Dear Colleagues,

Thank you very much for taking the time to engage with my work. I look forward to our conversation. I have attached a symposium paper that I’m currently working on for the *Harvard Civil Rights-Civil Liberties Law Review*. The title of the symposium is “Black, Poor, and Gone: Civil Rights Law’s Inner-City Crisis.”

In terms of my larger intellectual project, this work connects to my work on legal estrangement,¹ as I am currently working to identify creative ideas for responding to the problem of perceived legal exclusion in service of a book project on the theme of legal estrangement under conditions of social marginality.

As you can see from the paper, it is a bit experimental in its approach to both legal and sociological analysis. I hope it can spark an interesting discussion, and I am open to all types of questions and feedback. Your input will be foundational to the direction the paper and the broader project take in the future.

Many thanks again,

Monica Bell

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Safety, Friendship, and Dreams
Monica C. Bell†

Prelude

An Elegy: by Khalila & Fayard

1.

I never really lost nobody to killing—
only one Person
and I called him my Brother.

we used to smoke and stuff together
we was supposed to link up that same day
we were supposed to go downtown
we was supposed to just hang out

Four o’clock in the morning,

He got killed on the playground.

you always see somebody just gone
Facebook—Twitter—Instagram—24/7—
social media will kill you before you even actually dead.

no, not Him
not Him
He
just posted a picture on Instagram.

He got killed.
He got killed—
we went to the Candlelight.

we can’t talk on the phone
we can’t text each other
we used to text each other

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One day, I had just called the phone. I was thinking “He’ll probably answer the phone”
I would’ve been fine if His Mother would’ve answered the phone
“The person you’re trying to reach is not located.”
Yeah, because He’s dead, genius.

2.
I always tell my sister: Watch who you befriend. People just be settin up each other. You can set up anything!
Walk inside a house?
You probably aint
never gonna
walk out again.

A Girl,
She thought
She was going over
Her boyfriend house—

they raped Her.
Three of them, they raped Her:
Watch Who You Befriend.

3.
People like Him—I never expected Him to die.
most people didn’t notice a thing: He was a Church Boy.
I know He used to do shit
I know He used to do dirt
but I never expected Him
to actually get killed for it

everybody was false-claiming Him

the same people
who were beefing with Him
a few weeks ago
were saying
“R-I-P”
nobody came to the Candlelight
that said they were coming
nobody came to the funeral
that said they were coming

How do you all call Him “Bro”?
Y’all didn’t come to the Candlelight.

4.

I’m so scared to die. I’m so scared to die.

I don’t know what Death is—
—is it like you sleep?
you know you dead
—but you sleep
—but you can’t wake up?

so—it’s Black.

you can move your eyes
—but you just can’t move?

Or is it like, really a Heaven?
I never look
that far
I just don’t look
that far
I would like to look
that far
I look
for
tomorrow

Anything could happen,
especially in this city:

Baltimore is one—
of a kind.

INTRODUCTION

In this brief Essay, I argue that the unfinished work of the Civil Rights Movement is observable through the failures of the state to safeguard three entitlements that are part of the bundle of full membership in the American community—safety, friendship, and dreams—in many high-poverty African-American communities. What is government, if not a facilitator of social solidarity and a platform for the effective exercise of liberty? American government, at the national, state, and local levels, has routinely failed to meet these obligations and has bungled most of its attempts to change course. I also discuss the challenges of viscerally understanding the depths of these failures, and the need for new conceptions of legal and social change to recognize and respond to these failures.

I am not a poet. The words that open this Essay are from interviews with Khalilah Thomas\(^2\) and Fayard St. Jean,\(^3\) both eighteen-year-olds who were living in West Baltimore in the Summer of 2015. With the exception of punctuation, free-verse

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\(^2\) Pseudonym. Interview conducted by Monica Bell and Trinard Sharpe on July 28, 2015. Participants were part of the Hearing Their Voices study, which interviewed sixty-four young Baltimore residents, fifty of whom were African-American. We asked about many aspects of their lives, including how young people experienced and perceived the police, the criminal justice system, and other arms of government. See Monica C. Bell, Police Reform & the Dismantling of Legal Estrangement, 126 YALE L.J. 2054, 2090 (2017) (describing the study).

\(^3\) Pseudonym. Interview conducted by Monica Bell and Meshay Clark on July 27, 2015.
This unconventional technique for displaying qualitative data reflects my belief that, in order to complete the unfinished work of the Civil Rights Movement, lawyers and activists are going to have to take the risk of stretching their limbs toward the deeply unorthodox, the unthinkable.

I use empirical poetry as a metaphor for the type of bold and fearless reexamination of the state and communities’ relationships to it that will be necessary to end spatial marginalization. Moving from ghetto softening to what philosopher Tommie Shelby calls *ghetto abolition* will mean violating some tenets of social movement strategy and traditional legal analysis. It will mean reexamining what seems natural and logical in our stories of reform and revolution. Perhaps painfully, it will mean thinking beyond the boundaries of traditional radical-left-right-reactionary ideology.

The only strategy that will surely fail to complete the work of the Civil Rights Movement is to reproduce the Civil Rights Movement.

In parts 1 and 2 of the poem, we meet Khalila, a high school senior, her calendar filled with AP courses, who aspires to become a criminal defense attorney and start her own firm. She has had to change high schools a few times for fighting;

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4 It is regretful that, due to confidentiality agreements that these young people and I signed, in accordance with guidelines for the protection of human research participants, it would be unethical to credit these young people for their words by name at this time.


she has been expelled from two schools. Khalila is so strong academically, however, that even with the change and various other misdeeds, she finds herself in accelerated coursework. One of Khalila’s closest friends was killed several months before our interview. She often feels the urge to call him, an urge she has indulged only once, to heartbreaking results. Khalila would like to talk to friends about her grief (“I was sad, but I’m over—I mean, I still think about it,” she ambivalently explained), but she doesn’t, because even though she has friends, she thinks it’s important to maintains some distance from them. Friendship is precarious and potentially dangerous. According to Khalila, her friend was killed in part because he had untrustworthy friends. Thus, she advises her ten-year-old sister to avoid friendship.

Parts 3 and 4 introduce the reader to Fayard, a recent high school graduate. Fayard is the first person in his family to receive a high school diploma, and he is proud of his accomplishment. Yet, he is also struggling to cope after losing several friends to untimely death—car accidents, illnesses, and gun violence. One of his closest friends died in a shooting a few weeks before our interview. Yet, even after his friend’s death, other so-called friends made only empty gestures toward supportiveness. Fayard also routinely imagines his own death. His Vineyard Vines-inspired wardrobe and superficial buoyancy conceal a deep concern that, despite reaching a new milestone for the family, he won’t be reaching others. Fayard was visibly and audibly uncomfortable talking about his long-term future plans because “anything could happen, especially in this city.” Thus, he tries to keep himself from looking too far into the future, from having dreams that are too big.

The title of this Symposium is, “Black, Poor, and Gone: Civil Rights Law’s Inner-City Crisis.” It is interested in “the failure of civil rights law to address urban displacement, suburban impoverishment, and re-segregation in American cities”—keeping in mind that the Fair Housing Act, which was meant to eradicate “the ghetto” and produce “truly integrated and balanced living patterns,” became law more than a half-century ago. As any demographer

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would tell you, and as Professor Anthony Alfieri and Dean Angela Onwuachi-Willig explain in the lead essay in this Symposium, racial isolation and concentrated poverty have evolved over the past half-century. Aggregate measures of racial separation have declined and the dynamics of urban gentrification and suburban diversification have fundamentally changed the ecological landscape of cities.

