence against [Blacks]”¹⁶⁶ to include economic and wealth inequality.¹⁶⁷ We urge that “we the people” view the realities of economic discrimination, wealth disparity, and segregation of Blacks as racial violence because that is exactly

Relative to the Treatment of Prisoners of War, 6 U.S.T. 3316, 75 U.N.T.S. 135 (entered into force Oct. 21, 1950).

158. See generally THE STATUTE OF THE INTERNATIONAL COURT, *supra* note 155.

159. See generally Hernández-Truyol, *supra* note 13.

160. In 1994, the U.N. Human Rights Commission established a Special Rapporteur on Violence Against Women to examine the causes and consequences. See Julie Mertus & Pamela Goldberg, *A Perspective on Women and International Human Rights After the Vienna Declaration: The Inside/Outside Construct*, 26 N.Y.U. J. INT'L L. & POL. 201, 202 (1994) (explaining the coalescing of women from all states and from all walks of life to condemn violence against women).

161. See Cairo Conference, *supra* note 149 (explaining that “[t]he right to development is a universal and inalienable right”).

162. See Social Summit, *supra* note 149 (referring to the right to development as “universal, indivisible, interdependent and interrelated” human rights).

163. See Beijing Declaration, *supra* note 149 (discussing “women and the environment”).

164. See generally Hernández-Truyol, *supra* note 13.

165. See *id.* at 608.

166. *Id.* at 607 (suggesting that “a re/vision of acts that constitute violence against women is necessary for gender equality—both domestically and internationally—to become a reality”).

167. Compare *id.* at 609. (stating that “[t]he Article’s proposed model presents a re/constructed notion of violence, that not only facilitates discourse on violence itself, but also engenders an environment that will enable the eradication of violence and the promotion of women’s self-determination, empowerment and equality”).

what it is. This genre of violence perpetuates poverty, maintains joblessness, denies education, allows social and physical deterioration of peoples and communities, devalues achievement, and encourages failure. These realities reflect an irretrievable breakdown of our beloved labor desert theory and sustain a third world within our own first world.

Moreover, inherently unequal employment opportunities perpetuate the disparities between Blacks and whites. Indeed, unequal existence of Blacks in public office denies them political and civil rights as well as full enjoyment of social, economic, and cultural rights.¹⁶⁸ As the United Nations 1996 report explains, employment—the opportunity to secure one’s livelihood—is an essential element of economic rights and freedoms¹⁶⁹ in earning income and eventual accumulation of wealth. Furthermore, disparities in the number of Blacks in high-level jobs in the private sector also prevent Blacks from having equal access to economic resources, accounting in part for the wealth disparities between Blacks and whites.¹⁷⁰

Similarly, denial of equal access to education¹⁷¹ creates disparities, foreclosing Blacks from job opportunities and limiting Blacks to lower paying jobs. These systematic denials of equality in employment, politics, and education have historically caused wealth disparities between Blacks and whites.¹⁷²

To date, this economic violence has been institutionalized and reaffirmed, instead of fought and fixed. The future will continue to be a reflection of our past until we adopt measures to pave the way to change and reformation. In short, society should construct, or more appropriately deconstruct, wealth disparities and segregation as economic violence.

In the context of the suggested paradigm, it is a human rights violation to deprive human beings of full personhood and to injure the dignity of the human spirit. As asserted by Reed Brody, advocacy director of Human Rights Watch, “[i]f we are serious about the violation of human dignity represented by issues like preventable disease, homelessness and poverty, we need to hold states accountable for these abuses just as we do for torture and murder.”¹⁷³ Until United States society recognizes, as international society has, that economic equality is essential and should be regarded as a “primary right,” then inequality will persist in the U.S., tainting our future as it has our past.

168. *Cf. id.* at 617 (explaining the existence of the same phenomenon with respect to the lack of women in public office).

169. *See* U.N. HDR 1996, *supra* note 113, at 87.

170. *See* MASSEY & DENTON, *supra* note 4, at 219. As discussed earlier, another reason for the disparity in wealth is the historical denial of blacks from accumulation of property and homestead. *Cf. Hernández-Truyol*, *supra* note 13, at 617.

171. *See* FEAGIN, *supra* note 7, at 24.

172. *See generally* MASSEY & DENTON *supra* note 4; OLIVER & SHAPIRO, *supra* note 2.

173. *See* Press, *supra* note 114, at 17 (quoting Reed Brody, advocacy director of Human Rights Watch).

C. The Underpinnings of Inequality

By reviewing the liberal republican roots of the United States' approach to human rights, this section seeks to explain the disconnect in the United States, explored in the sections above, between civil and political rights, on the one hand, and social, economic, and cultural rights on the other. As will be revealed, the focus on the autonomous individual has starkly and stubbornly stood in the way of an embrace to an approach that seeks systematically to change the subordination of any group.

