New Orleans's broken levees opened up a key opportunity. They opened up the floodgates to a public conversation long ignored by mainstream media. Why did the broken levees flood so many black homes? Why were so many black people poor, stranded, and unaided by the government? As we tried to make sense of the disturbing pictures of blacks stranded on rooftops in a country where opportunity is supposed to be abundant and racism all but dead, we were forced to reconsider some of our most deeply held assumptions. And as the uncomfortable issue of race forced its way back into the public discourse, we began to ask how the events we were seeing could be explained by race or by poverty. While this is the wrong question—race and poverty are inextricably linked and cannot be separated—the question itself prompted an opportunity and challenge for us to examine the post-civil rights era dogma of abandonment through “individual responsibility” and inequity through “color blindness.”

People of color and the poor have been laboring in a society in which many believe that we have transcended our racist past and can blame poverty on personal failure. As we think about racism, we look for the individual engaged in a discreet act or acts; we understand racism as primarily a psychological event located in the mind of a racist actor. Similarly, when we think of poverty we primarily think of either an individual’s bad choices or bad luck. These individualist approaches affect not only how we understand issues of race and poverty but also what issues we see and do not see and the solutions that we support.

The destruction of New Orleans challenges this individualist frame. But we as a society have no readily accessible alternative collective frame. Here we discuss that alternative. We now have the opportunity collectively to see our fragile infrastructure, weakened by our ideology of government withdrawal from public protection and human investment. We have the opportunity to see how race has been used to create structural arrangements which weaken our ability to protect the public and promote...
healthy communities to our collective
detriment. We have an opportunity to
rebuild the Gulf Coast region through
national policies that strengthen our
collective well-being by transforming
these structural arrangements.

To grasp this opportunity, we must make
visible the truth of the interrelationship
between race and class and its relation-
ship to white privilege. Most whites
strongly object to the concept of white
privilege. It violates their sense of indi-
vidualism and fairness and suggests they
have something that they did not earn.
Given the meaning our culture has
attached to race (otherness, inferiority,
etc.), to believe that the have-nots earned
their privileges and the have-nots failed
to earn them is much easier. The concept
of white privilege calls this logic into
question.

Whites also have difficulty seeing white
privilege because many are aware that
there are poor whites or that the middle
class has diminished opportunities, such
as inadequate health insurance, job
insecurity, and concern about the future
of their children. Thus many whites do
not see their lives as privileged but
rather as under assault. How can a group
be under assault and have privilege? And
yet we assert that both are true.

We argue that the story of the declining
middle class, white privilege (however
fragile), and structural racism are cut
from the same cloth. While structural
racism creates and distributes harsher
burdens and fewer benefits to people of
color, it limits us all. Indeed racialized
meaning obscures the real culprit in the
Gulf Coast tragedy—our failure to sup-
port levees and other urban infrastruc-
ture. We must use a structural-racism
lens to understand inequity and poverty
and to develop meaningful policies to
end both. This lens creates policy possi-
bilities for a rebuilt Gulf Coast and sug-
gests additional approaches for lawyers
and other advocates to eradicate racial
disparity and poverty.

I. Structural Racism Defined

The United States took a critical step
when it made intentional segregation
and discrimination against blacks,
Latinos, Asian Americans and Pacific
Islanders, or Native Americans illegal.
But, as significant as civil rights laws
have been, we have never addressed
institutional arrangements that produce
the same results as racist laws—what we
refer to as "structural racism." Structural
racism is both a description of the cur-
rent state of racial hierarchy, along with
the poverty it produces in our post-civil
rights society, and a strategy develop-
ment tool.

"Structure," as defined by Webster's New
Universal Unabridged Dictionary, is "the
arrangement or interrelation of all the
parts of a whole." U.S. society has many
parts. It has schools, colleges, and uni-
versities, employers, banks, housing,
and news media. These institutions, and
system of institutions, can be public,
 quasi-public, or private. Government
serves, regulates, and mediates these
institutions and is at the same time an
institution and system of institutions.
Together all of these institutions operate
in relationship to one another.

Structural racism has five primary char-
acteristics:

- Structure matters, and structures are not
  neutral. They unevenly distribute bene-
  fits, burdens, and racialized meaning.
  The interaction between institutions
  must be identified and transformed, or
  retrenchment may turn a reform victory
  into a toothless tiger.

- History matters. Our history of racism
  includes racist and race neutral policies
  and practices which are cumulative both
  across generations and institutions. The
  levees began weakening decades before
  the 2005 hurricane season. The institu-
  tional arrangements themselves that
  supported special segregation and
  divestment created opportunity killers
  that occurred on a daily basis.