Yet, here are Khalila and Fayard. And here is West Baltimore. And here are the twenty-one metropolitan areas that remained “hypersegregated” as of the 2010 Census. And there was Freddie Gray.

What is to be done?

The legal scholar’s impulse is to say: Enough description. We know the problem. How are we going to fix it? But “we” do not know “the problem.” We must not. Most legal and policy approaches that proceed under the banners of racial justice or economic justice reveal a breathtaking cluelessness—or perhaps willful flattening—of the nuanced realities that ghettoized African Americans face on a daily basis.


See, e.g., PATRICIA FERNÁNDEZ-KELLY, THE HERO’S FIGHT: AFRICAN AMERICANS IN WEST BALTIMORE AND THE SHADOW OF THE STATE 49 (“Outsiders see West Baltimore as an enigmatic zone constituting one of three ghettos encroaching upon the city”).


Freddie Gray was a 25-year-old young African-American man from West Baltimore who died on April 19, 2015, one week after being severely injured in police custody after an arrest near his home. See, e.g., WESLEY LOWERY, THEY CAN’T KILL US ALL: FERGUSON, BALTIMORE, AND A NEW ERA IN AMERICA’S RACIAL JUSTICE MOVEMENT 129-67 (2016).

This is different from the sociologist’s impulse, which is to say: Enough description. More theory. Some sociologists fight that impulse as well. See Max Bresbis & Shamus Khan, Less Theory. More Description., 35 SOC. THEORY 147 (2013).
Consider the residential mobility versus community development debate, which divides people who should be allies because it is almost obvious that both and more are critically important for meeting today’s crisis.\textsuperscript{15} Consider the debate over police reform, which vacillates between moderate-but-positive ambitions of body cameras and training, on one end, and fatalistic-but-positive ambitions of police abolition on the other.\textsuperscript{16}

Ghetto abolition might mean reconsidering how we consume the testimonies of people living at America’s margins. How do we hear them? If we put their words into shrunken Times New Roman font, in block quotations as is typical in qualitative research, will that mean their words are more credible in scholarship? If we shrink their words instead by condensing them into easily countable survey responses, will that mean they are somewhat more credible in policymaking? \textit{Should} we be interested in hearing words, anyway? Wouldn’t a “gold standard” experiment better for… everything?\textsuperscript{17}

And—isn’t there something distasteful about gazing upon what generations of dispossession has done to them? Is to depict the suffering of Khalila and Fayard

\textsuperscript{15} See Nestor M. Davidson, Reconciling People and Place in Housing and Community Development Policy, 16 GEO. J. POVERTY LAW & POL’Y 1, 1-2 (2009).
\textsuperscript{17} Randomized experiments have been called the “gold standard” for making causal inferences about the efficacy of policy interventions—an alleged characteristic of experimental social research that some claim enhances lofty goals such as liberty and democracy. See John A. List, \textit{Why Economists Should Conduct Field Experiments and 14 Tips for Pulling One Off}, 25 J. ECON. PERSPECTIVES 3, 8 (2011); Lawrence W. Sherman, \textit{Evidence and Liberty: The Promise of Experimental Criminology}, 9 CRIMINOLOGY & CRIM. JUST. 5 (2009); see also Richard A. Berk, \textit{Randomized Experiments as the Bronze Standard}, 1 J. EXP. CRIMINOLOGY 417 (2005) (offering a more nuanced endorsement of the causal inference capabilities of randomized experiments). The policies tested are often individual-level interventions, so they are not as effective for understanding collective interventions or the real impact of contextual dynamics on individuals’ lives. Robert J. Sampson, \textit{Moving to Inequality: Neighborhood Effects and Experiments Meet Social Structure}, 114 AM. J. SOC. 189 (2008) (raising several concerns about the ability of experiments to test neighborhood effects as contemplated through the Moving to Opportunity experiment); see also Robert J. Sampson, \textit{Gold Standard Myths: Observations on the Experimental Turn in Quantitative Criminology}, J. QUANT. CRIMINOLOGY 489, 490 (2010) (arguing that “criminological randomistas have overreached in their claims and generated their own folklores,” including that they fully resolve questions of causal inference, do not rest on many assumptions and theories, and are more policy relevant than other research methods).
merely satisfying the liberal elite demand for poverty porn? Does seeing and feeling their testimonies illuminate the structural reasons for their suffering—as I hope it does—or do their individual stories obscure social structure and simply induce white pity and shame? Is anything wrong with white shame?

And—if we return to fundamental questions about what people are entitled as American citizens, or simply as human beings, will our analysis be futile if we label those entitlements “rights”? Would it raise fewer eyebrows to call these entitlements “needs” or “privileges” or “capabilities” because those terms are defined in somewhat distinctive ways from rights? Does speaking in terms of

19 See, e.g., Rachel Alicia Griffin, Pushing into Precious: Black Women, Media Representation, and the Glare of the White Supremacist Capitalist Patriarchal Gaze, 31 Critical Studs. Media Comm. 182 (2014); Katarina Kyrölä, Feeling Bad and Precious (2009): Black Suffering, White Guilt, and Intercorporal Subjectivity, 10 SUBJECTIVITY 258 (2017); Alisa Zipursky, When They Want Trauma Porn Instead of Your Truth, HEALINGHONESTLY.COM, Jan. 12, 2018, http://healinghonestly.com/pop-culture/when-they-want-trauma-porn-instead-your-truth (defining “trauma porn” as “the exploitive sharing of the darkest, creepiest, most jarring parts of our trauma specifically for the purpose of shocking others. It can be engaging for some non-survivors because of the shock value, but is not only unhelpful to survivors, but often actually harmful to us because it can trigger our PTSD”).
20 I spent the first several months of thinking about this piece internally debating, researching, and anticipating criticism based on whether I called safety, friendship, and dreams “rights,” “needs,” “privileges,” “principles,” or used some other terminology. The classic debate on rights played out in the 1990s as a debate between predominantly white and male Critical Legal Studies scholars and scholars of color of the Critical Race Theory school. Compare Peter Gabel & Duncan Kennedy, Roll Over Beethoven, 36 STAN. L. REV. 1, 24-36 (1984); Frances Olsen, Statutory Rape: A Feminist Critique of Rights Analysis, 63 TEX. L. REV. 387, 393 (1984); Mark Tushnet, An Essay on Rights, 62 TEX. L. REV. 1363, 1394 (1984) with Richard Delgado, The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?, 22 HARV. C.R.-C.L. L. REV. 301, 305 (1987); Mari J. Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 HARV. C.R.-C.L. L. REV. 323, 338-41, 356-58 (1987). However, this is not quite the debate of a bygone era, as scholars critiquing the concept of rights consistently reemerge, hoping to quell the proliferation of rights claims. See generally SONU BEDI, REJECTING RIGHTS (2009) (arguing that a rights framework weakens democracy and proposing a legislation-based “theory of justification” instead). I tend to concur with Professor Patricia Williams who three decades ago, in the pages of this journal, called the CLS/CRT debate over rights-talk “no more than a word game.” Patricia J. Williams, Alchemical Notes: Reconstructing Ideas from Deconstructed Rights, 22 HARV. C.R.-C.L. L. REV. 401, 410 (1987). I also find persuasive Professor Jamal Greene’s recent analysis, who helpfully points out that just because an entitlement is called a “right” does not necessarily mean it must categorically trump other state considerations. Compare Jamal Greene, Foreword: Rights as Trumps?, 132 HARV. L. REV. 28
“rights” stand in the way of the project of reimagining the state, or can rights-talk and radical change find common ground? 21

