Safety, Friendship, and Dreams

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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.

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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

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.”

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 Essay, I argue that the unfinished work of the Civil Rights Movement is observable through state failure to respect and protect three intertwined social entitlements—safety, friendship, and dreams—in many high-poverty African-American communities. One might envision these entitlements as part of a bundle of rights and privileges that constitute full membership in the American community. American government, at the national, state, and local levels, has routinely fallen short of its obligations to equitably safeguard these aspects of American life and has bungled most attempts to change course. The Essay also discusses 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 them. To build these arguments, I weave together narratives based on interview research, sociological theory, and analysis of case law.

I am not a poet. The words that open this Essay are drawn from interviews with Khalila Thomas and Fayard St. Jean, who in July 2015 were both eighteen-year-olds living in West Baltimore. With the exception of punctuation, free-verse arrangement, and editing for succinctness, I have left

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3 Pseudonym. Interview conducted by Monica Bell and Trinard Sharpe on July 28, 2015. Participants are part of the Hearing Their Voices study, which has interviewed sixty-four young Baltimore residents, fifty of whom are African-American. We asked young people about many aspects of their lives, including how they 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 in greater detail).

4 Pseudonym. Interview conducted by Monica Bell and Meshay Clark on July 27, 2015.
their words unadulterated. 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 must stretch their limbs toward the unorthodox, the unthinkable.

I use empirical poetry as a metaphor for the type of bold reexamination of the state and communities’ relationships to it that will be necessary to end marginalization through the racially inequitable organization of geographic space. We must move from efforts to merely soften the “ghetto” toward what philosopher Tommie Shelby calls “ghetto abolition”—or “an aggressive attempt at fundamental reform of the basic structure of our society.” To abolish the “ghetto,” we might need to violate some tenets of traditional legal analysis, and we must explore new audiences for legal scholarship. Thus, this Essay is not necessarily directed toward lawmakers, adjudicators, or regulators. Instead, it is written in conversation with movements for racial and economic justice, aiming to highlight nontraditional law-infused frameworks for change.

5 Due to informed consent agreements that these young people and I signed, in accordance with guidelines for the protection of human research participants, it would violate research ethics and federal regulations to credit these young people for their words by name. See 45 C.F.R. §§ 46.111, 46.116, 46.117 (2018).


8 Tommie Shelby, Dark Ghettoes: Injustice, Dissent, and Reform 275 (2016).
The vision of justice embraced here is one in which the state recognizes collective and individual humanity and thus, through various means, aims to promote social inclusion and social solidarity. Safety, friendship, and dreams are oft-ignored and misunderstood aspects of inclusion and solidarity, and thus, justice does not exist in their absence. Also, critically, this Essay does not draw upon doctrine to constrain legal possibilities. It treats judicial interpretations as emblems of legal values—occasionally hopeful symbols but more often disheartening exposures of gaps between institutional articulations of law and commonly held American values.

The only strategy that will surely fail to complete the work of the Civil Rights Movement is to reproduce the Civil Rights Movement. By this, I mean that approaches that center traditional legal analysis must give way to approaches that situate law within a much broader conversation about the distribution of power and voice throughout society.

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; 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 shot and 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 ambiguously explained), but she doesn’t, because even though she has friends, she thinks it’s important to maintain 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 with 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 other milestones. 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 would tell you, and as Professor Anthony Alfieri explains 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 have a rich understanding of “the problem.” Most legal and policy approaches that proceed under the banners of racial justice and economic justice reveal a breathtaking cluelessness—or, perhaps, willful flattening—of the nuanced realities that ghettoized African Americans face on a daily basis. They leave unexplored how largely white economic and social advantage are deeply implicated in the dual travesties of ghettoization and dispossession.

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. 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.

15 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.”).


17 Freddie Gray was a 25-year-old African-American man from West Baltimore who died on April 19, 2015, one week after being severely injured in police custody following 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 129–167 (2016).

18 This is different from the sociologist’s impulse, which is to say: Enough description. More theory. Some sociologists fight that impulse as well. See generally Max Besbris & Shamus Khan, Less Theory. More Description., 35 Soc. Theory 147 (2013).


