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Introduction: Assuming a Critical Lens in Legal Studies: Reconciling Laws and Reality

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**INTRODUCTION:
ASSUMING A CRITICAL LENS IN LEGAL
STUDIES: RECONCILING LAWS AND REALITY**

Courtney Anderson* & Tanya Washington Hicks**

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* Associate Professor of Law, Georgia State University College of Law; LL.M., Georgetown University Law Center; J.D., Harvard Law School; B.A., University of Pittsburgh. We would like to thank the staff of the *Georgia State University Law Review* who thought it fitting to organize this Symposium and dedicate this accompanying Issue to exploring creative responses to the unprecedented challenges we are all living through.

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INTRODUCTION

Social justice and civil rights movements center on protecting and advancing the rights and interests of people across assumed and assigned identities, affinity groups, and socially constructed realities. They confront and demand reform and transformation of systems, structures, institutions, and laws that frustrate and foreclose social and racial justice. For the law to be relevant it must respond to shifting priorities and goals and to demands for change that emerge through and in response to these movements. The content and expression of law must be guided by inherent principles of equity, inclusion, and justice. Those currently in the legal profession and those preparing to enter it are engaging and learning the law during a pandemic, which is surfacing and intersecting with entrenched societal fissures and fault lines resulting from historic, pervasive, and continuing structural, systemic, and institutional inequality. The dynamic nature of the current reality shaped by a global pandemic, a racial reckoning, and unconscionable and unsustainable power, and resource inequities between people and communities urge us to reflect on the role of the law in creating, maintaining, and facilitating inequality. This moment also calls us to examine the responsibility of law to cure persisting inequality, to redress the injury it inflicts, and to curate a more equitable reality for *all* people.

Disparities produced by racism, sexism, homophobia, transphobia, ableism, and poverty, which have been ignored for far too long, are now on full display. Embedded, supremacist structures and systems facilitate oppression and exclusion that marginalize people diminishing their quality of life, squander talent and human resources, weaken institutions, and compromise effective decision-making. These systems and structures operate effectively because they are often difficult to discern, but like gravity, their effect is ubiquitous.

This extraordinary moment challenges law students and legal professionals alike to acknowledge the persistent reality of systemic and structural inequality and to consider their role as power brokers

entrusted with the authority and responsibility to address and change this reality, to ensure categorical protection of civil and human rights, and to promote justice for all. The selected Articles in this Symposium Issue of the *Georgia State University Law Review* and the Spring 2021 convening that introduced this special edition of the journal highlight proposed solutions to social and racial (in)justice across a continuum of contexts and by multifarious means. This timely publication calls the question on social and racial inequality and asks, “What Next?” This important question urges consideration of the capacity and responsibility of the law, and those who study and practice it, to identify and dismantle structures and systems designed to produce and protect an enduring legacy of inequality and to make manifest a system of laws that promote justice for *all*.

Problems resulting from complex, intersecting realities require complex, intersecting solutions. The siloed thinking of old yields solutions that cannot address the shape, depth, breadth, and content of social and racial inequality. Siloed solutions ignore overlapping, compounding, and oppressive realities experienced by Black, Brown, and poor people in the United States. These challenges call for new wine and new bottles. This brief introduction illustrates an intersectional approach to addressing pressing social and racial inequality in the areas of voter suppression, K–12 public schools, the U.S. criminal legal system, and housing insecurity. Inequality in these fundamental aspects of the lived experience condemn people and communities to realities marked by discrimination, limited prospects, disenfranchisement, violence by state and private actors, and racialized morbidity and mortality rates. It is in these same contexts that the law has great potential to dismantle racial and social inequality and to manifest social and racial justice and equity. By highlighting how these seemingly independent contexts intersect in ways that facilitate interlocking inequality, we hope to inspire intersectional solutions to foundational and entrenched obstacles to social and racial justice.