And—are we allowed to use “ghetto”? Does it matter that I mean it in the sociological and historical sense, meant to capture a particular set of structural, racialized spatial processes? 22 Is the word too tarnished, like the racial epithet “thug,” to be useful at all? 23

(2018) with Ronald Dworkin, Rights as Trumps, in THEORIES OF RIGHTS 153, 153 (Jeremy Waldron ed., 1984) (restating and defending the idea in his earlier work that “[r]ights are best understood as trumps over some background justification for political decisions that states a goal for the community as a whole”). Under Greene’s proportionality analytic approach, it would be possible to expand recognition of things called “rights” without creating impossible locked-in debates in law. Martha Nussbaum’s formulation of “capabilities,” or meaningful opportunities to pursue various freedoms in pursuit of a flourishing life, is helpful. However, it is not clear whether there is a normative reason for a distinction between capabilities and rights. Nussbaum argues that governments are obligated to produce capabilities (though not particular outcomes), which is essentially a claim that governments are obligated to affirmatively protect rights to capabilities. Indeed, Nussbaum at times defines specific capabilities by reference to rights. The language of capabilities is valuable because it does allow conversations to move beyond conceptions of constitutional rights as mere negative liberties. See Martha C. Nussbaum, Constitutions and Capabilities: “Perception” Against Lofty Formalism, 121 HARV. L. REV. 412-16, 21 (2007).

21 See Amna Akbar, Toward a Radical Imagination of Law, 93 N.Y.U.L. REV. 405, 409 (2018) (explaining that the Movement for Black Lives has largely avoided rights claims and emphasized reimagining the state).

22 From a sociological perspective, “ghetto” is meant to capture not only a physical space, but the social meaning attached to it ("territorial stigmatization") and the strategies of poverty concentration and racial isolation used to create the space and its meaning. See LOIC WACQUANT, URBAN OUTCASTS: A COMPARATIVE SOCIOLOGY OF ADVANCED MARGINALITY (2006); see also MITCHELL DUNEIER, GHETTO: THE INVENTION OF A PLACE, THE HISTORY OF AN IDEA (2016). Wacquant has also referred to the places these processes create as the “hyperghetto” which, along with imprisonment, function as the latest stage in the marginalization of black people in America. WACQUANT, supra, at 41-47. But see Elijah Anderson, The Iconic Ghetto, 642 ANNALS AM. ACAD. POL. & SOC. SCI. 8 (2012), (identifying the “iconic ghetto” as being a place black people inhabit, a place for the “iconic Negro,” emphasizing the ghetto as a matter of racial stigma more than social, spatial processes).

23 See, e.g., CalvinJohn Smiley & David Fakunle, From “Brute” to “Thug:” The Demonization and Criminalization of Unarmed Black Male Victims in America, 26 J. HUM. BEHAV. SOC. ENV. 350 (2016); Dawn Marie Dow, The Deadly Challenges of Raising African American Boys: Navigating the Controlling Image of the “Thug,” 30 GENDER & SOC’Y 161 (2016). But see Simone Ispa-Landa, Gender, Race, and Justifications for Group Exclusion: Urban Black Students Bussed to Affluent Suburban Schools, 86 SOC. EDUC. 218, 227 (2013) (finding that African-American youth used this word in a complimentary way amongst themselves to mean someone who has had a difficult life but fights to overcome it). We also saw this dual use of “thug” in our study. For example, one respondent differentiated between a “thug” and a “gangster,” explaining that, “Thug is a brother. What I mean by ‘brother,’ any race—a man. You stand up for yours. You won’t fall for nobody.” It was clear, though, that when outsiders used the
By the way, can we retire “inner-city” since it is both racially pejorative and, for the most part, social scientifically misleading?24

How do we know what we think we know about “the inner-city crisis”? How can we make sure that we center knowledge, rather than stultifying pragmatism or stifling “wokeness,” in our advocacy? How do we guarantee that, while centering knowledge, we hold space for both the (bounded) expertise of academics and technocrats and the (bounded) expertise of the people who could benefit most from the achievement of racial and economic justice, those who will suffer most if it continues to elude us?

These are difficult questions. As a legal scholar and qualitative social scientist deeply committed to racial and economic justice, they are questions I, and surely others, wrestle with on a daily basis. So, as I contemplate the future of ghetto abolition through law, I think less about the policies and legal machinations we must pursue and more about our epistemology, our methodology, and our values.

I interviewed Khalila and Fayard with members of a research team I led in Baltimore. We set out to ask them about their experiences growing up under the police regime that yielded the death of Freddie Gray and the subsequent unrest. We learned valuable information about living under the thumb of a social control and social exclusion system run amuck. We also learned that the primary concern

terminology, it did not have a positive meaning. See Monica C. Bell, Police Reform & the Dismantling of Legal Estrangement, 126 YALE L.J. 2054, 2097-98 (2017).

24 “Inner-city” can be used to describe areas proximate to the central parts of cities, but it has often been used as a proxy for spatial disadvantage, and that proxy no longer works given increased gentrification in the urban core and rising inequality within and between suburbs. See, e.g., ELIZABETH KNEEBONE & ALAN BERUBE, CONFRONTING SUBURBAN POVERTY IN AMERICA (2013); Karyn Lacy, The New Sociology of Suburbs: A Research Agenda for Analysis of Emerging Trends, 42 ANN. REV. SOC. 369 (2016); Jackelyn Hwang, Gentrification in Changing Cities: Immigration, New Diversity, and Racial Inequality in Neighborhood Renewal, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 319, 320 (2015); Daniel T. Lichter, Domenico Parisi, Michael C. Taquino, Toward a New Macro-Segregation? Decomposing Segregation within and between Metropolitan Cities and Suburbs, 80 AM. SOC. REV. 843 (2015); Chad R. Farrell, Bifurcation, Fragmentation, or Integration? The Racial and Geographic Structure of Metropolitan Segregation, 1990–2000, 45 URB. STUD. 467 (2008); Alexandra K. Murphy, The Symbolic Dilemmas of Suburban Poverty: Challenges & Opportunities Posed by Variations in the Contours of Suburban Poverty, 25 SOC. FORUM 541 (2010). Labels like “urban” and “inner-city” today are mostly used as proxies for blackness despite the changing composition of urban space. See, e.g., Chase M. Billingham & Shelley McDonough Kimelberg, Identifying the Urban: Resident Perceptions of Community Character and Local Institutions in Eight Metropolitan Areas, 17 CITY & COMM’TY 858, 873-75 (2018); Dyan Watson, Norming Suburban: How Teachers Talk About Race Without Using Race Words, 47 URB. EDUC. 983 (2012).
of almost each one of the fifty young African Americans we interviewed was catastrophic violence be it directly from the state or from elsewhere, which created whirlpools of vulnerability around their communities, blighted but beloved. This violence—state violence, interpersonal violence, symbolic violence,25 economic violence26—is too profound for any honest reformer or revolutionary to simplify or ignore. Civil rights and civil rights-era legal advocacy weakened some forms of violence, such as de jure segregation, but it permitted and may have even facilitated other forms of violence, such as mass incarceration and its attendant institutions and processes.27

Violence undermines some of the most basic, but rarely invoked, privileges of American citizenship and of humanity: safety, friendship, and dreams. In this Essay, I offer a preliminary account of each, rooted in sociological and legal research, constitutional legal analysis, and the experiences of Khalila and Fayard as emblematic of the enduring crisis of American racial and economic marginality. The goal of this Essay is not to reach a conclusion about these social entitlements—be they “rights,” “privileges,” “needs,” or something else—but to provoke a frank discussion of how a social movement infused with legal actors

25 Pierre Bourdieu defined “symbolic violence” as the process of “ensur[ing] the domination of one class over another.” P. Bourdieu, Symbolic Power, 4 C RITIQUE OF ANTHROPOLOGY 77, 80 (1979).
27 See ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA (2016)
and legal claims-making might effectively advocate for these essential but consistently overlooked components of racial and economic justice.