Ghetto abolition should entail reconsidering how we consume the testimonies of people living at America’s margins. How do we hear these testimonies? Isn’t there something distasteful about gazing upon what generations of dispossession has done to them, to us? Does depicting the suffering of Khalila and Fayard merely satisfy the liberal elite demand for monies? Isn’t there something distasteful about gazing upon what monies of people living at America’s margins. How do we hear these 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 should demand 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?24

rather than fatalistic, as in its gradualist form it does not seem to fully embrace the Afro-Pessimist view that progress against antiblackness is untenable. Compare Allegra M. McLeod, Prison Abolition and Grounded Justice, 62 UCLA L. Rev. 1156, 1161 (2015) ("[A]bolition may be understood . . . as a gradual project of decarceration, in which radically different legal and institutional regulatory forms supplant criminal law enforcement"), with Victor Erik Ray et al., Critical Race Theory, Afro-Pessimism, and Racial Progress Narratives, 3 SOC. RACE & ETH. 147, 148–51 (2017).


23 See, e.g., Rachel Alicia Griffin, Pushing into Precious: Black Women, Media Representation, and the Gaze of the White Supremacist Capitalist Patriarchal Gaze, 51 CRITICAL STUD. MEDIA COMM. 182, 187–89 (2014); Katarina Kyrölä, Feeling Bad and Precious (2009): Black Suffering, White Guilt, and Intercorporeal Subje ctivity, 10 SUBJECTIVITY 258, 259 (2017); Alisa Zipursky, When They Want Trauma Porn Instead of Your Truth, HEALING HONESTLY (Jan. 12, 2018), http://healinghonestly.com/pop-culture/when-they-want-trauma-porn-instead-your-truth, archived at https://perma.cc/22FY-38UG ("[T]rauma porn is 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.").

24 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 (CLS) scholars and scholars of color of the Critical Race Theory (CRT) school. Compare Peter Gabel & Duncan Kennedy, Roll Over Beethoven, 36 STAN. L. REV. 1, 24–36 (1984), and Frances Olsen, Statutory Rape: A Feminist Critique of Rights Analysis, 63 TEX. L. Rev. 387, 393 (1984), and 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), and 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 SONU BEDI, REJECTING RIGHTS 41–92 (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.
Must we rethink the source of social entitlements, moving beyond standard conversations rooted in American constitutional interpretation and working toward the ingredients for American social membership? Does speaking in terms of “rights” stand in the way of the project of reimagining the state, or can rights-talk and radical change find common ground?

How do we know what we think we know about “the inner-city crisis”? How do 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?

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? Does the word obscure the undenia-

Williams, Alchemical Notes: Reconstructing Ideals from Deconstructed Rights, 22 HARV. C.R.-C.L. L. REV. 401, 410 (1987). I also find persuasive the recent analysis of Professor Jamal Green, 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, 34 (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. To be sure, capability is understood as the opportunity to pursue a certain end, such as safety, while a right is the moral or legal protection of that opportunity. Ingrid Robeyns, The Capability Approach, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2016), https://plato.stanford.edu/entries/capability-approach/#FunCap, archived at https://perma.cc/CL69-64QN. 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. 4, 12–16, 21 (2007).

Implicit in this idea is that rights do not simply emanate from state power, but instead have an independent basis rooted in other values, such as human flourishing, dignity, and equity. While legal scholarship typically focuses on legal rights, one could just as easily have a conception of rights that emphasizes their moral or normative bases. But cf. HANNAH ARENDT, ORIGINS OF TOTALITARIANISM 290–302 (1951) (arguing that a strong state alone was necessary and sufficient to guarantee a human right).


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 WAC-
ble heterogeneity of poor urban neighborhoods in ways that challenge its usefulness?25 Is the word too tarnished, like the racial epithet “thug,” to be useful at all?26 Should we retire “inner-city” as well, since it is, for the most part, social-scientifically misleading?27

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 fifty young African Americans 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 conditions of simultaneous social control and social exclusion. We also learned that consistent yet catastrophic violence, be it directly from the state or from elsewhere, had created whirlpools of vulnerability around their communities and thus emerged as their central concern. This violence—state violence, interpersonal violence, symbolic violence,31 economic violence32—is too profound for any honest reformer or revolutionary to simplify or ignore. Civil rights-era and post-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.33 Violence undermines some of the most basic, but rarely invoked, privileges of American citizenship and of humanity: safety, friendship, and dreams. Below, I offer a preliminary and incomplete account of each, rooted in sociological and legal research, constitutional legal analysis, and the ex-