1DAVID RODGERS, THE WAGES OF WHITENESS: RACE
AND THE MAKING OF THE AMERICAN WORKING

2See, e.g., GLEN LOURY, THE ANATOMY OF RACIAL
INEQUALITY 162 (2002), where Loury argues that we must look at external,
civic, and public structures that provide opportunity and reward or lack thereof.
Effects matter. The existence of individual actors and any malicious intent is not relevant. 3

Disparities are effects (or symptoms) of structural racism and therefore structural racism must be transformed to have a meaningful impact on racial disparities. 4 In fact, poverty itself is preserved within these structures, and we permit these structures to exist because of racially coded messages about deserving and undeserving poor.

Institutional arrangements in a post–Jim Crow era will be over- and underinclusive. These new walls of segregation and racial hierarchy will be porous and some whites will get caught and harmed, while some people of color will succeed.

A. Structure Matters

Structural arrangements among institutions operate in several different ways. One institution can create incentives for another institution to behave in certain ways. Major news magazines, for example, rank colleges and universities based on their average SAT scores. As a result, colleges and universities work to raise their average SAT scores even while they recognize that SAT scores are weak predictors of student achievement. That this overreliance on weak indicators harms students of color is acceptable.

An institution can also behave in a way that constrains other institutions from behaving in desired ways. Consider the behavior of an urban public housing authority. It may recognize the multigenerational benefits of locating subsidized housing for poor people in wealthy communities within or even outside its jurisdiction. But it may face multiple barriers to doing so based on the constraints of other institutions. The city council of a suburban community, incorporated separately from the city, may have adopted an exclusionary zoning ordinance that prohibits the construction of multiunit dwellings. Public housing can be prohibited on the basis of the fight for ratables that are needed to support local services and schools. Again, that most of the beneficiaries of this fight are white, and most of the people harmed are people of color, is seen as a necessary by-product of economic sustainability.

The federal government is more than just a cog in this multiinstitutional wheel. The government assists in the distribution of racialized benefits and burdens and has played a critical role in the very production of race itself. Consider our first immigration law, unanimously passed in 1790 without debate and limiting citizenship to whites. One had to prove one's whiteness to make claims of belonging to the imagined community in a country which was purportedly founded on the ideal of equality. The impact of this law is still with us today as the racial “other” faces the assumption of not belonging. It is small wonder that the Katrina evacuees are seen by many as refugee-outsiders.

The federal government also has perceived real incentives and constraints to behave in particular ways based on a globalized economy, federal and non-federal checks and balances on its power and the opinion of the public, and the behavior of both private and public non-federal institutions. For example, the federal government may recognize the importance of immigrant workers to the local and national economy of the country and yet continue to undermine their presence based on public opinion. The U.S. Supreme Court decision in *Milliken v. Bradley* is another example. 5 In *Milliken* the Supreme Court refused to require the suburbs to open their schools to interdistrict integration with

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Detroit schools. The Supreme Court was not concerned that, by protecting localism and permitting white flight from integration, it was permitting the remedial overturning of Brown v. Board of Education.

As these examples illustrate, structural racism recognizes that institutions operate within a "web" of structures that constrain their capacities and translate and compound the effects of their actions (or inactions) across institutional boundaries.

B. History Matters

Race neutral policies and practices perpetuate and create new pathways to opportunity for whites as a group at the expense of almost every nonwhite group and ultimately at the expense of the nation. One reason that race neutrality is itself insidious is our long history of racism in which the federal government participated significantly. The federal government supported and created incentives for overt racism, racial segregation, disinvestment, and exclusionary policies.

Government-created incentives targeting whites subsidized their flight from the city and their relocation to the suburbs. For example, New Deal legislation—the National Housing Act of 1934—created the Federal Housing Administration, which subsidized mortgages and insured private mortgages. Federally subsidized mortgage loans often required new owners to incorporate racially restrictive covenants into their deeds.

By the 1950s the Federal Housing Administration and the Veterans Administration were insuring half the mortgages in the United States, but only in "racially homogenous" neighborhoods. The Federal Housing Administration's underwriting manual required a determination about the presence of "incompatible racial or social groups...." People of color were literally classified as nuisances to be avoided along with "stables" and "pig pens." The Federal Housing Administration urged developers, bankers, and local government to use zoning ordinances and physical barriers to protect racial homogeneity.