I. SAFETY

What Khalila and Fayard experienced in the death of their friend was not unique. Indeed, if Khalila is right that she lost “only one person” to killing, she has experienced fewer deaths than many other young people in Baltimore. Professor Jocelyn Smith, a public health scholar, interviewed forty young black Baltimore men and found that they knew an average of three homicide victims each.  

Twenty-seven of the fifty participants in our study discussed a friend or family member who had been a victim of serious violence, most lethal. In many respondents’ view, the risk of early death springs mostly from uncontrollable circumstances and accidents of geography, and only minimally from criminal behavior or poor choices. While most gun violence is concentrated within tight networks of people who commit crimes, these young people, simply by making friends in their neighborhoods and at school, are often part of such networks. Thus, even if gun violence is not truly random, these young people often see and experience it as random. This experience lends an ambient sense of unsafety and insecurity to daily life, with an array of detrimental consequences for individuals and communities.

How does American law protect the safety and security of individuals and communities? From a judicial interpretation-centered constitutional perspective, it essentially doesn’t. There are limits (flexible limits, but limits) on how far the police may intrude into people’s lives, which some scholars interpret as matter of security rather than privacy. Criminal law and tort law place impose

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29 This is likely an underestimate of the youth who had a friend or family member who was a victim of serious violence, given that we did not systematically ask respondents about victimization. In the context of pervasive injury, it would be asking too much to expect an unprompted, full recounting of all of the violence and injury youth were experiencing. Cf. LAURENCE RALPH, RENEGADE DREAMS: LIVING THROUGH INJURY IN GANGLAND CHICAGO (2014) (describing the pervasiveness of injury in a disadvantaged black community in Chicago).
punishments or penalties when a private individual jeopardizes another individual’s safety. However, there is no affirmative state duty to protect individual safety before it is violated.

Famously, in *DeShaney v. Winnebago*, the Supreme Court ruled that the state has no affirmative duty to protect people from private danger, even if the state was aware of the potential for danger.33 The majority opinion, authored by Chief Justice Rehnquist, used a more expansive legal analysis than necessary. The Court dismissed the principle of affirmative constitutional rights nearly except in the rarest of circumstances, not limiting its analysis to an affirmative right to safety.34 Chief Justice Rehnquist used a formalist, text-driven analysis (odd in substantive due process) to conclude that “[t]he [Due Process] Clause is phrased as a limitation on the State’s power to act, not as a guarantee of certain minimal levels of safety and security.” In *Castle Rock v. Gonzales*, the Court reiterated its argument in *DeShaney*, this time as applied to the police department. When the police failed to enforce a woman’s restraining order against her abusive husband, he kidnapped and then brutally murdered their three children.36 The Court suggested that the woman should just file a wrongful death suit in tort.37

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34 Those rare circumstances include the protection of prisoners who are wholly under state control, even though prison conditions cases are unsettled as to the extent of those duties, and Chief Justice Rehnquist did not take an expansive view of such duties even before invoking them in *DeShaney*. Compare *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976) (establishing an affirmative duty to provide healthcare to people in prison) with *Daniels v. Williams*, 474 U.S. 327 (1986) (holding that the Due Process Clause did not grant an affirmative duty to protect prisoners from correctional officers’ negligent acts, in an opinion also authored by Justice Rehnquist).
35 489 U.S. at 195. As many have pointed out, there is nothing inherent in the concept of a “right” that means it can only function as a restraint against the state. See, e.g., Robin West, *Rights, Capabilities, and the Good Society*, 69 FORDHAM L. REV. 1901, 1907 (2001).
37 545 U.S. at 768.
DeShaney and Castle Rock left space for states to be liable for failing to keep an individual safe if the state created the danger, but thus far, state-created danger cases have fallen short of protecting people like Khalila, Fayard, and their communities. For example, public housing residents in New York City, Philadelphia, and Upstate New York have argued that dangerous housing conditions such as lead paint and bed bugs, ran rampant despite officials’ knowledge that they endangered the lives and health of tenants; they claimed that these safety hazards were state-created dangers that the state had an affirmative duty to alleviate. In each case, the district court ruled for the defendant public housing authorities on motions to dismiss.\(^\text{38}\)

Theoretically, state constitutions could step in where the U.S. Constitution does not. But even when state constitutions explicitly acknowledge a right to safety or security, state courts have generally interpreted those provisions as mere aspirations, not enforceable entitlements.\(^\text{39}\) Human rights law does somewhat better than American constitutional law, but human rights law has failed to meaningfully impact analysis of American civil rights and citizenship.\(^\text{40}\)

The Civil Rights Movement’s way of earning recognition of social entitlements—going to court—is unlikely to build a pathway to recognition of an affirmative constitutional right to safety. Fortunately, courts do not have a monopoly on constitutional interpretation,\(^\text{41}\) nor does the written text have a


monopoly on constitutional authority. Consider, for example, the emergent right to healthcare enshrined in the Affordable Care Act, built in part on the idea that healthcare is a positive right, even though there is no basis for such a right in federal or state constitutional law. Safety, which has more textual support than healthcare does, can be recognized through similar devices. To be sure, some would say that the federal government has already recognized safety as an important social entitlement through numerous pieces of legislation adopted to respond to crime—the Anti-Drug Abuse Act of 1988 (Reagan drug law), for example, or the Violent Crime Act of 1994 (Clinton crime bill). But those statutes did not draw from deep wells of knowledge about why violence occurs.

Thus, in some ways, these statutes made poor black communities less safe by criminalizing and disenfranchising them.

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The obvious rebuttal to this point is that violent crime, especially homicide, has massively declined in low-income African-American communities since the 1990s. This is indisputable, though no one is quite sure why. See, e.g., Patrick Sharkey, Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence 55-60 (2018). Yet, preservation of life and prevention of crime is not safety. As I describe above, the constant dread of risk from both interpersonal and state violence is a serious burden on safety that has negative consequences for individuals and communities, and in the proactive policing paradigm that the Clinton crime bill partly represents, the presence of police has remained physically threatening and can perhaps be seen as structurally violent given its concentration and targeting in
We need a social movement that advocates for safety as a universal value that the government is obligated to proactively respect, which requires laser-sharp focus on eradicating criminogenic social conditions—deep poverty, residential segregation by race and wealth, virulent discrimination based on race and criminal justice involvement. It also requires a commitment to reining in state violence alongside interpersonal violence. Violence, in all its forms, threatens safety. White middle-class communities, “law-and-order” politicians, and some police leaders have appropriated “safety” and made it inaccessible as a claim for communities of color, especially those who live in marginalized communities. This should end. In order to for this approach to work, the legal and policy response to this movement has to take a different path than it did in the late twentieth century, in which the “solutions” to un-safety were heavy policing and incarceration. They must finally take the bold, holistic approach that many leaders then were calling for by meeting demands for safety with strategies that will end criminogenic conditions in black communities.

Since the rise of the #BlackLivesMatter movement in 2013, activists, reformers, and occasionally governments have produced numerous high-profile reports purporting to set forth an agenda to transform the relationship between marginalized communities of color and some numbers of arms of the state. Initially, the conversation around Black Lives Matter was framed around the unaccountable extinguishing of black lives, motivated by the deaths of Trayvon Martin, Eric Garner, Michael Brown, Tamir Rice, and more. While Martin died at the hands of a private citizen, the others were unarmed men, killed by police officers. This cyclical death sparked a sharp, national interest in police reform. The Obama White House report embraced several reformist approaches to particular racialized communities. See, e.g., Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).