31 Pierre Bourdieu defined “symbolic violence” as the process of “ensur[ing] the domination of one class over another.” P. Bourdieu, Symbolic Power, 4 CRITIQUE OF ANTHROPOLOGY 77, 80 (1979). For the purposes of this Article, I adopt Bourdieu’s broad conception of symbolic violence, noting its parallelism to other key sociological conceptions such as “social closure” and “opportunity hoarding.” See, e.g., Frank Parkin, Strategies of Social Closure in Class Formation, in THE SOCIAL ANALYSIS OF CLASS STRUCTURE 1 (Frank Parkin ed., 1974); Kim A. Weedon, Why Do Some Occupations Pay More than Others? Social Closure and Earnings Inequality in the United States, 108 AM. J. SOC. 55, 57–60 (2002).


33 See ELIZABETH HINTON, FROM THE WAR ON POVERTY TO THE WAR ON CRIME: THE MAKING OF MASS INCARCERATION IN AMERICA 5–26 (2016); see also JAMES FORMAN JR., LOCKING UP OUR OWN: CRIME AND PUNISHMENT IN BLACK AMERICA 11–13, 17–46 (2017).
experiences of Khalila and Fayard as emblematic of the enduring crisis of American racial and economic marginality.

The goal of this analysis is not to reach a conclusion about the precise nature of these social entitlements, be they “rights,” “privileges,” “needs,” or something else. That task must be left for future work. I also recognize that throughout the piece, I connect and at times equate concepts that a more parsimonious analyst would distinguish—for example, an argument that social capital is necessary is obviously distinguishable from a claim that friendship is necessary. Similarly, though they are more closely connected than social capital and friendship, an argument that aspirations are necessary is distinguishable from a claim than dreams are necessary, for reasons touched on below. Likewise, although safety and security are often used interchangeably, scholars sometimes draw conceptual distinctions between the two. These distinctions would be critical for an audience concerned with working out the precise details of the entitlement claims articulated here, but that is not the task of this Essay. This Essay instead attempts to operate at the level of first principles, inviting a conversation about ways to imagine the goal of civil rights advocacy in a more capacious manner, adapted to the sense of injustice and loss that young people living under conditions of race-class marginality raise in their own words. This analysis is meant to provoke a frank discussion of how a social movement infused with legal actors and transformative legal claims-making—a 21st century “jurisgenerative community”—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 violent deaths than many other young people in Baltimore. Twenty-seven of the 50 participants in our study discussed a friend or family member who had been a victim of serious violence, often lethal. In several respondents’ views, the risk of early death springs...
primarily from uncontrollable circumstances and accidents of geography, and only minimally from criminal behavior or poor choices. Gun violence is concentrated within tight and very small networks of people who commit crimes, but often young people who reside within race-class marginalized communities, simply by knowing people in their neighborhoods and at school, are part of such networks. Therefore, even if gun violence is usually not random, these young people often experience it as random. This rational framing of violence as inescapable 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 does not. There are limits (flexible limits, but limits) on how far the police may intrude into people’s lives, which some scholars interpret as a matter of security rather than privacy. Criminal law and tort law impose 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. 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, except in the rarest of circumstances, not limiting its analysis to an affirmative right to safety. Chief Justice Rehnquist used a formalist, text-prompted, full recounting of all of the violence and injury youth were experiencing. Cf. Laurence Ralph, Renegade Dreams: Living Through Injury in Gangland Chicago 3–6 (2014) (describing the pervasiveness of injury in a disadvantaged black community in Chicago).


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, 333–34 (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).
Driven analysis (odd in the substantive due process context) 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, the husband kidnapped and then brutally murdered their three children. The Court suggested that the woman should just file a wrongful death suit in tort.

*DeShaney* and *Castle Rock* left space for state liability for failing to keep an individual safe if the state created the danger, but thus far, cases based on claims of state-created danger 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, on various grounds.

Theoretically, state constitutions could step in where the U.S. Constitution does not. But even when state constitutions explicitly acknowledge a

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43 *DeShaney*, 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).