When the federal government finally turned its attention to urban centers, now dying as a result of its subsidization of white suburbs, it appropriated funds for "urban renewal," a race-neutral policy. This resulted in $13.5 billion to cities between 1953 and 1986 and in displacing inner-city residents—largely people of color. The displaced people were relocated from poor but viable neighborhoods to high-density, high-rise public housing in isolated sections of the city. This housing was intended to be temporary but became permanent. Unattractive downtown commercial buildings, parking ramps, and public housing complexes funded by federal money accelerated middle-class

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6Pres. Richard Nixon stopped George Romney, then secretary of the U.S. Department of Housing and Urban Development (HUD), from opening up the white suburbs. No president as effectively challenged the Nixon assumption that the suburbs should remain closed. Charles Lamb, Housing Segregation in Suburban America Since 1960: Presidential and Judicial Politics (2005).


9Id. at 51.

10Ford, supra note 3.


13See id. at 451 (citing Charles Abrams, Forbidden Neighborhood: A Study of Prejudice in Housing 231 (1955)).

14See id. at 87 (citing Irving Wibleld, Where We Live: A Social History of American Housing (1988)).

15Id. at 90-91.

and private investment flight to safer, cheaper, white suburbs.\textsuperscript{17}

So effective were federal incentives to suburbanize that by 1990 two-thirds of the metropolitan population lived outside the central city in 168 census-defined metropolitan areas, compared to 1950, when 60 percent lived in the old central cities.\textsuperscript{18} Moreover, 152 new metropolitan areas sprang up during four decades of "new" urban growth. As a result, three-quarters of the American public were living in 320 metropolitan areas, most outside the city centers.\textsuperscript{19}

Once again, incentives to suburbanize and to do so in a racially biased way involved multiple institutions. Mortgage subsidies and the racial discrimination that the government required of private actors were important pieces of the structural arrangement. Transportation was another. The transportation block grants of the 1980s allowed states to use mass transit dollars to serve those living in distant suburbs in commuting by train to the financial city centers, while leaving thousands of city center residents, standing on city streets waiting for overcrowded buses.\textsuperscript{20} Even in the 1990s, when certain federal highway funds were available on a flexible basis for states and regional localities to transfer from highway programs to public transit projects, only $3.2 billion of the $33.5 billion available, or 12.5 percent, was actually transferred.\textsuperscript{21}

Federal housing and transportation policies have had a tremendous impact on where jobs are located and who can get to them. According to the 1995 Nationwide Personal Transportation Survey, in metropolitan areas over half of travel from home to work are suburb to suburb.\textsuperscript{22} Travelers represent a broad mix of professional white-collar, blue-collar, sales, and clerical workers.\textsuperscript{23} Suburb-to-city commuters, by contrast, tend to be white-collar workers. The smallest category of workers commutes from city to suburb.\textsuperscript{24}

Federal grants have historically subsidized new suburban development by providing billions of dollars to state and local governments for new sewage treatment plants, with much of the money used to build new capacity for suburban growth rather than to rectify Problems or improve existing wastewater systems.\textsuperscript{25} Over time the federal programs and policies described here have been revised to remove racially explicit criteria. Yet the adverse impact persists because the structural arrangements remain intact.\textsuperscript{26}

The burgeoning suburbs were not merely the construction of a new space for the already existing white population. They served to homogenize formerly ethnic Europeans into "whites." The creation of the new white space occurred at the same time that the civil rights movement was attempting to redefine America in inclusive and democratic terms.\textsuperscript{27}
The governance structures of metropolitan areas became highly fragmented. In 1942 there were approximately 24,500 municipalities and special districts in the United States. By 1992 that number had more than doubled to 50,834. This allowed new suburbanites to control their tax burden and the definition of their communities. Local tax base must subsidize services. Therefore communities have a financial incentive to prohibit development of subsidized housing and multiunit development—exclusionary zoning—in these communities.

C. Effects Matter

The effects of the racialized suburbanization policies have been tremendous—we literally are a nation divided not just in personal attitudes but also in our structures, land-use policies, fiscal policies, and our imagination. This system has not only created disparities on many levels—individual, group, neighborhood, city, state and nation—but also has depressed opportunities for the entire nation and left us ill-equipped to deal with the challenge of the current form of globalization.