It is remarkable that policing has arisen as the seemingly natural response to safety concerns given that, until a couple of decades ago, scholars did not believe policing played much of a role in crime prevention. See, e.g., Tracey L. Meares, The Law and Social Science of Stop and Frisk, 10 ANN. REV. L. & SOC. SCI. 335, 336 (2014).

JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA (2017).

See Alicia Garza, Foreword, in WHO DO YOU SERVE, WHO DO YOU PROTECT?, at vii, ix (Maya Schenwar et al. eds., 2016); see also CHRIS LEBRON, THE MAKING OF BLACK LIVES MATTER: A BRIEF HISTORY OF AN IDEA (2017); KEEANGA-YAMAHTTA TAYLOR, FROM #BLACKLIVESMATTER TO BLACK LIBERATION (2016).
public safety, such as community policing. However, that Task Force was more focused on internal reforms to police departments than more holistic restructuring of the landscape for people of color who live in ghettoized neighborhoods.

In contrast, the reports produced by the Ferguson Commission in 2015 and the Vision for Black Lives platform, crafted by a large coalition of organizations in 2016, are focused less on police reform than on the conditions that surround the hyper-policing of black communities, many of which are not operating within the criminal justice apparatus. Vision for Black Lives platform only rarely discusses safety; it does address violence by standing against the state violence and gender-based violence that LGBTQ people face. The Vision platform also advocates for the use of transformative justice for responding to violent acts, focused on healing for the aggrieved and community accountability for the accused. But safety does not appear as a defined value even though it is of constant concern to young people like Khalila and Fayard. To be sure, much of the Vision for Black Lives’ agenda would improve violence-producing conditions, but making this potential connection clearer might be of value for widening the activist net. Forward through Ferguson, the report produced by the Ferguson Commission in 2015, is an exemplar of a methodology for incorporating safety principles into an agenda for racial justice, noting throughout the links between safety and housing, schooling, and economic justice. Linking the policy goals of “ghetto abolition” explicitly to safety allows reclamation of one of the most salient rhetorical weapons against shrinking the carceral apparatus: What, then, will keep us safe?

II. FRIENDSHIP

When Khalila and Fayard describe their concerns about friendship, they represent an increasingly-recognized sociological reality: Poverty and racism are bad for relationships. Some works depict idyllic relationships of mutual caring and communal support in poor communities of color, usually among “fictive

kin,” as described in Professor Carol Stack’s classic All Our Kin. This work is important because it unsettled a then-prevalent narrative that black communities were “disorganized” and inflected with “a tangle of pathology.” Yet, most ethnographic and qualitative research since tells a somewhat different tale, one of simultaneous fusion and fracture. People have friends, but racial and economic marginality inflect those relationships are inflected with precarity. This is not hard to understand when considering the stress associated with poverty, racism, and corresponding forms of disadvantage. The violence of the state and the economy can coarsen some of the most intimate, micro-level social interactions; resilience is found in the tenderness preserved under such circumstances.

Professor Sandra Susan Smith, for example, describes even close relationships between employed and unemployed friends and family members as “characterized by a pervasive distrust that deterred cooperation.” Professor Matthew Desmond describes “disposable ties,” or short-term, intense resource-sharing friendships, in both white and black impoverished communities in Milwaukee. Professor Judith Levine draws particular attention to the social

54 See Clifford Shaw & Henry McKay, Juvenile Delinquency & Urban Areas (1942) (initially articulating social disorganization theory, arguing that social disorganization increased juvenile lawbreaking); see also Robert J. Sampson, Great American City: Chicago and the Enduring Neighborhood Effect 149-54 (2012) (describing the long trajectory of social disorganization theory and offering an alternative of collective efficacy).
57 Sandra Susan Smith, Lone Pursuit: Distrust and Defensive Individualism Among the Black Poor 3, 27-54 (2007); see also
58 Matthew Desmond, Disposable Ties and the Urban Poor, 117 Am. J. Soc. 1295, 1311 (2012) (“By disposable ties, I mean
network complexity that women in poor communities of color experience, explaining that familial or family-like relationships are for some their most valuable relationships, but for others “structural conditions . . . contributed to the burdens that women’s social networks placed on them.”

It can be hard to tell: In one breath as someone declares their general inability to trust anyone and definitely declares, “I have no friends”; in the next, they may describe an intense, long-term, loving relationship with a friend or family member. We are all this complicated. But the research nonetheless suggests that interpersonal trust is weakened in the context of segregation and disadvantage. I call these harms to interpersonal trust and fragile social networks burdens upon “friendship,” but one might think of them instead as inequalities of social capital, relational poverty, or affective injustice.

Issues of capital, poverty, and injustice enter this conversation because the social fragmentation described here is not just unfortunate; it is an additional manifestation of disadvantage exacted upon marginalized communities of color and poor people. A host of scholarship in sociology, economics, and political science has emphasized the role of social capital, or social networks, in

relations between new acquaintances characterized by accelerated and simulated intimacy, a high amount of physical copresence (time spent together), reciprocal or semireciprocal resource exchange, and (usually) a relatively short life span”).

59 JUDITH A. LEVINE, AIN’T NO TRUST: HOW BOSSES, BOYFRIENDS, AND BUREAUCRATS FAIL LOW-INCOME MOTHERS AND WHY IT MATTERS 182 (2013); see also BRUCE WESTERN, HOMEWARD: LIFE IN THE YEAR AFTER PRISON (2018) (explaining that responsibility for the support of returning citizens often falls to their mothers and sisters); Linda M. Burton et al., The Role of Trust in Low-Income Mothers’ Intimate Unions, 71 J. MARRIAGE & FAM. 1107 (2009) (explaining that, instead of “distrust,” low-income women across racial lines exhibit modified, more situational forms of interpersonal trust); Anjanette M. Chan Tack & Mario L. Small, Making Friends in Violent Neighborhoods: Strategies among Elementary School Children, 4 SOC. SCI. 224 (2017). For additional examples of scholarship that calls into question the tightness of kin and kin-like relationships in the context of dispossession and racial marginalization, see ORLANDO PATTERSON, RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES 162 (1998); Sandra Susan Smith, Race and Trust, 36 ANN. REV. SOC. 453, 467 (2010) (“Contrary to Stack’s claims, however, trust and trustworthiness are not always bedfellows of persistent poverty and racism. Indeed . . . poverty and racism often erode trust”).

60 See ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 326 (2000) (“The more integrated we are with our community, the less likely we are to experience colds, heart attacks, strokes, cancer, depression, and premature death of all sorts. Such protective effects have been confirmed for close family ties, for friendship networks, for participation in social events, and even for simple affiliation with religious and other civic associations”); Pierre Bourdieu, The Forms of Capital, in HANDBOOK OF THEORY AND RESEARCH FOR THE SOCIOLOGY OF EDUCATION 241 (J. Richardson ed., Greenwood 1986) (distinguishing social capital from economic capital and cultural capital); Glenn Loury, A Dynamic Theory of Racial Income Differences, in WOMEN, MINORITIES, AND EMPLOYMENT
procuring employment, navigating the education system, finding housing, health, parenting, immigration, gun violence, and more. The much-discussed Moving to Opportunity housing demonstration that HUD administered in the 1990s was initially intended to expose low-income people to wealthier social networks that would assist them in finding employment, even though the intervention did not directly intervene to foster these cross-class social ties. Some scholars have argued that friendship is essential for meaningful

DISCRIMINATION 153, 176 (1977) (introducing the basic concept of social capital, though using it differently from how it is typically used today).