I. VOTING RIGHTS AS QUINTESSENTIAL TO EQUAL ACCESS TO AND PARTICIPATION IN DEMOCRACY

We begin with a discussion of voting rights because the franchise is a constituent aspect of democracy and because it is preservative of other legal rights and protections. Voter suppression efforts underway in Georgia and across the nation are the most efficient way to deprive people of elected representation and to exile them and their communities from access to quality K–12 educational opportunities, from access to criminal justice, and from access to government provided resources, services, and support.

More than 159 million votes were cast in the 2020 presidential election,¹ which was the most voters to ever participate in a presidential election in U.S. history by more than 20 million voters.² That this record-breaking exercise of democracy occurred in the midst of a deadly pandemic, during which many states were subject to quarantine orders, makes this achievement even more extraordinary.³ Rather than celebrate this democratic feat and embrace the laws, policies, and practices that made it possible, pervasive efforts are afoot to curtail voter turnout and to enact laws that strategically target low-income voters, younger voters, elderly voters, and voters of color.⁴

As of May 2021, 389 bills restricting voting access had been introduced in 48 states during the 2021 legislative session.⁵ Georgia's

1. Adrienne Dunn, *Fact Check: Over 159 Million People Voted in the U.S. General Election*, USA TODAY: FACT CHECK, <https://www.usatoday.com/story/news/factcheck/2020/12/30/fact-check-fals-president-than-were-registered-u-s/4010087001/> [https://perma.cc/UP5N-C5ZL] (Dec. 31, 2020, 12:04 AM).

2. Domenico Montanaro, *President-Elect Joe Biden Hits 80 Million Votes in Year of Record Turnout*, NPR (Nov. 25, 2020, 9:06 AM), <https://www.npr.org/2020/11/25/937248659/president-elect-biden-hits-80-million-votes-in-year-of-record-turnout> [https://perma.cc/5UL6-X5A8].

3. *States That Issued Lockdown and Stay-at-Home Orders in Response to the Coronavirus (COVID-19) Pandemic, 2020*, BALLOTPEDIA (Jan. 5, 2021), [https://ballotpedia.org/States_that_issued_lockdown_and_stay-at-home_orders_in_response_to_the_coronavirus_\(COVID-19\)_pandemic,_2020](https://ballotpedia.org/States_that_issued_lockdown_and_stay-at-home_orders_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020) [https://perma.cc/7SQT-KKAA].

4. *Voting Laws Roundup: May 2021*, BRENNAN CTR. FOR JUST. (May 28, 2021), <https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-may-2021> [https://perma.cc/ZFU3-LQCV].

5. *Id.*

GOP-controlled legislature passed, and GOP-Governor Brian Kemp signed into law, a carefully crafted web of voter suppression strategies, including reduced weekend voting, limited mail-in voting eligibility, restricted availability of drop-boxes, additional voter ID requirements, establishment of an uber-Election Board empowered to takeover county election processes and challenge (and change) election results, and criminalizing the distribution of food and drink to voters waiting in the long lines that are a foreseeable consequence of this patchwork quilt of voting restrictions.⁶ This overhaul of Georgia's election laws is an example of a solution in search of a problem and is designed to reduce voter turnout and diminish the political power of Black, Brown, and poor voters to elect officials who will advance their interests in achieving greater social and racial equality. Enactments that Senator Raphael Warnock, the first black senator to represent Georgia, calls Jim Crow 2.0.⁷

The Herculean effort to suppress the vote, however, may not have the last word. In the midst of voter suppression tactics in Georgia as a response to election results that challenge the State's longstanding reputation as a red state, the John Lewis Voting Rights Advancement Act and the For the People Act emerge as federal responses to the proliferation of state voter suppression laws.⁸ The John Lewis Voting Right Advancement Act (John Lewis Act) is appropriately named after an American hero whose life and legacy represent an unyielding commitment to protecting and enforcing the right to exercise the franchise. In the spirit of "good trouble," the John Lewis Act is animated by a desire to rectify past and present patterns of voter discrimination by restoring and augmenting the full protections of the Voting Rights Act of 1965, which were gutted by the U.S. Supreme

6. Stephen Fowler, *Georgia Governor Signs Election Overhaul, Including Changes to Absentee Voting*, NPR, <https://www.npr.org/2021/03/25/981357583/georgia-legislature-approves-election-overhaul-including-changes-to-absentee-vot> [https://perma.cc/R9P7-ZJV7] (Mar. 25, 2021, 8:07 PM).