The adoption of the Universal Declaration ostensibly reveals the commitment of states to the protection of a "collection of indivisible, interdependent, and inviolable rights that include not only civil and political rights, but also social, economic, cultural, and solidarity rights."¹⁷⁴ However, a critical examination of the U.S. approach to human rights reveals much about the United States' system and its current condition.

For one, the reluctance of the United States to sign the Economic Covenant dates to the early days of the global human rights initiative. As discussed earlier, the aspiration of the signatories of the Universal Declaration was that a single treaty, binding on States, would result. However, during the meetings concerning a single human rights convention, it became apparent that the United States, embracing its individual autonomy and liberal republican ideology, was comfortable only with the grant of civil and political rights.¹⁷⁵ Thus, the U.S. embraced only "those 'negative' rights of individuals to be free from governmental interference."¹⁷⁶ Simultaneously, the United States rejected undertaking any positive obligations involving granting social, economic, and cultural rights. This posture is evidenced today by its refusal to ratify the

174. Hernández-Truyol & Rush, *supra* note 126, at 245-46 (explaining that included in the Universal Declaration were rights such as the right to social security, full employment, fair working conditions, and an adequate standard of living which are all considered economic in nature). See Universal Declaration on Human Rights, *supra* note 119; see also ICCPR, *supra* note 132, at part III, arts. 6, 7, 8(1)-(2), 15, 16, 18. See generally ICESCR, *supra* note 133.

175. See Hernández-Truyol & Rush, *supra* note 126, at 246.

176. *Id.* See also Mary G. Dietz, *Context Is All: Feminism and Theories of Citizenship*, DAEDALUS, Fall 1987, at 4-5 (explaining that interestingly, and perhaps ironically, the liberal vision, while stuck on civil and political rights even at the expense of the greater societal good, recognized the inviolability premise: "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. . . . The rights secured by justice are not subject to political bargaining or the calculus of social interests.") (quoting JOHN RAWLS, *A THEORY OF JUSTICE* (1971)). Negative rights focus on the individual's personal rights with the consequent effect of placing limits on actions of governments—the freedom from government interference with the conception of rights. Positive rights, on the other hand, are those that articulate that a social bill of rights have attached to them positive government obligations. See generally CHARLES TAYLOR, *HUMAN RIGHTS: THE LEGAL CULTURE*, excerpted in *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 173, 174-76 (Henry J. Steiner & Philip Alston eds., 1996).

Economic Covenant.¹⁷⁷

In contrast to the U.S. position, the so-called Third World States, as well as the communist “Second World” States,¹⁷⁸ firmly held that true liberation and freedom could only result from the grant of positive rights: social, cultural, and economic.¹⁷⁹ The guarantee of these rights constitutes an obligation on each individual State to ensure the basic subsistent well-being of all its peoples. To be sure, this does not require that any State do more than it can do. Rather, it requires States to craft, within their means, a framework within which all of the States’ inhabitants can be free from want and hunger and enjoy safe housing and basic economic security.¹⁸⁰ Negative rights would perpetuate silence and oppression; but, when the playing field is not even, positive rights give voice and create a possibility for equality.¹⁸¹

Ultimately, however, which rights are embraced by the U.S. is an issue of priorities and domestic policies.¹⁸² The Western liberal view (mis)leads one to believe that only civil and political rights, the so-called “primary” or “first generation” rights, are necessary or important for human flourishing.¹⁸³ An examination of the roots of civil and political rights dates to the American Declaration of Independence¹⁸⁴ and the French *Declaration des Droits de L’Homme*¹⁸⁵ (Rights of Man). Both documents resulted from late eighteenth century political and social uprisings that sought to identify impermissible governmental intrusions into individual lives.¹⁸⁶

But perhaps foretelling the weaknesses and limitations of a singular focus on political rights, these eighteenth-century social and political revolutions coexisted with the proverbial “skeletons in our closet”—slavery, capitalistic oppression of

177. See Dietz, *supra* note 176, at 4 (explaining that “[t]he life of liberalism . . . began in capitalist market societies, and as Marx argued, it can only be fully comprehended in terms of the social and economic institutions that shaped it”); see also Hernández-Truyol, *supra* note 131, at 16.

178. See Hernández-Truyol, *supra* note 131.

179. Many Eastern European countries and some “developing countries” such as South Africa and India, actually recognize economic and social rights in their constitutions. See Press, *supra* note 114, at 16.

180. See generally ICESCR, *supra* note 133.

181. See generally Hernández-Truyol, *supra* note 131; The Declaration on the Granting of Independence to Colonial Countries and Peoples of 1960, U.N.G.A. Res. 1514, U.N. GADR, 15th Sess., Supp. No. 16, U.N. Doc. 4684 (1961).