65 MARIO LUIS SMALL, UNANTICIPATED GAINS: ORIGINS OF NETWORK INEQUALITY IN EVERYDAY LIFE (2009)


social equality, part of an equality of love, care, and solidarity that social policy must foster and support. Distrustful friendship is a harm of persistent segregation and dispossession that has been completely absent from conversations about reform in the Black Lives Matter era.

What might it look like to support friendship as a political and legal project? Professor Laura Rosenbury has argued for legal recognition of friendship, though not necessarily friendship promotion, through law. Rosenbury grounds her claim in a contention that friendship is family-like. In line with Rosenbury’s approach, Professor Melissa Murray explores legal recognition of alternative familial arrangements to the traditional parent-centered model of child caregiving, making something like parental status available to more people in a person’s network, potential including friends. Professor Ethan Leib, who has written most extensively on the subject of friendship in law, takes a different approach. Instead of arguing that friends are like family and thus should have family-like legal protections available, Leib argues that law should protect and promote friendship in part because it is a decidedly non-familial relationship.

He grounds this claim in numerous ways, focusing primarily on the benefits for the state, such as reduced costs of caregiving and economic growth. In Leib’s formulation, law could promote friendship in part by recognizing friendship as fiduciary relationship with corresponding duties.

In constitutional doctrine, the closest we get to support we see for friendship is the right to intimate association, thought part of the bundle of First Amendment

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75 Ethan Leib, FRIEND V. FRIEND: THE TRANSFORMATION OF FRIENDSHIP—AND WHAT LAW HAS TO DO WITH IT (2011).
The right to intimate association is usually thought to apply only to familial relationships, even though Professor Kenneth Karst, one of the first legal scholars to expound the freedom of intimate association, thought the right must include friendship. Cases that have considered whether friendship is a form of constitutionally protected intimate association have mostly decided that it is not, concluding that intimate association is based in “creation and sustenance of a family.” Others punt, leaving the question open for future engagement. By and large, courts treat intimate association as a family-only protection.

Again, courts are not the only arbiters of rights, and currently existent constitutional doctrines need not be their only sources. Perhaps a state obligation to promote friendship could flow from the state’s initiation of and complicity in wealth dispossession and racial segregation, which created conditions that burn through close relationships. Friendship promotion, in this vision, would be an outgrowth of corrective justice. Another alternative: If courts came to realize at a deeper level the dignity interests inherent in friendship, it would honor friendship on substantive due process grounds as essential for the effective exercise of liberty. This line of argument would recognize Justice Kennedy’s Obergefell v. Hodges dignity interest in marriage for everyone, except it would take better stock of the truth confronting many Americans about the changing nature of family. With respect to the queer community, for example, because of the long

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77 Kenneth L. Karst, The Freedom of Intimate Association, 89 YALE L.J. 624, 626 (1980) (“Any view of intimate association focused on associational values must … include friendship.”).
79 Vieira v. Presley, 988 F.2d 850, 853 (8th Cir 1993) (“There is no clearly established law whether or not associations with friends and acquaintances are sufficiently intimate to be entitled to the constitutional protection of freedom of association”); O’leary v. Luongo, 692 F. Supp. 893, 900 (N.D. Ill. 1988); Flaskamp v. Dearborn Pub. Sch., 232 F. Supp. 2d 730, 740 (E.D. Mich. 2002) (“Although the United States Supreme Court has left the possibility open, it has yet to extend the right to intimate associations beyond familial relationships”); see also Andrew Jensen Kerr, Coercing Friendship and the Problem with Human Rights, 50 U.S.F. L. REV. 1 (2015).
exclusion of queer people from traditional marriage and the bigotry-fueled abandonment of many queer people from their families of origin, friends—“chosen family”—may well be the only family available.\textsuperscript{82} Because of the far-reaching effects of dispossession, chosen family (Stack’s “fictive kin”) can be especially salient in the context of ghettoized poverty. But resource deprivation strains these relationships, routinely causing them to crumble. Perhaps, concomitant with an entitlement to friendship is entitlement to the resources that make friendship more sustainable.

Shifting the burden for the social safety net away from friendship networks would untangle some of the damage done in the 1980s and 1990s high era of welfare retrenchment. One of many competing theories behind ramped up child support enforcement in the 1980s\textsuperscript{83} and the virtual end of welfare assistance in the 1990s\textsuperscript{84} was that people had friends, lovers, and family members who would support them, if only the state forced their hands by making it impossible (well, more impossible than it already was) to survive on welfare alone.\textsuperscript{85} But, as


\textsuperscript{84} KATHRYN EDIN & H. LUKE SCHAEFFER, $2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 1-34 (2015) (declaring that “welfare is dead” and explaining the political process that led to that result in 1996).

\textsuperscript{85} See Deborah Dinner, \textit{The Divorce Bargain: The Fathers’ Rights Movements and Family Inequalities}, 102 VA. L. REV. 79, 101-02 (2016); see also KATHRYN EDIN & LAURA LEIN, \textit{Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work} (1997) (demonstrating that before enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (or the Clinton welfare reform bill), welfare mothers made ends meet by working off the books while receiving the subsidy in order to scrape together
explained above, reliance on friendship networks and aggressive enforcement of child support policy often tarnishes relationships. A movement for affective entitlements fits in well with movements to divest funds from the crime control system in part to build a more robust and non-punitive social support system.

Finally, legal and policy support for friendship, and perhaps social capital writ broadly, would be valuable for supporting political power within communities that lack it. Movement organizing rests upon the construction of genuine relationships with people of many types united by a common interest. Organizing is an affective project just as much as an ideological and intellectual one. As Professor Tiya Miles recently mused, “What if the power of friendship is a quiet movement unto itself, one heart at a time, shrinking the shadows between us?”

Is some sort of deep and meaningful social connection necessary for nurturing those “quiet movements,” and thus indispensable to the community power that social movements today have committed to building? If so, it seems imperative that a movement for racial and economic justice concern itself with the structural obstacles Khalila, Fayard, and others face in building and sustaining friendship.

III. DREAMS

Because his experiences have taught Fayard to worry about death, his reticence to muse on the future is unsurprising. A large body of social science research points to this as the problem of leveled aspirations—simply put, young people who grow up in disadvantaged, isolated contexts may start out with big dreams, but over time, those aspirations tend to shift to more closely match their social position of origin. The issue is not that young people growing up in disadvantaged contexts do not know, at least in a general sense, about some prestigious careers or future opportunities and aim to reach lofty goals. Instead,
over time, young people become increasingly aware of the structural barriers people from their backgrounds face in pursuing those opportunities—sometimes because of educational barriers, sometimes because of financial constraints, and likely sometimes, like Fayard, because the future seems uncertain at a basic, visceral level. Reasonably, then, many young people growing up under these circumstances modify their aspirations to more closely align with “realistic” opportunities.89

Institutions and institutional actors—for example, for-profit colleges, guidance counselors—play a central role in this leveling process.90 In 1960, Burton Clark famously referred to this institutional program of ambition-leveling for poor and minority college students as “cooling out.”91 Criminal justice involvement also operates to chill aspirations, even when people who have been caught up in the system have developed narratives of striving and success. Harding and colleagues, studying people returning home after prison, find that when structural constraints are so intense that people’s aspirational scripts for moving forward are incompatible with them, their narratives often shift.92 Through multiple,
multilayered channels, poverty and racial disadvantage dampen dreams and confine imaginations.