45 *Castle Rock*, 545 U.S. at 768.

46 See Hurt v. Phila. Hous. Auth., 806 F. Supp. 515, 529 (E.D. Pa. 1992) (dismissing lead paint case because there is no state constitutional right to “decent, safe, and sanitary housing” and for various jurisdictional reasons); Paige v. N.Y.C. Hous. Auth., 2018 U.S. Dist. LEXIS 137238, at *19 (S.D.N.Y. Mar. 9, 2018) (dismissing lead paint case for lack of subject matter jurisdiction); Barber v. Rome Hous. Auth., 2018 U.S. Dist. LEXIS 54211 (N.D.N.Y. Mar. 30, 2018) (dismissing bed bug case for failure to state a claim that officials violated complainants’ substantive due process rights because they did not claim officials were deliberately indifferent to the danger and declining to exercise supplemental jurisdiction over state law claims); see also Matthew Desmond & Monica Bell, *Housing, Poverty & the Law*, 11 ANN. REV. L & SOC. SCI. 15, 22–23 (2015) (describing poor environmental conditions, including lead toxins, in public and private housing); Laura Oren, *DeShaney and “State-Created Danger”: Does the Exception Make the “No-Duty” Rule?,* 35 ADMIN. & REG. L. NEWS 3, 6 (2010). I do not imply that housing residents never prevail on other state-law claims involving violation of housing codes. I am simply discussing claims that the housing conditions constitute a state-created danger in the lineage of *DeShaney* and *Castle Rock*. 
right to safety, state courts have generally interpreted those provisions as mere aspirations, not enforceable entitlements. Human rights law does somewhat better than American constitutional law, but human rights law has not deeply penetrated understandings of American civil rights and citizenship.

The Civil Rights Movement’s pathway toward social entitlements—going to court—is unlikely to build a pathway to recognition of a positive right to safety (or friendship, or dreams). Fortunately, courts do not have a monopoly on the establishment or interpretation of rights. 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

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47 See, e.g., OH. CONST. art. I, § 1 (“All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.”); VA. CONST. art. I, § 1 (“That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.”); CAL. CONST. art. I, § 1 (“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”).


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 Control and Law Enforcement Act of 1994 (Clinton crime bill). But those statutes obviously did not draw from deep wells of knowledge about why violence occurs given their inattention to the roots of crime in structural disadvantage. Thus, in some ways, these statutes made poor black communities less safe by criminalizing and disenfranchising them.

We need a movement that advocates for safety as a universal value that the government is obligated to proactively respect. Respecting the entitlement to safety requires laser-sharp focus on eradicating criminogenic social conditions—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


54 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 Patrick Sharkey, Uneasy Peace: The Great Crime Decline, the Renewal of City Life, and the Next War on Violence 55–60 (2018) (offering analysis on the varying prominent theories for why violent crime began to fall in the early 2000s). Yet, preservation of life and prevention of crime are 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 created, the presence of police has remained physically threatening and can perhaps be seen as structurally violent given its concentration and targeting in particular racialized communities. See, e.g., Floyd v. City of New York, 959 F. Supp. 2d 540, 585 (S.D.N.Y. 2013) (identifying targeted practices based on the city of New York defending “that blacks and Hispanics represent 87% of the persons stopped in 2011 and 2012” but there was “no reason to believe that the nearly 90% of people who are stopped and then subject to no further enforcement action are criminals”).

color, especially those who live in marginalized communities. This should end. In order for a universal safety entitlement to have the desired effects, the legal and policy response to this movement must take a different path than it did in the late twentieth century, when the “solutions” to un-safety became 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, such as expansion of the social safety net. They must do this because safety is a positive precondition for individual and collective freedom, perhaps especially for those to whom it has been long denied.

Since the rise of the #BlackLivesMatter movement in 2013, activists, reformers, and occasionally governments have produced high-profile reports setting forth an agenda to transform the relationship between marginalized communities of color and some number 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 others. While Martin, himself unarmed, died at the hands of a private citizen operating under the aegis of Neighborhood Watch, the other unarmed men were killed by official...
police officers. This cyclical death sparked a sharp, national interest in police reform. The Obama White House created the President’s Task Force on 21st Century policing, which issued a report embracing several reformist approaches to public safety, such as community policing. However, for various understandable reasons, that report focused substantially on internal reforms to police departments rather than holistic restructuring of law and policy to respond to the concerns of people of color who live in ghettoized, heavily policed neighborhoods. That is, the mission of that Task Force was primarily to respond to problems with policing, not problems of public safety.