The structural-racism analysis focuses our attention on group-based disparities, but we must remember in examining these disparities that, although they show disproportionate harm to certain groups, this harm is not exclusive to those groups. In talking about the poverty line, for example, we should keep in mind that, although blacks and Latinos show large gaps in income and wealth compared to whites, there are certainly still whites in poverty and without wealth. In absolute numbers, more whites live in poverty than blacks in the United States, and many of the low-income whites are also living in opportunity-poor central-city and inner-suburban communities. Furthermore, due to the current nature of our arrangements, many Americans, regardless of race or ethnicity, are feeling the increasing pressures of economic insecurity. Incomes are stagnating, affordable health insurance is elusive, personal bankruptcies are on the rise, and increases in foreclosures are challenging families and blighting entire communities. Further, all of this is occurring within a changing globalized landscape, which increases anxiety among the workforce and widens the gap between the haves and the have-nots.

Still, we must continue to identify and work towards alleviating, as a matter of justice, group-based disparities, which are indicators of structural conditions perpetuating poverty. We call for this to be done through targeted universalism—programs that are indeed universal but focus on the special place and needs of the most marginal.

Statistics demonstrating group-based racial and ethnic disparities on almost every indicator of social and economic well-being are legion. For example, according to the Lewis Mumford Center, the mean incomes of blacks and Latinos are between $15,000 and $18,000 less than whites. And while 9.1 percent of whites live below the poverty line, 24.9 percent of blacks and 22.6 percent of Latinos do. Per-capita wealth differential between blacks and whites is 1 to

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30 This is a concept developed by Lani Guinier of Harvard University and John A. Powell of the Kirwan Institute. Universalism as it has been practiced in the United States has often increased racial disparities in its attempt to be colorblind. Consider the number of New Deal programs such as the G.I. Bill that is considered by some a great program for the creation of the middle class. But the G.I. Bill also increased both racial and gender disparities. See IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA 113-41 (2005).


With blacks’ net worth, measured in terms of home equity and financial assets, remaining at more than $40,000 less than that of whites.  

Homeownership is a wealth builder. The median net worth of renters is only 1 percent of the level of net worth of homeowners. According to the Pew Hispanic Center, 74.3 percent of whites owned homes in 2002. Homeownership rates for Latino and black households, by contrast, were 47.3 percent and 47.7 percent, respectively. Wealth creation is more complicated than simply housing ownership. Housing values are dependent on a number of factors including the quality of the schools, services, and amenities. Homeownership in distressed neighborhoods does not necessarily produce wealth. Since 1996, the proportions of net worth by race have not changed significantly. Posting zero or negative net worth in 2002 were 26 percent of Latino, 32 percent of black, and 13 percent of white households. Fewer than 40 percent of blacks and Latinos have middle-class levels of wealth. Nearly 75 percent of white households have middle-class or higher levels of wealth.

Rates of “housing hardships” for blacks, Latinos, and Native Americans are twice as high as those of whites and Asian Americans. Over 90 percent of all new single-family homes built between 2000 and 2002 were not affordable to more than 75 percent of all black and Latino households. Not surprisingly, between 1999 and 2001, the net worth of black and Latino households fell by 27 percent each. The net worth of white households increased by 2 percent.

By examining group-based poverty, we see that urban whites who are poor, while treated unjustly and victims of the structural production of poverty, also have different opportunities from those of their black, Latino, Native American, and Asian counterparts. Blacks in particular are disproportionately represented in high-poverty neighborhoods where at least 25 percent of residents have incomes below the federal poverty line. Compared to 22 percent of poor Latinos and only 6 percent of poor Whites, 34 percent of poor blacks live in these areas.

Between 1970 and 1990, the number of census tracts where at least 40 percent of the population was poor increased from under 1,500 to more than 3,400. If concentrated poverty is defined as 30 percent of residents at or below the federal poverty level, 23.3 million people lived in concentrated poverty in 1990.

By examining income alone to determine how many people live in concentrated poverty, those living in concentrated poverty declined by 9 percent between 1990 and 2000. By examining not only income, but also rates of female-headed households, high school dropouts, and unemployed working-age males, the number of people living in distressed neighborhoods increased from 15.2 million to 18.1 million (more than 19 percent) between 1990 and 2000.

34 See Barlow, supra note 29.
35 John a. powell, Seizing Opportunities for Inclusion: Smart Growth, Race and Regionalism, Keynote Address at the Funders’ Network for Smart Growth and Livable Communities Annual Conference, Albuquerque, N.M. (March 7, 2005)
40 Id.
41 Id.
D. Disparities Are Symptoms of Structural Racism

One reason poverty has become concentrated in particular neighborhoods is the location of subsidized housing, including housing projects and housing financed by the Low-Income Housing Tax Credit. The average metropolitan neighborhood with subsidized housing in the 1990s had (1) a poverty rate that was three times higher than the average neighborhood; (2) a median household income that was 40 percent lower than the average neighborhood; and (3) home values that were 20 percent lower than the average neighborhood.