Big, stable, and supported dreams are important drivers toward achievement in the face of disadvantage.\textsuperscript{93} For example, Professor Robert Bozick and colleagues have found that youth of all income brackets start with high college aspirations, but those dreams become volatile for youth from backgrounds of middle- and low-socioeconomic status, while they tended to remains stable for youth from families of high socioeconomic status. Importantly, of the youth with stably low expectations—a small group—nearly all of them were of a low-socioeconomic status background.\textsuperscript{94} Stability is key: Consistently high aspirations are a better predictor of positive outcomes like college enrollment than shaky hopes.\textsuperscript{95} Numerous obstacles—poverty, lack of information, and (apropos of the friendship discussion in Part II) lack of social capital—stand in the way of college enrollment and completion for poor students, regardless of the strength of their hopes for and commitments to college.\textsuperscript{96} But hoping and committing are important prerequisites too, and they are not merely matters of personal wherewithal or individual “grit,” but are also shaped by structural conditions.\textsuperscript{97}

\textsuperscript{93} E.g., Sarah J. Beal & Lisa J. Crockett, Adolescents’ Occupational and Educational Aspirations and Expectations: Links to High School Activities and Adult Educational Attainment, 46 DEV. PSYCH. 258 (2010); Stephanie C. Berzin, Educational Aspirations among Low-Income Youths: Examining Multiple Conceptual Models, 32 CHILDREN & SCHOOLS 112 (2010) (on poor students’ lower aspirations); Grace Kao & Marta Tienda, Educational Aspirations of Minority Youth, 106 AM. J. EDUC. 349 (1998). Note that I envision this entitlement to dream as an entitlement to the bundle of supports that make dreams tangible and productive, such as exposure to a range of ideas and information about possible futures.

\textsuperscript{94} Robert Bozick et al., Framing the Future: Revisiting the Place of Educational Expectations in Status Attainment, 88 SOC. FORCES 2027, 2040 (2010).

\textsuperscript{95} Id. at 2043.


\textsuperscript{97} See, e.g., David Calnitsky, Structural and Individualistic Theories of Poverty, 12 SOC. COMPASS 1, 7 (2018); Noah Asher Golden, “There’s Still That Window That’s Open”: The Problem With “Grit,” 52 URB. EDUC. 343, 346-48 (2017); Annette Lareau, Cultural Knowledge and Social Inequality, 80 AM. SOC. REV. 1, 8-12, 21-22 (2015).
To be sure, many people growing up under conditions of poverty and racial marginality have high ideals, but they are often untethered and ineffective because they have little information about how to fulfill them. The relevant research, which focuses mostly on educational aspirations, is mixed. For example, scholars have found that community college students retain high aspirations of bachelors’ degree completion even when graduation rates are exceedingly low and their own paths have been interrupted. In recent years, partly in light of the student debt crisis, scholars and policymakers have suggested moving away from a college-for-all ethos. They argue that institutions should deemphasize four-year college and encourage youth to

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98 Some scholars distinguish between “aspirations,” “goals,” “ideals,” and so forth because untethered and unsupported dreams do not have as positive an effect on important social outcomes as grounded and supported dreams do. E.g., Deborah F. Carter, A Dream Deferred? Examining the Degree Aspirations of African American and White College Students (2001); Karolyn Tyson, Integration Interrupted: Tracking, Black Students, and Acting White After Brown (2011); Alford A. Young, Jr., The Minds of Marginalized Black Men: Making Sense of Mobility, Opportunity, and Future Life Chances (2004); Margaret Frye, Bright Futures in Malawi’s New Dawn: Educational Aspirations as Assertions of Identity, 117 AM. J. SOC. 1565 (2012).

99 The research on race, poverty, and aspirations overwhelmingly focuses on college aspirations because post-secondary educational aspirations are easier to make sense of as being truly “high” or “low” than occupations, though there is research especially in vocational psychology that makes those sorts of evaluations. See, e.g., Kimberly A.S. Howard et al., Career Aspirations of Youth: Untangling Race/Ethnicity, SES, and Gender, 79 J. VOCATIONAL BEHAVIOR 98 (2011). Research on gender and aspirations often focuses more on career aspirations and classification of occupations due to scholars’ interest in sex segregation across occupations and job tasks. See, e.g., Erin A. Cech, The Self-Expressive Edge of Occupational Sex Segregation, 119 AM. J. SOC. 747 (2013); Mariko Lin Chang, Growing Pains: Cross-National Variation in Sex Segregation in Sixteen Developing Countries, 69 AM. SOC. REV. 114 (2004); Shelly J. Correll, Constraints into Preferences: Gender, Status, and Emerging Career Aspirations, 69 AM. SOC. REV. 69: 93 (2004); see also Vicki Schultz, Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument, 103 HARV. L. REV. 1749, 1800-14, 1815-39 (1990) (explaining conservative choice-centered and liberal coercion-centered perspectives on occupational sex segregation and proposing an alternative). Also, young people routinely change their career occupations, and it is not clear that stable specific career aspirations are as consequential for outcomes of interest, such as wages or wealth, as educational aspirations are.

explore community colleges, vocational schools, and the military instead.\textsuperscript{101} Yet, much reform needs to happen at many community colleges and vocational/technical schools to make them acceptable alternatives to four-year colleges.\textsuperscript{102} While college need not consume all post-secondary aspirational energy, college aspirations may improve outcomes for the young people whose academic skills seem least well-developed for finding success there. Some research shows that even among students who score less well on vocabulary and aptitude tests, those with aspirations for four-year college—that is, those with bigger dreams—still fared better in early adulthood in terms of college enrollment, college graduation, being able to meet their financial needs, and even exhibited fewer signs of depression than those who had low aspirations.\textsuperscript{103} Finally, dreams can be the criterion in which major institutions, legal institutions, perceive a human being as hopeful or hopeless. For example, juvenile justice and child welfare proceedings may use educational and career goals in sentencing, parental rights determinations, or foster care emancipation, as various institutional actors often determine whether a young person is capable of rehabilitation or independence based in part on their perceived drive and stated aspirations.\textsuperscript{104}

\textsuperscript{101} E.g., JAMES ROSENBAUM, BEYOND COLLEGE FOR ALL: CAREER PATHS FOR THE FORGOTTEN HALF 265-80 (2001).
\textsuperscript{102} STEFANIE DI LUCA, SUSAN CLAMPET-LUNDQUIST & KATHRYN EDIN, COMING OF AGE IN THE OTHER AMERICA (cataloguing Baltimore-area community college graduation rates); see also Jennie Brand & Yu Xie, Who Benefits Most from College? Evidence for Negative Selection in Heterogeneous Economic Returns to Higher Education, 75 AM. SOC. REV. 273 (2010) (showing that students from groups least likely to complete college, such as those from disadvantaged backgrounds, derived the greatest benefit in earnings from college). To be sure, bachelors-level college education leaves in place a substantial and growing racial wealth gap and a sharp earnings gap between black men and white men all along the spectrum of family income and neighborhood background. See Raj Chetty et al., Race and Economic Opportunity in the United States: An Intergenerational Perspective, NBER Working Paper 24441 (Mar. 2018), http://www.nber.org/papers/w24441.
\textsuperscript{103} Anne Martin & Margo Gardner, College Expectations for All? The Early Adult Outcomes of Low-Achieving Adolescents Who Expect to Earn a Bachelor’s Degree, 20 APP. DEV. SCI. 108, 113-16 (2016).
\textsuperscript{104} See, e.g., Lisa Beth Greenfield Pearl, Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency, 37 N.Y.U. REV. L. & SOC. CHANGE 553, 584 (2013); Erik S. Pitchal, Where Are All the Children? Increasing Youth Participation in Dependency Proceedings, 12 UC DAVIS J. JUV. L. & POL’Y 233, 242 (2008); Jessi Carriger, Note, Teach Me to Act: California’s Use of Title 1D Funds for Delinquent Students, 30 WHITTIER L. REV. 329, 357 (2008); see also Donna M. Bishop, Michael Leiber & Joseph Johnson, Contexts of Decision Making in the Juvenile Justice System: An Organizational Approach to Understanding Minority Overrepresentation, 8 YOUTH VIOLENCE & JUVENILE JUST. 213, 222 (2010) (finding that net of other factors, worse school performance and having dropped out of school is positively associated with likelihood of formal prosecution in the juvenile justice system).
In America, we often speak of “the American Dream.” This appellation captures the idea that as long as someone in America puts forth the effort, that person can own a home, graduate from college, and move up the social and economic ladder.\(^\text{105}\) This Dream, comprised of property ownership, education, and opportunity for mobility, is a pre-constitutional value, deeply embedded into American ideology. What does it mean to be an American if you cannot dream of a bright future? It might seem silly to think about dreaming as a matter for law or politics but, of the three entitlements discussed in this paper, it is probably most central to American identity.\(^\text{106}\) Values that are arguably much less central to American identity, such as equality, ownership of weaponry, and healthcare are legally protected and facilitated. Given its salience, is there any legal framework that protects or guarantees the broad availability of dreams for a bright future?