7. Michael Waldman, *Sen. Warnock Calls Out 'Jim Crow in New Clothes,'* BRENNAN CTR. FOR JUST. (Mar. 23, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/sen-warnock-calls-out-jim-crow-new-clothes> [https://perma.cc/ZY7D-6Y53].

8. John Lewis Voting Rights Advancement Act, S. 4263, 116th Cong. (2020); For the People Act of 2021, H.R. 1, 117th Cong. (2021).

Court's decision in *Shelby County vs. Holder* in 2013.⁹ Reinforcing the framework the John Lewis Act would provide, the For the People Act would respond to laws calibrated to suppress the voting rights of specific voter demographics, and it would automate and modernize voter registration and protect against discriminatory practices like voter roll purges that disenfranchised voters in Georgia's 2019 gubernatorial election.¹⁰ Both historic bills acknowledge and respond to the existential threat voter suppression laws pose to the right to vote and to the democracy that depends upon free and fair elections and robust and unfettered voter participation. The enactment of these voting rights laws would preserve and protect the power of people and communities to elect representative officials who can challenge and remediate systems and structures that enable and advance social and racial inequality.

II. EDUCATION IS AN ENGINE FOR SOCIOECONOMIC MOBILITY

Intersecting with efforts at voter suppression are laws and policies that deny huge swaths of our population a quality education, thereby limiting their political, social, and economic prospects. The U.S. Supreme Court has recognized the symbiotic relationship between education and democracy.¹¹ In its unanimous, landmark desegregation decision in *Brown vs. Board of Education of Topeka* striking down the duplicitous doctrine of separate but equal in the education context, the Court made the connection between education and democratic processes clear, announcing:

[E]ducation is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate

9. 570 U.S. 529 (2013); see also Myrna Pérez & Tim Lau, *How to Restore and Strengthen the Voting Rights Act*, BRENNAN CTR. FOR JUST. (Jan. 28, 2021), <https://www.brennancenter.org/our-work/research-reports/how-to-restore-and-strengthen-voting-rights-act> [<https://perma.cc/NJN6-B68R>].

10. Ed Kilgore, *What Would the John Lewis Voting Rights Act Actually Do?*, N.Y. MAG. (June 7, 2021), <https://nymag.com/intelligencer/2021/06/what-would-the-john-lewis-voting-rights-act-actually-do.html> [<https://perma.cc/Q73D-6JN9>].

11. See generally *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities It is the very foundation of good citizenship. . . . Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.¹²

Though the Court in *Brown* missed an opportunity to address the injury to white children forced to sit in classes without the presence and brilliance of Black children, it did note the role of the law in amplifying the injury de jure racial segregation inflicted on “colored children.”¹³ The Court emphasized, “Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law”¹⁴

The U.S. Supreme Court has declined to recognize the right to education as constitutionally fundamental; however, it has confirmed its relevance to democracy and to democratic processes.¹⁵ Eighteen years after its decision in *Brown* dealt a devastating blow to Jim Crow 1.0, the Court recognized the “undisputed importance of education,”¹⁶ expressed “an abiding respect for the vital role of education in a free society,”¹⁷ and confirmed “the grave significance of education both to the individual and to our society.”¹⁸ The Court’s reticence to adjudicate education as a fundamental right, though regrettable, does not lessen the significance of the lasting harm caused to those damned by its deprivation. The Court’s description of education in its seminal cases casts it as inherent in democracy and, like the right to vote, as preservative of other rights.

12. *Id.* at 493.

13. *Id.* at 494.

14. *Id.*

15. *See generally* *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973).

16. *Id.* at 35.

17. *Id.* at 30.