Federal demonstration programs enabling the poor to move from distressed city neighborhoods to lower-poverty communities underscore the potent impact of neighborhood quality on family stability. Most subsidized housing is located in resource-depleted inner cities, rather than resource-rich suburbs. In 2000, three-quarters of the nation’s traditional assisted housing units were located in central cities, while only 37 percent of the nation’s metropolitan population lived in central cities.

William Julius Wilson refers to an “underclass” whose primary problem is “joblessness reinforced by an increasing social isolation in an impoverished neighborhood.” For this group, isolation and poverty are a symptom of structural racism.

Segregation has become a self-perpetuating mechanism of racial isolation and structural poverty. Persistent racial segregation is an expression of a structure that denies meaningful choices to people of color and produces concentrated poverty. According to new research by the Institute on Race and Poverty examining the fifteen largest metropolitan areas between 1980 and 2000, the proportion of segregated neighborhoods fell from 72 percent to 60 percent. However, a number of diverse neighborhoods that were integrated in 1980 made the transition to resegregated communities by 2000.

Our laws and policies have failed to understand both how institutions and structures work and the interactive nature of white privilege with nonwhite subordination. One example is the narrow concept of intentional racist acts as actionable. Our legal system recognizes to a limited degree that individuals engage in racist processes unintentionally—unconscious racism. Generally, however, the remedies for conscious or unconscious racism focus on changing the offending individuals’ racial attitudes and racist behavior.

Even when reform has been institutional, the victories may be short-lived. Progress in one area can easily be undermined by what is happening in another area. For example, while Brown v. Board of Education was a momentous legal victory for the civil rights movement, housing segregation, and discrimination have made integration strategies difficult. Blacks, Latinos, and whites did...
not and still largely do not live in the same communities. Also, the Brown decision, coupled with federal policies that created incentives for suburbanization, led to white flight from urban areas to the suburbs.\textsuperscript{5} When lawyers, quite rightly, sought to create cross-jurisdictional integration strategies, the Supreme Court, in protection of white geographic and psychological space, refused to permit interjurisdictional desegregation remedies and instead constitutionalized localism.\textsuperscript{5}\textsuperscript{1} Housing patterns and governmental boundaries, both of which have operated to protect separate white space, are part of an institutional relationship with schools operating in race-specific ways.

This understanding clarifies the distinction between institutional and structural racism. Institutional racism, as we are using the phrase, refers to practices and conditions in a single institution. We must transform institutional behavior. That behavior, however, cannot be thought of as located only within the target institution. Just as individual strategies alone cannot adequately address institutional racism, focusing only on single institutions cannot adequately address structural racism.

Nor are we fighting simply for redistribution of public goods, although that, too, is part of the fight. We misunderstand and mischaracterize the meaning of racial disparities if we understand them only as a product of our failure to distribute public goods, such as jobs and health care. In speaking about the redistribution of goods we run the risk of framing the issue as a zero-sum game in which public goods are limited and the advancement of one group comes at the detriment of another. This only pits groups against one another (often those who share a linked fate) and creates divisiveness where coalitions should exist.

Instead we would like to suggest that we collectively partake in the remaking and restructuring of society to benefit not only people of color but also entire communities, regions, and the nation.\textsuperscript{5}\textsuperscript{2} When we successfully transform these structural arrangements, we also transform ourselves—our group-based identities and the benefits they confer.\textsuperscript{5}\textsuperscript{3} The structural arrangements which produce segregation allow a single group to monopolize the political process, which distorts democracy by preventing people of color from developing the resources necessary to build political clout necessary to participate meaningfully in our democratic process. Our failure to develop an alternative to this racialized space is limiting both the life chances for individuals and the democratic potential of our country.

II. New Orleans and Structural Racism

The structural arrangements of white suburbanization, racialized concentrated poverty, and the fragmentation of government is the story of the nation. It is also the story of New Orleans. Before the broken levees, according to the 2000 Census, New Orleans' population was 67.3 percent African American, 26.6 percent white, 3.1 percent Latino, and 2.3 percent Asian. The city was shrinking in population and opportunity. According to the Brookings Institution, New Orleans had 54 percent of its region's population and 66 percent of its jobs in 1970. By 2000 it had only 36 percent of the region's population and 42 percent of its jobs.\textsuperscript{5}\textsuperscript{4} White flight suburbanization explains much of this demographic shift. The city lost half of its white population over this thirty-year period. The Census Bureau estimates that in 2004 the population in the New Orleans metropolitan region did not grow and the city lost over 22,000 residents.