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 per se than on the conditions that surround the hyper-policing of black communities, such as poverty, a lack of opportunity, a lack of affordable housing, and—most centrally—racial inequity. Both documents re-envision safety as a value, moving away from criminal-justice centered conceptions and showing how those conceptions can be antithetical to community safety. 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. Throughout, the report notes the links between safety and other aspects of community life such as housing and schooling. The analysis that understands safety as an entitlement rather than a mere goal is sub-

65 A Vision for Black Lives, supra note 60, at 10.
66 Forward Through Ferguson, supra note 60, at 54, 198.
67 Id. at 42–43.
merged but strongly implied. Linking the policy goal of “ghetto abolition” explicitly to safety allows reclaiming of one of the most salient rhetorical refrains used to oppose 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. Resource deprivation burdens friendship, which produces distrust. 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. Stack’s and others’ research is important because it unsettled a then-prevailing 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. This is not hard to understand when considering the stress associated with poverty, racism, and corresponding forms of disadvantage. The violence of the

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70 See Clifford Shaw & Henry McKay, Juvenile Delinquency & Urban Areas 183–89 (1942) (articulating social disorganization theory in its original form, 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).
state and the economy can coarsen some of the most intimate interactions. Resilience is found in the tenderness preserved under such circumstances.73

Social attachment is critical to personhood and survival,74 but poverty and economic inequality imperil attachment. Professor Sandra Susan Smith, for example, argues that many relationships between employed and unemployed friends and family members are “characterized by a pervasive distrust that deterred cooperation.”75 Professor Matthew Desmond identifies “disposable ties,” or short-term, intense resource-sharing friendships, in both white and black impoverished communities in Milwaukee.76 Professor Judith Levine draws particular attention to the social network complexity that women in poor communities of color experience, explaining that familial or family-like relationships are for some the most valuable relationships, but for others “structural conditions . . . contributed to the burdens that women’s social networks placed on them.”77 To be sure, as someone declares


75 Sandra Susan Smith, Lone Pursuit: Distrust and Defensive Individualism Among the Black Poor 3, 27–54 (2007).

76 Matthew Desmond, Disposable Ties and the Urban Poor, 117 AM. J. SOC. 1295, 1311 (2012) (“By disposable ties, I mean 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.”).

77 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 101–20 (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, 1121 (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, 241–42 (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
their general inability to trust anyone and definitively declares, “I have no friends” in one breath, in the next, they may describe an intense, long-term, loving relationship with a friend. 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 procuring employment, navigating the education system, finding housing, improving health, facilitating good parenting, easing...
the immigration process, avoiding gun violence, productively resolving interpersonal disputes at school, 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 (among other things), even though the intervention did not directly intervene to foster these cross-class social ties. Other studies on residential mobility have shown that younger children who move to a higher-income neighborhood are more likely to make friends and thus fare better in school than adolescent movers who—perhaps hurt in the same ways Khalila and Fayard have been—avoid making new friends and are less integrated into their schools. Some scholars have argued that friendship is essential to social justice, part of an equality of love, care, and solidarity that social policy must foster and support. The emotion of love, on this theory, is an essential concern for the public sphere, not merely a private feeling free from the contemplation or reach of the state. Distrustful friendship is a consequence 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 social relationship as a political and legal project? Professor Laura Rosenbury has argued for legal recognition of friendship, though not necessarily friendship promotion, through law.94 Rosenbury grounds her claim in a contention that friendship is family-like. In line with Rosenbury’s approach, Professor Melissa Murray advocates 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, potentially including friends.95 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.96 He grounds this claim in numerous ways, focusing primarily on the benefits for the state, such as reduced costs of caregiving and economic growth.97 In Leib’s formulation, law could promote friendship in part by recognizing friendship as fiduciary relationship with corresponding duties.98

In constitutional doctrine, the closest we get to support for friendship is the right to intimate association, thought to be part of the bundle of First Amendment freedoms.99 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 upon the freedom of intimate association, surmised that the right includes friendship.100 Cases that have considered whether friendship is a form of constitutionally protected intimate association have mostly decided that it is not, concluding that intimate asso-

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97 Ethan J. Leib, \textit{Friendship & the Law}, 54 \textit{UCLA L. Rev.} 631, 657–62 (2007) (arguing that friendship facilitates market participation in numerous ways and that the state might not need to subsidize professional caregiving for people who are sick or disabled if friends engaged in that work instead).