18. *Id.*

K–12 education is compulsory, and every state constitution codifies some educational entitlement.¹⁹ Therefore, it is appropriate to characterize the right to a quality education, or at least a liberty interest in being free from systems, structures, and laws that foreclose the opportunity, as prerequisites for social and racial equality. Current statistics inform that K–12 public schools are more segregated now than they were when *Brown* was decided,²⁰ due in large part to continued and pervasive residential segregation.²¹ This disturbing reality confirms that the *Brown* decision’s promise, the eradication of the twin evils of separateness and inequality, was never realized. More than 50 years later, our schools remain separate and unequal.²²

The charter school movement and school take-over plans have produced mixed results.²³ These “reforms” have provoked legitimate criticism of how they affect Black, Brown, indigenous, and low-income students. The digital divide,²⁴ resource inequities,²⁵ and curricular and performance disparities have only become more acute during the pandemic,²⁶ which forced many public schools to close

19. See, e.g., GA. CONST. art. VIII, § I, ¶ I (“The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia.”).

20. Emily Richmond, *Schools Are More Segregated Today than During the Late 1960s*, THE ATLANTIC (June 11, 2012), <https://www.theatlantic.com/national/archive/2012/06/schools-are-more-segregated-today-than-during-the-late-1960s/258348/> [<https://perma.cc/Q55D-695U>].

21. See generally ANURIMA BHARGAVA, HARV. JOINT CTR. FOR HOUS. STUD., THE INTERDEPENDENCE OF HOUSING AND SCHOOL SEGREGATION (2017), https://www.jchs.harvard.edu/sites/default/files/media/imp/a_shared_future_interdependence_of_housing_and_school_segregation.pdf [<https://perma.cc/6GAT-ZRX3>].

22. Keith Meatto, *Still Separate, Still Unequal: Teaching About School Segregation and Educational Inequality*, N.Y. TIMES (May 2, 2019), <https://www.nytimes.com/2019/05/02/learning/lesson-plans/still-separate-still-unequal-teaching-about-school-segregation-and-educational-inequality.html> [<https://perma.cc/2VJT-HVG4>].

23. Tomas Monarrez et al., *Do Charter Schools Increase Segregation?*, EDUCATION NEXT, <https://www.educationnext.org/do-charter-schools-increase-segregation-first-national-analysis-reveals-modest-impact/> [<https://perma.cc/22EM-27SG>] (July 24, 2019).

24. John Roese, *COVID-19 Exposed the Digital Divide. Here’s How We Can Close It*, WORLD ECON. F. (Jan. 27, 2021), <https://www.weforum.org/agenda/2021/01/covid-digital-divide-learning-education/> [<https://perma.cc/9S3T-Z2JJ>].

25. See generally EMMA DORN ET AL., MCKINSEY & CO., COVID-19 AND STUDENT LEARNING IN THE UNITED STATES: THE HURT COULD LAST A LIFETIME (2020), <https://mck.co/3dPdoDQ> [<https://perma.cc/W8YN-3E8X>].

26. Emma Dorn et al., *COVID-19 and Learning Loss—Disparities Grow and Students Need Help*, MCKINSEY & CO.: PUB. & SOC. SECTOR (Dec. 8, 2020), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help#>

and left vulnerable populations of children without educational instruction and services for a year or more.²⁷ The lack of reliable internet access in rural areas, in inner cities, and on tribal lands, combined with limited access to the technology and equipment essential for online learning and the demands on parents whose jobs leave little room to supervise and supplement online instruction, have combined to widen pre-pandemic educational disparities.²⁸ The racialized impact of the pandemic on communities of color has compounded educational deficiencies.²⁹ Some experts believe these deprivations will make the social and economic mobility that a quality education can provide an even more distant prospect for poor children and children of color.³⁰

It is impossible to divorce educational deprivations from democratic processes that ensure fair representation and participation. One's ability to appreciate the value of voting and the right to cast an informed ballot for a candidate committed to protecting and advancing one's rights and interests is a democratic prerogative. Guaranteed educational entitlement and voter protection are symbiotic privileges. A poor education compromises voter participation and access, and compromised voting rights cramp one's ability to ensure equitable access to a quality education. The experience of inequality in both contexts produces an intersecting and synergistic deprivation for racial minorities and the poor. An attempt to address one deprivation but not the other will produce inadequate solutions. Our laws must contemporaneously protect and preserve the right to the book and to the ballot if we are to effectively

[<https://perma.cc/WYJ7-Y252>].