\textsuperscript{50}Miliken, 418 U.S. at 717.
\textsuperscript{51}Ford, supra note 3.
\textsuperscript{52}Cashin, supra note 28.
\textsuperscript{53}CENTER FOR SOCIAL INCLUSION, THINKING CHANGE: RACE, FRAMING, AND THE PUBLIC CONVERSATION ON DIVERSITY: WHAT SOCIAL SCIENCE RESEARCH TELLS ADVOCATES ABOUT WINNING SUPPORT FOR RACIAL JUSTICE POLICIES (2005), www.centerforsocialinclusion.org
\textsuperscript{54}BROOKINGS INSTITUTION, NEW ORLEANS AFTER THE STORM: LESSONS FROM THE PAST, A PLAN FOR THE FUTURE (2005).
As in much of the country, federal housing and transportation policies and disinvestment in communities of color and integrated communities actually reduced racial integration. In the first half of the twentieth century, New Orleans was a racially and culturally vibrant and heterogeneous city, despite its poverty. Until 1970 blacks and whites lived in close proximity, and there were integrated communities. Poverty was not as geographically isolated either. In 1976 there were no neighborhoods with a majority of blacks. In 1970 New Orleans was a poor city, but its poor were not highly concentrated in hypersegregated neighborhoods. That changed dramatically after 1970. In fact, in 2000 New Orleans ranked twenty-ninth in the country based on black-white racial segregation and second among the fifty largest cities in the country based on the number of extreme-poverty neighborhoods. The number of concentrated-poverty neighborhoods in New Orleans actually grew by two-thirds between 1970 and 2000, even though the poverty rate stayed about the same (26.8 percent). [1]

In many ways, the history of the Lower Ninth Ward mirrors that of communities across the country. Historically it was undesirable land—a swamp—and the lower portion of a swath of slave plantations. Poor freed blacks and Irish, German, and Italian immigrant laborers, unable to afford housing in other areas of the city (higher areas), were forced to endure flooding and disease to live there. Before the broken levees, the Lower Ninth Ward was almost exclusively black, and 36 percent of its residents were poor.

Poverty in New Orleans was racialized. Too many whites were poor, but their poverty was different from black poverty. Almost a third of black families in New Orleans lived below the federal poverty level compared to just under 5 percent of white families. According to the Brookings Institution, blacks in New Orleans were so poor that almost 35 percent of the population had no car. A much lower percentage of whites—about 15 percent—had no car.[2]

As these racial disparities suggest, New Orleans was neither healthy nor sustainable before its levees broke. This trend, while among the most dramatic of major metropolitan regions in the country, is not unique. Many cities experienced similar trends as, propelled by a history of federal policies traceable all the way back to the New Deal, whites fled to suburbs.

The racialized poverty of the region and of New Orleans represents the effects of a shrinking city tax base, propelled by white flight. The racialized poverty there also represents the racially driven failure of the nation to invest in blacks, Latinos, Native Americans, and Asians as potent human resources for the country’s future. For example, the New Deal excluded almost three-fifths of the black community from the benefits of Social Security Insurance by excluding domestic and agricultural workers from eligibility. [3] Driven by Southern Dixiecrats intent on maintaining the social, economic, and political subordination of blacks, the white power structure demonstrated a willingness to seal the fates of poor white agricultural and domestic workers to preserve white racial hegemony. Furthermore, by allowing unions to discriminate on the basis of race while empowering union organizing under the Wagner Act, unions not only participated in the stratification of black workers even in the industrializing north but also helped weaken the labor movement possibilities.

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56Id.


58See Miliken, 418 U.S. at 717.

in the South. New Deal policies had a tremendous impact on the wealth-creating possibilities for whites with wealth and educational opportunities which increased opportunities for future generations. By the same token, the disinvestment and exclusion that these policies advanced for black people and other communities of color have perpetuated multigenerational poverty and nonaccess to opportunity.

The current discussion around rebuilding appears to be headed away from a stronger, more equitable region. Having spent forty years to gain political ascendancy, often using a strategy of pandering to white Southern racism in coded language, the political right can now move its agenda. The political right has a vision for a radically different America based on less government and more corporate prerogative. The White House recently repealed laws mandating standard local wages for recovery construction workers, suspended affirmative action in contracting requirements and environmental regulations, allowed states to cap their Medicaid spending, and even worked to eliminate estate taxes.