182. See Press, *supra* note 114, at 16-18.

183. See Hernández-Truyol & Rush, *supra* note 126, at 247 (explaining that the United States recognizes as most important those rights protected in the Bill of Rights).

184. THE DECLARATION OF INDEPENDENCE (U.S. 1776).

185. *French Declaration des Droits de L’Homme (Rights of Man)*, reprinted in HUMAN RIGHTS IN WESTERN CIVILIZATION 1600 TO THE PRESENT 27-28 (John A. Maxwell et al. eds., 1994).

186. See Hernández-Truyol & Rush, *supra* note 126, at 247-48 (noting that while also based on revolution, the anti-colonialist and post-socialist revolutions, the champions of social, economic, and cultural rights, sought to impose positive obligations on states for the well being of communities and society).

indigenous peoples, and subordination of women and their status as chattel—which are hardly consistent with equality.¹⁸⁷ Rather, the social conditions of slavery and the chattel status of all women are classic examples of how power can be used to oppress the minority.¹⁸⁸

Thus, we have to own up to the melange that constitutes liberalism and its embeddedness in the United States' view on rights. In its origins, liberalism was both good and bad. Good in that it centered on the notion that *men qua* persons were entitled to and possessed a plethora of rights—autonomy, dignity, self-respect, freedom, and liberty to choose one's own values—and bad because it was *men*, not persons who were entitled to such personhood. That conceptualization of white male as human and human as white male became normative and, as such, persists today.

Yet, it is the liberal language of rights that women and slaves themselves have used in their own liberation projects. It is this language that is appropriated and utilized today by indigenous groups and marginalized racial, ethnic, and sexual minorities to clamor for their rights. Thus, we do not want to throw the liberalism baby out with the proverbial bath water. Rather, we need to think about it in a way that can include *all* persons and as a weapon against the very denials of liberties with which, in the past, it coexisted.

In this movement society needs to continue to work on the persisting problem of man as the ubiquitous norm. In doing so, society must recognize the need to address the necessitous condition of whole segments of our society as such, not as simply autonomous individuals.

While everyone can agree that civil and political rights are desirable and necessary, current interventions into equality discourses evidence the need for a paradigmatic shift that also embraces social and economic conditions within the framework of fundamental entitlements. In short, while recognizing the significance, importance, and value of a reformed version of liberalism, we must also undertake a communitarian-based interrogation of the condition, including object destitution, poverty, and overwhelming social, economic, and educational disadvantages of some of our communities. Communitarianism, then, is concerned with the “balance between social forces and the person, between community and autonomy, between the common good and liberty, between individual rights and social responsibilities.”¹⁸⁹

This balance between autonomy and the community good advocates democracy and facilitates a more accessible notion of equality.¹⁹⁰ International

187. See Celina Romany, *Women as Aliens: A Feminist Critique of the Public/Private Distinction of International Human Rights Law*, 6 HARV. HUM. RTS. J. 87, 90 (1993) (stating that “the presence of patriarchy in these emancipatory structures [of liberalism] reveals the gap between liberal concepts and reality”); see also Ursula Vogel, *Marriage and the Boundaries of Citizenship*, in THE CONDITION OF CITIZENSHIP 76, 79 (Bart van Steenberg ed., 1994).

188. See Hernández-Truyol & Rush, *supra* note 126, at 247.

189. Amitai Etzioni, *Introduction to THE ESSENTIAL COMMUNITARIAN READER*, at ix, x (Amitai Etzioni ed., 1998).

190. See *id.*

human rights regimes operate on both liberal and communitarian principles considering both individual and group rights, emphasizing the importance of political and civil rights but recognizing the interdependence of those rights with social, cultural, and economic rights. This transformation of liberalism, together with the two-part proposal, provides a starting point in the quest for true equality between Blacks and whites.

CONCLUSION

This proposal for a reconceptualized version of a system of rights that embraces a holistic amalgam of civil and political rights as well as social, economic, and cultural rights is not totally out in left field. While it is true that Western States, in general, have resisted the notion of social and economic rights, years ago President Franklin Delano Roosevelt appears to have wholeheartedly embraced them. President Roosevelt's Four Freedoms speech,¹⁹¹ in which he discussed four essential human freedoms, established the third freedom as the "freedom from want which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world."¹⁹²

Later, in his State of the Union message to Congress, delivered on January 11, 1944, President Roosevelt articulated many of these economic rights as part of his vision for a truly free United States of America. He noted that "true individual freedom cannot exist without economic security and independence," that "[p]eople who are hungry and out of a job are the stuff of which dictatorships are made," and referred to these "economic truths [as being] self-evident."¹⁹³ The President then went further by asking for "a decent standard of living for all individual men and women and children in all nations" and likened freedom from fear to freedom from want, reflecting the foundation of the

191. See Franklin Delano Roosevelt, 87 CONG. REC. 44, 46-47 (1941), *reprinted in* FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 362 (1990).