27. *See generally* OECD, THE IMPACT OF COVID-19 ON STUDENT EQUITY AND INCLUSION: SUPPORTING VULNERABLE STUDENTS DURING SCHOOL CLOSURES AND SCHOOL RE-OPENINGS (2020), https://read.oecd-ilibrary.org/view/?ref=434_434914-59wd7ekj29&title=The-impact-of-COVID-19-on-student-equity-and-inclusion [<https://perma.cc/F5N4-R4QE>].

28. *See generally* OFF. OF C.R., U.S. DEP'T OF EDUC., EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA'S STUDENTS (2021), <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf> [<https://perma.cc/XZL5-G3ZH>].

29. *Id.* at 11.

30. *Id.*

address and remedy the social and racial inequality that will persist in the absence of both.

III. THE RACIALIZED CRIMINAL (IN)JUSTICE SYSTEM CONDEMNS INDIVIDUALS AND COMMUNITIES

There is an intricate and insidious relationship between racialized arrest, prosecution, conviction, and prosecution rates; poor access to educational opportunities and services; and voter disenfranchisement. The school-to-prison pipeline has fed juvenile and adult facilities inmates of color for decades.³¹ In addition to diminishing the lives of individuals and their communities, mass incarceration of Black, Brown, and poor people perpetuates a significant constitutional deprivation. This racialized practice, which was birthed along with the Civil War Amendments,³² ensures circumvention of the Fifteenth Amendment's protection of the right to vote without regard to race or previous condition of enslavement.³³ If jails and prisons are filled with un(der)educated children and people of color, crippling socioeconomic realities and curtailed political power are systematically achieved, locking people into recidivist and intersecting conditions of racism and poverty.³⁴ More than 6% of voting-age Blacks and more than 2% of voting-age Latinos are disenfranchised due to a felony conviction.³⁵ The symbiotic

31. See generally NAACP LEGAL DEF. & EDUC. FUND, *DISMANTLING THE SCHOOL-TO-PRISON PIPELINE* (2005), https://www.naacpldf.org/wp-content/uploads/Dismantling_the_School_to_Prison_Pipeline__Criminal-Justice__.pdf [<https://perma.cc/QE6S-LWQU>].

32. See U.S. CONST. amends. XIII, XIV, XV. See generally NANCY O'BRIEN WAGNER, PBS, *SLAVERY BY ANOTHER NAME: HISTORY BACKGROUND* (2012), https://bento.cdn.pbs.org/hostedbento-prod/filer_public/SBAN/Images/Classrooms/Slavery%20by%20Another%20Name%20History%20Background_Final.pdf [<https://perma.cc/7736-V5G6>].

33. *Voting Rights for African Americans*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/elections/right-to-vote/voting-rights-for-african-americans/> [<https://perma.cc/TAH7-SGNF>].

34. Grace Chen, *The Link Between Education and Incarceration: The NAACP Report*, PUB. SCHS. REV., <https://www.publicschoolreview.com/blog/the-link-between-education-and-incarceration-the-naacp-report> [<https://perma.cc/5LWP-A7VX>] (Apr. 29, 2020) (noting the correlation between high school drop-outs and incarceration rates).

35. See generally CHRIS UGGEN ET AL., THE SENTENCING PROJECT, *LOCKED OUT 2020: ESTIMATE OF PEOPLE DENIED VOTING RIGHTS DUE TO A FELONY CONVICTION* (2020), <https://www.sentencingproject.org/publications/locked-out-2020-estimates-of-people-denied-voting-rights-due-to-a-felony-conviction/> [<https://perma.cc/8GVN-FNZQ>].

relationship between anemic educational opportunities and political disenfranchisement of the formerly incarcerated reflect the reality that our systems and structures are not broken; rather, they perpetuate preordained and intersecting ends—social and racial inequality.