This ideological approach harms people of color and whites. Consider the fact that in 2004 the richest 10 percent of Americans received tax cuts worth two times what the government would spend on job training, college Pell grants, public housing, low income rental subsidies, and child care. The portrait painted by both our historic and current federal policies reinforces a structure of racial segregation, disinvestment, and lack of sustainability for all our communities and the nation.

III. Creating Pathways to Opportunity

The good news is that globalization and the erosion of the middle class present an opportunity for a new social order. Also, a paradigm shift is beginning in the courts as courts demonstrate a willingness to look at multiple institutions and a complex set of factors to reach liability decisions and consider remedies. As demonstrated in the education adequacy cases, courts are willing to look at outcomes to determine the need for institutional reform. Even when courts fail to produce sought-after remedies, the structural approach lays a foundation for transforming institutions that have proven resistant to change through the political process. This foundation can be laid and the paradigm shift supported only if lawyers make multiinstitutional arguments and demonstrate the complex layers of institutional behavior creating social and racial inequity. Adequacy education cases such as *Sheff v. O'Neil*, *Leandro v. State of North Carolina*, and *Abbott v. Burke* demonstrate this approach, and *Walker* and *Thompson* in the context of housing, as discussed below.

Over the years advocates and researchers have been developing many strategies to create more choice and greater opportunity for low-income people of color and to attack structural underpinnings of inequity and improve the structural soundness of the nation. This requires, in one way or another, legal expertise. In almost all these instances, legal services and legal aid lawyers have been influential partners in identifying and implementing these strategies. The strategies themselves are not new. In fact, they can be seen as a continuation of the strug-
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Tearing Down Structural Racism and Rebuilding Communities—beginning in the 1950s—for racial justice.66

Mobility housing strategies, for example, give to low-income people of color housing choices in opportunity-rich communities.67 Mobility housing refers to strategies to create greater access to subsidized and affordable housing in resource-rich communities, often in the suburbs. Promoting homeownership are such strategies as housing vouchers, inclusionary zoning, tax incentives, and land trusts.

Some recent cases suggest real possibilities. In 1995 six families living in Baltimore public housing filed a landmark suit, Thompson v. HUD, on behalf of 14,000 other low-income families. They contested the city's plan to demolish housing projects in the city and rebuild all units in the same segregated, economically depressed locations. They also challenged the knowing failure of the U.S. Department of Housing and Urban Development (HUD) to ensure that the city comply with desegregation mandates. Represented by the American Civil Liberties Union of Maryland, plaintiffs negotiated a partial settlement (consent decree) between the families and the government; the settlement called for 3,000 new housing opportunities for public housing families and the redevelopment of the high-rise sites. The judge’s ruling is the opportunity-based housing model, whereby housing is connected to other opportunity structures (e.g., jobs, transportation, and quality schools).68

According to research conducted by the Kirwan Institute for the Study of Race and Ethnicity, the Baltimore region has some of the most concentrated subsidized housing in the nation. Roughly three out of four of the region's subsidized housing opportunities are located in Baltimore. However, Baltimore has only 29 percent of the region's housing units and 27 percent of the region's population. Most subsidized housing in the Baltimore region is located in highly impoverished neighborhoods with high crime rates, limited employment, and distressed schools. These communities are also highly segregated. Approximately 85 percent of subsidized housing units are found in high-poverty neighborhoods. One out of three housing units is in “extreme high-poverty” neighborhoods.69

As the national statistics suggest, low-income blacks in Baltimore have less housing choices and mobility than low-income whites there. Some 60 percent of low-income whites live throughout Baltimore’s suburbs and enjoy the advantages of suburban schools and job opportunities. A full 86 percent of low-income blacks are concentrated in Baltimore. This is hardly surprising in that 89 percent of the region’s public housing and 71 percent of its subsidized housing is concentrated in a few areas of the city.

In Baltimore the greatest improvement in economic school integration would come from implementing a regionwide inclusionary zoning policy to assure mixed-income housing in all new housing developments. For almost thirty years, Maryland's Montgomery County has had the country's most extensive mixed-income housing policies. Its “moderately priced dwelling unit” law requires that 15 percent of every major housing development must be affordable for families in the lowest third of the income scale. Furthermore, the county directs its public housing authority to

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68 John a. powell, Opportunity-Based Housing, 12 JOURNAL OF AFFORDABLE HOUSING AND COMMUNITY DEVELOPMENT LAW 188 (2003).
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buy or rent one-third of the moderately priced dwelling units to assist very low-income families. To offset a builder's cost of setting aside affordable units, the county offers up to a 22 percent density bonus.