First Amendment doctrine, which protects freedoms of speech, expression, religion, the press, and so forth as an extension of a commitment to free thought, provides a conceptual starting point. Although the Court has rejected the idea of an equal, fundamental right to education under the Fourteenth Amendment,\(^\text{107}\) it has expressed the idea that certain components of education, such as particular books or curricular contents, cannot be withheld from students. *Board of Education v. Pico* arose after a Long Island school board removed numerous books from its schools’ libraries, criticizing their content for being inappropriate, anti-American, “filthy,” or otherwise abhorrent.\(^\text{108}\) The Court ruled 5-4 that this book removal violated the First Amendment because “the Constitution protects the right to receive information and ideas.”\(^\text{109}\) In 2017, an Arizona district court judge relied on *Pico* to find that the State of Arizona’s sweeping 2010 legislation that banned ethnic studies curricula from public and charter schools violated the First Amendment.\(^\text{110}\) Judge Tashima reasoned that the same logic at work in *Pico* applied here: Arizona’s curriculum restriction was enacted with racial animus and with the purpose of forbidding students to learn about ideas with which the legislators disagreed; there were no legitimate pedagogical reasons to ban ethnic


\(^{108}\) Id. at 856-57.


The purpose of the right to receive information and ideas is to prepare young Americans for full citizenship and to meet their civic duties. Even though education is not a right, the ideas and information it shares with students is of special constitutional importance because they are critical for the maintenance of our democratic institutions.

To be clear: I am not suggesting that the pathway toward recognizing an entitlement to dream is through litigation, or through traditional constitutional analysis. The reasons that Fayard cannot dream are several steps removed from the educational system, and any litigation based on this entitlement would fail at least because *Pico* and its progeny focused a great deal on policymakers’ intent when they tried to restrict information. It would be difficult to show that by creating the conditions that Fayard is living under, the state intended to limit his capacity to dream. There are numerous problems with trying to contort the plurality’s reasoning in *Pico* into a cause of action before a court. I make reference to the right to information and ideas acknowledged in *Pico*, though, to point out that imagining a movement or political claim based on an entitlement to dream is not outlandish when we think about what dreaming is—drawing upon the information at our disposal to develop ideas for our futures. The specific context in which the Court evokes the right to information and ideas is irrelevant; what matters is that even the judicial branch has envisioned the components of dreaming as rights that the government is bound to respect. Importantly, “respect” here means that the government must continue to purchase and distribute books in its libraries and must continue to fund teachers and textbooks who will teach ethnic studies, and more: The right to information and ideas is a right that demands governmental action. The affirmative right/negative right framework does not apply.

In a recent article, Professors Anne Dailey and Laura Rosenbury offer an additional window through which to see an entitlement for Americans, especially young Americans, to dream and to build friendships. They set forth a blueprint

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111 *Id.* at 972-74; see also Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022 (9th Cir. 1998); Arce v. Douglas, 793 F.3d 968 (9th Cir. 2015); Virgil v. School Board of Columbia County, 862 F.2d 1517 (11th Cir. 1989).  
113 *See Pico*, 457 U.S. at 871 (“If petitioners intended by their removal decision to deny respondents access to ideas with which petitioners disagreed, and if this intent was the decisive factor in petitioners’ decision, then petitioners have exercised their discretion in violation of the Constitution”) (emphasis in original).  
for a “new law of the child,” one that reconsiders and builds from the traditional best interests of the child in family law and related fields, and expands children’s interests to include five specific interests: “(1) parental and nonparental relationships; (2) exposure to new ideas; (3) expressions of identity; (4) personal integrity and privacy; and (5) participation in civic life.”116 Dailey and Rosenbury’s approach is resonant with the notion of entitlements I describe here; their interest in relationships aligns with an entitlement to friendship, and their interest in exposure to new ideas aligns with an entitlement to dreams. Their ambition is similarly to set forth a new, provocative framework for thinking about people’s relationships to authority—for them, the domain is children’s interests.

One of the unfortunate aspects of their interesting article is that it does not take into account the raced and classed aspects of the interests of a child. (If anything, their article argues for making canonical cases such as Brown v. Board and Plyler v. Doe less about the problem of racial segregation and discrimination generally and more about the particular harms of segregation and discrimination to children.)117 Scholars of race and inequality could repurpose Dailey and Rosenbury’s work to think about expanded notions of basic entitlements, or the privileges of American citizenship.118 Full citizenship is not attained through non-discrimination alone. Instead, it requires relationships, ideas, identity formation, personal integrity, and the ability to engage in civic life. The 21st century movement for racial justice still needs to fight against discrimination, segregation, and dispossession, as the work to eliminate them is far from complete. However, the 21st century racial justice movement can fight for nondiscrimination, integration, and economic justice using new frameworks, including re-imagination of a future orientation as part of the bundle of goods that is meant to come with American citizenship. Moreover, an entitlement to dream is an entitlement to the bundle of supports that make dreams tangible and productive.

116 Id. at 1484.
117 Id. at 1535-36.
CONCLUSION

In this short essay, I have taken an avant-garde approach to civil rights scholarship, lacing together empirical poetry, social scientific theory and research, and legal analysis. The goal of this technique is to help stimulate creative thinking about what people living within the U.S. borders are owed by their government, and why it is owed. I am reminded of Professor Richard Delgado’s three decade-old commentary on the feeble but persistent virtue of rights: “Rights do, at times, give pause to those who would otherwise oppress us.”119 Identifying safety, friendship, and dreams as “rights” or fundamental entitlements would elevate them higher in the political agenda, and might open space to approach old conversations about racial equity and economic justice from slightly different vantage points. For low-income people of color living in high-poverty contexts, rights have never been trumps.120 They have been jacks, not aces. Expanding our understanding of social, political, and legal entitlements is key to reimagining the state’s broader relationship with those it has disrespected, controlled, and estranged.121

We depart this essay, and this symposium, probably holding on to more questions than answers about the next fifty years of civil rights agitation. This is appropriate: the 21st century’s civil rights movement (however it labels itself) must not be rigidly programmed or hierarchical. Thus far it has been, and should continue to be, rooted in ceaseless inquiry and revolutionary discomfort.

120 See Greene, supra note ___.
121 Bell, supra note __, at 2083-89 (on legal estrangement); see also Issa Kohler-Hausmann, Misdemeanorland: Criminal Courts and Social Control in an Age of Broken Windows Policing (2018); Akbar, supra note __, at 409.