In 2014, President Barack Obama’s administration issued guidelines in recognition of the racialized nature of school disciplinary actions that result in Black children being more than three times more likely than white students to be expelled or suspended, despite equal rates of misconduct, and experiencing greater exposure to incarceration.³⁶ The joint guidance offered by the Departments of Education and Justice encouraged public school systems across the nation to abandon zero-tolerance discipline policies that criminalize student behavior that could be handled without engaging law enforcement and that disproportionately and adversely impacted students of color.³⁷ The guidance warned schools to take measures to ensure fair and equitable treatment of students and imposed data-collection and reporting requirements on school districts to track racialized disciplinary outcomes. It also threatened legal and monetary sanctions for school districts that failed to develop strategies and reforms to adequately address racial discrimination and racial disparities. These guidelines, which were summarily rescinded by the Trump Administration,³⁸ were designed as civil rights enforcement tools to redress the overcriminalization of Black and Brown youth in public school settings.

On the campaign trail President Joe Biden promised “education justice,” which includes policies to disrupt the flow of children of color into jails and prisons and policies and practices that promote, rather than contravene, their civil rights.³⁹ Many are hopeful that the

36. Gary Gately, *Obama Administration Unveils School Discipline Guidelines*, JUV. JUST. INFO. EXCH. (Jan. 9, 2014), <https://jjie.org/2014/01/09/obama-administration-unveils-school-discipline-guidelines/> [https://perma.cc/GP5R-LF9W].

37. *Id.*

38. Erica L. Green & Katie Benner, *Trump Officials Plan to Rescind Obama-Era School Discipline Policies*, N.Y. TIMES (Dec. 17, 2018), <https://www.nytimes.com/2018/12/17/us/politics/trump-school-discipline.html> [https://perma.cc/LR5M-ZXFM].

39. *A Review of the Presidential Candidates’ Latest Education Plans*, S. EDUC. FUND, <https://www.southerneducation.org/education2020/> [https://perma.cc/WU8L-A7AX].

Democracy Restoration Act (DRA) will address the intersecting and devastating effects of hyperincarceration and voter disenfranchisement on individuals, on our communities, and to our democracy.⁴⁰ The bill, which was introduced to the Senate in March 2021, would invalidate state disenfranchisement laws except with respect to individuals serving felony sentences, and it would nationalize standards for restoring the voting rights of those who have paid their debt to society.⁴¹ The law would address the intersecting inequality that the American Bar Association President, Patricia Lee Refo, highlights in her letter endorsing the DRA: “[T]he state and federal governments’ application of criminal law disproportionately punishes many individuals along racial and ethnic lines, resulting in a stunning correlation between the permanent loss of the right to vote and Black, Indigenous, and other communities of color.”⁴² Effective laws can interrupt these coalescing realities marked by racial and social inequality.

IV. SEPARATE AND UNEQUAL HOUSING

The correlation between racial disparities in educational access and performance, racialized incarceration rates, and racialized voter disenfranchisement realities find a home (pun intended) in historic racialized housing patterns and racialized rates of housing insecurity and homelessness. Several policies initiated and supported by the government and private entities caused extreme segregation in the United States, with restrictive covenants and redlining being two of the more egregious. A restrictive covenant is a private agreement that restricts the use or occupancy of real property,⁴³ and racially

40. Democracy Restoration Act of 2019, H.R. 196, 115th Cong. (2019).

41. Press Release, Ben Cardin, Sen. of Md., Cardin Leads Senate Call for Restoring Voting Rights to Formerly Incarcerated Individuals (Feb. 25, 2021), <https://www.cardin.senate.gov/newsroom/press/release/cardin-leads-senate-call-for-restoring-voting-rights-to-formerly-incarcerated-individuals> [https://perma.cc/A2XX-QMYU].

42. Letter from Patricia Lee Refo, President, Am. Bar Ass’n, to the Hon. Ben Cardin, Sen. of Maryland (Mar. 10, 2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/aba-support-democracy-restoration-act.pdf?logActivity=true.