Since 1976, private, for-profit home builders have produced over 11,000 moderately priced dwelling units integrated seamlessly into middle-class neighborhoods. The housing authority has bought 1,700 widely scattered moderately priced dwelling unit and rents another 1,500. As a result, Montgomery County is one of the nation's most racially and economically integrated communities.

Had the Baltimore region such a policy in effect for the region over the last twenty years, the policy could have produced about 15,800 "workforce" housing units and another 7,900 "welfare-to-workforce" housing units. Income eligibility for workforce housing corresponds roughly to the income limits for partially subsidized school meals. Income eligibility for welfare-to-workforce housing (i.e., the housing authority-owned units) corresponds roughly to the income limits for fully subsidized meals. Such an inclusionary zoning law would also have lowered the level of segregation in Baltimore schools.

Victories in the area of school desegregation prove to be consequential. The Supreme Court ruling in Grutter v. Bollinger upheld the University of Michigan School of Law's affirmative action admission policies, which permitted race to be one of many factors in considering admission. The Court found that diversity was a compelling state interest, overcoming the strict scrutiny required of a policy that considered race. Comfort v. Lynn School Committee is the first published opinion to address whether a school district may use race in deciding school transfer requests to diversify the schools in the district. Denied transfer requests based on the racial diversity plan, plaintiff parents of white students sued on equal protection grounds. The court, relying on the Supreme Court's ruling in Grutter v. Bollinger, found that all students were better off in racially diverse schools and upheld the school districts' plan.

Mobility strategies are crucial if we are to connect people of color to opportunities. Mobility strategies alone, however, ignore salient opportunities to connect communities of color to opportunities. In New Orleans, for example, some low-income black communities have significant numbers of homeowners. Because of their isolation from jobs, transportation, and amenities, many had low asset value in their homes and many lacked flood insurance. In the New Orleans rebuilding context, advocates and communities of color may be able to identify prime opportunities to salvage black homes and connect home-owning communities to transportation and other asset-building infrastructure.

Moreover, the development of mixed-income communities must be closely monitored. Disturbing examples of mixed-income housing development in New Orleans and elsewhere have not delivered the number of affordable units origi-
nally promised and have not always created the level of racial integration originally envisioned. One example is the implementation of HUD's Homeownership and Opportunity for People Everywhere (HOPE VI) program in New Orleans. The HOPE VI program provides federal resources to replace severely distressed public housing projects with redesigned mixed-income housing and provides housing vouchers to assist original residents in renting apartments in the private market. The noble policy goals of HOPE VI, however, have faced such implementation problems as the lack of affordable housing for former housing project residents armed with vouchers, housing discrimination against voucher holders, and voucher holders' inability to meet eligibility criteria in newly redeveloped projects.

In New Orleans HOPE VI implementation has engendered among Blacks tremendous animosity and distrust of federal housing programs. The program demolished the St. Thomas projects located near the French Quarter and rebuilt River Gardens, a mixed-income housing development. Originally St. Thomas residents were promised half of the units in River Gardens. In the end, they received only 10 percent of the units, and these units remain largely unfilled by former St. Thomas residents.

IV. Conclusion

The structural-racism lens suggests the need to examine place-based and mobility strategies and to consider policies required in education, transportation, economic development, and housing together. Clearly those affected by the broken levees must be part of the conversation around rebuilding. Clearly the rebuilding discussion should be couched in terms of ensuring residents the choice to return to New Orleans and be connected to opportunities. A set of policies must intentionally prevent the development of permanent trailer parks in isolated places. Housing availability and affordability must be a conscious part of the policy proposals but must be connected to a range of other opportunities. Black homeowners, often uninsured or underinsured, must receive federal subsidies to rebuild homes and develop value in their properties. Those whose properties have to be demolished must be assured of receiving adequate buyouts and support to purchase property in a revitalized New Orleans or in other cities of their choice.

The national policy debate must also recognize that some will choose either to remain in the cities where they find themselves or to move to new places. A national plan must be devised for the displaced to do so without perpetuating the cycle of exclusion from a full range of opportunities, beginning with a fundamental set of choices about where and how to live. The structural-racism lens demonstrates that race neutrality will not do. Racial consciousness is required. We must think about a package of policy proposals that recognize the connections among housing, education, services, environment, and transportation.