192. *Id.* at 46. Fully, the four freedoms speech provided as follows:

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is the freedom of speech and expression everywhere in the world. The second is the freedom of every person to worship God in his[/her] own way everywhere in the world. The third is the freedom from want, which translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants everywhere in the world. The fourth is freedom from fear—which translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world.

Id.

193. Franklin Delano Roosevelt, State of the Union Message, 90 CONG. REC. 55, 57 (1944).

Universal Declaration and Economic Covenant.¹⁹⁴ Implicit in Roosevelt's words is the notion embraced by the international human rights paradigm that the "two sets of rights are not mutually exclusive but interrelated."¹⁹⁵

President Roosevelt's vision encompassed a long list of economic rights including the right to earn enough to provide food, clothing, and recreation to one's family, the right to ownership of a decent home, and to adequate medical care, the opportunity to achieve and enjoy good health, the right to adequate protection from the economic fears of old age, sickness, accident, and unemployment, as well as the right to quality education.¹⁹⁶ These rights echo those economic rights listed in the Universal Declaration and the Economic Covenant.¹⁹⁷ President Roosevelt also observed that political rights alone are not sufficient, because necessitous persons are not truly free. Roosevelt spoke under the premise under which we work here: that, without economic security and independence, freedom is illusory.

In fact, Roosevelt viewed these economic rights as a second bill of rights which would form a "new basis of security and prosperity."¹⁹⁸ Collectively, he concluded with words that should make a call to arms today: Americans "cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure."¹⁹⁹

194. *See id.*

195. Press, *supra* note 114, at 14 (explaining that poverty and illiteracy frequently lead to an inability to exercise one's political and civil rights just as the absence of political freedom facilitates gross economic abuse). *See also* THE QUALITY OF LIFE *supra* note 151 (advocating a "capabilities approach" to human rights that pinpoints the basic material resources necessary for individuals to realize their rights, full potential, and abilities as human beings).

196. *See* Roosevelt, *supra* note 193, at 57; *see also* Press, *supra* note 114, at 14.

197. *See* ICESCR, *supra* note 133, at Part III, art. 7(a)(i), (ii), (b), (c).

198. Roosevelt, *supra* note 193, at 57.

199. *Id.* Recognizing the origins of the country in the sacredness of political rights, Roosevelt also recognized that

as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness. We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. "Necessitous [wo]men are not free [wo]men." . . . In our day these economic truths have become accepted as self evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race or creed.

Id. Roosevelt continued to enumerate the new rights

to a useful and remunerative job . . . to earn enough to provide adequate food and clothing and recreation . . . [of farmers] to raise and sell his[her] products at a return which will give him[her] and his[her] family a decent living . . . [of business [wo]men] . . . to trade [free] . . . from unfair competition . . . of every family to a decent home . . . to adequate medical care and . . . to achieve and enjoy good health; to adequate protection from the economic fears of old age, sickness, accident and

Yet it seems that in pursuit of liberalism (individual autonomy), we have systematically rejected this notion of economic rights. We would do well to acknowledge that while we are all individuals, we all are also part of various and varied communities; therefore, as members of the U.S. community, we should not be content if members of any of our subcommunities are systematically living in deprivation. We should embrace FDR's sentiments, particularly in light of the incredibly depressing data on wealth and income disparities between the Black and white communities in the United States. As Martin Luther King, Jr. so eloquently stated, "[i]njustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly."²⁰⁰ Simply put, if we are ever to enjoy *true* equality, we must commit to the full personhood ideal that only the full panoply of human rights can realize.

However, the current system recognizes a less-than-full citizenship status of Blacks in the United States. Therefore, in conceptualizing violence, society must look beyond guns and fists, to dignity and employment. Collectively, society must give a voice and face to those at the bottom of the ladder—stuck in a generational cycle out of which it will be increasingly difficult to emerge.

These insights provided by the analysis of our system, past to present, and its theoretical underpinnings expose the non-neutrality of domestic laws and their effect on current racial disparities between Blacks and whites. By revealing the flawed origins and application of norms, we can finally break the cycle of the past and reconstruct the domestic idea in an antistatist, multidimensional, multicultural, inclusive manner—more reflective of the international human rights paradigm. In these reconceptualization efforts, it is imperative to ensure that new notions of justice are envisioned with paramount respect for personhood and human dignity, creating attainability of equality between Blacks and whites. The process of reconstruction of equality discourse must be transformational, dynamic, and ongoing in a profoundly different way.

unemployment . . . good education.

Id. Roosevelt concluded by noting that “unless there is security here at home there cannot be lasting peace in the world.” *Id.*

200. MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 77, 79 (1964).