43. *Grace Fellowship Church, Inc. v. Harned*, 5 N.E.3d 1108, 1113 (Ohio Ct. App. 2013).

restrictive covenants were instituted by white communities and endorsed by the federal government beginning in the early 1900s to limit the transfer and sale of property to people who were not white.⁴⁴ These prohibitions were commonly included in recording instruments until 1962 when the Supreme Court ruled that racially restrictive covenants were unconstitutional.⁴⁵ Redlining is the practice of a bank or financial institution denying or increasing the cost of banking to consumers based on the racial makeup of their neighborhood.⁴⁶ As a result of redlining, Black families were prohibited from receiving loans to purchase homes.⁴⁷

Despite the Civil Rights Act of 1968's prohibition on redlining, homeownership disparities persist. Historic and overt acts of oppression set the stage for the concentration of Black families into segregated communities and the creation of segregated housing patterns.⁴⁸ As a result of financial disinvestment, segregation, and historical oppression, low-income neighborhoods have disparately high numbers of sub-standard housing populated by disproportionate numbers of Black people experiencing pronounced racial and social inequality.⁴⁹

Racially segregated housing patterns condemn children to racially segregated and under resourced schools,⁵⁰ which, in conjunction with hypercriminalization policies and practices, exposes greater numbers

44. See generally RICHARD R.W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* (2013).

45. See generally *Shelley v. Kraemer*, 334 U.S. 1 (1948).

46. Khristopher J. Brooks, *Redlining's Legacy: Maps Are Gone, but the Problem Hasn't Disappeared*, CBS NEWS, <https://www.cbsnews.com/news/redlining-what-is-history-mike-bloomberg-comments/> [<https://perma.cc/U6CV-NMBD>].

47. FED. FIN. INSTS. EXAMINATION COUNCIL, INTERAGENCY FAIR LENDING EXAMINATION PROCEDURES, at iii (2009), <https://www.ffiec.gov/PDF/fairlend.pdf> [<https://perma.cc/K8Z6-XYKT>].

48. See generally Douglas Massey & Nancy Denton, *The Dimensions of Residential Segregation*, 67 SOC. FORCES 281 (1988).

49. *Racial Disparities Among Extremely Low-Income Renters*, NAT'L LOW INCOME HOUS. COAL. (Apr. 15, 2019), <https://nlihc.org/resource/racial-disparities-among-extremely-low-income-renters> [<https://perma.cc/9ZR6-NAW7>]. See generally Matthew Desmond & Nathan Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets*, 124 AM. J. SOCIO. 1090 (2019).

50. Richard Rothstein, *The Racial Achievement Gap, Segregated Schools, and Segregated Neighborhoods – A Constitutional Insult*, ECON. POL'Y INST. (Nov. 12, 2014), <https://www.epi.org/publication/the-racial-achievement-gap-segregated-schools-and-segregated-neighborhoods-a-constitutional-insult/> [<https://perma.cc/SZJ9-2DKZ>].

of people and children of color to incarceration and resulting disenfranchisement. Upon release, formerly incarcerated people are more likely to experience homelessness and housing insecurity than those in the general population.⁵¹ These reinforcing, racialized realities coalesce to ensure that people of color and the poor experience nearly inescapable conditions of racial and social inequality.

CONCLUSION

The layered, nuanced, and complex ways that laws have manufactured and maintained racial and social inequality can be met with equally effective and sophisticated uses of law to dismantle inequity and to create equality. Intricate and intersecting inequality is no match for legal minds trained to discern connecting conditions of inequality and committed to disrupting patterns of discrimination and oppression through transformative laws. Law students studying in this unprecedented space and bearing witness to the use of law to serve equitable and inequitable ends are faced with the choice of how they will wield their professional power and knowledge of the law. With an appreciation for the law as a tool that can build and destroy, and as an instrument that can produce harmonious melodies and dissonance, we believe many law students will respond to the call to be responsible and conscientious power brokers. Despite the daunting nature of pervasive racial and social inequity, like the students who devoted this special Symposium Issue to centering work focused on approaches to eradicating racial and social inequality, these future lawyers are “What’s Next.”

51. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [<https://perma.cc/35HN-Y4JL>].