98 See \textit{Leib}, supra note 96, at 63–77.


100 Kenneth L. Karst, \textit{The Freedom of Intimate Association}, 89 \textit{Yale L.J.} 624, 626 (1980) (“Any view of intimate association focused on associational values must . . . . include friendship.”).
cation 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.

There are also inherent dignity interests in friendship, essential to the effective exercise of liberty. Even as this Essay does not limit itself to court-centered legal argumentation, it is worth noting that a focus on the dignity interest in friendship could draw from Justice Kennedy’s Obergefell v. Hodges claim that there is a dignity interest in marriage while taking better stock of the truth confronting many Americans about the changing nature of family and the scarce availability of state-sanctioned forms of intimacy, especially among certain race-class marginalized populations and sexual minorities. With respect to the queer community, for example, because of the long exclusion of queer people from traditional marriage and the abandonment of many queer people by their families of origin, friends— “chosen family”—may well be the only family available. Justice Kennedy explains that the liberties protected under the Fourteenth Amendment’s Due Process

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102 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, 4 (2015).


106 See, e.g., Catherine F. Croghan, Rajean P. Moore & Andrea M. Olson, Friends, Family, and Caregiving Among Midlife and Older Lesbian, Gay, Bisexual, and Transgender Adults, 61 J. Homosexuality 79, 94–95 (2013); Nancy J. Knauer, LGBT Older Adults, Chosen Family, and Caregiving, 32 J. L. & Religion 150, 151–52 (2016); Vickie M. Mays et al., African American Families in Diversity: Gay Men and Lesbians as Participants in Family Networks, 29 J. Comp. Fam. Stud. 73, 83 (1998); Ramona Faith Oswald, Resilience Within the Family Networks of Lesbians and Gay Men: Intentionality and Redefinition, 64 J. Marriage
Clause “extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.”107 Quoting Goodridge v. Department of Public Health,108 the Massachusetts case requiring state recognition of same-sex marriage, Kennedy argues that marriage shapes “an individual’s destiny” and creates a pathway through which “two persons together can find other freedoms, such as expression, intimacy, and spirituality.”109 But marital ties, for many Americans, are not the most central relationships through which such freedoms flow.110 In ways sometimes reminiscent of marriage, platonic friendship holds longstanding practical and normative value in American society because it contributes mightily to personal growth and autonomy.111 Friendship bears time-honored importance for human flourishing in ways that sound in dignity, equality, and liberty by analogy to the characteristics of marriage that Justice Kennedy reveres in Obergefell.112

Yet again, courts are not the only arbiters of rights, and present 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 instrument of corrective justice. 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, undermining trust and thus routinely causing them to crumble.

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107 Obergefell, 135 S. Ct. at 2597.
109 Obergefell, 135 S. Ct. at 2599.
110 See, e.g., Clare Huntington, Obergefell’s Conservatism: Reifying Familial Fronts, 84 FORDHAM L. REV. 23, 28–29 (2015) (pointing out that “[f]ar from the marble halls of the Supreme Court, marriage is not a central feature of family life in many communities” and arguing that the Kennedy pro-marriage argument “reinforces the notion that [non-marital] families are deviant”).
111 See, e.g., Sonu Bedi, An Illiberal Union, 26 WM. & MARY BILL OF RTS. J. 1081, 1116–21 (2018) (critiquing arguments that marriage is intrinsically more valuable than other forms of intimacy and noting that “there are other relationships—being a best friend, a member of a religious community, or a caretaker for someone you love—that may be just as stable or significant, or central to human contentment and fulfillment as marriage”); Rubin, supra note 94, at 202 (“The values underlying state respect of intimate association . . . including society, caring and commitment, intimacy, and self-identification - are present not only in marriages, parent-child relationships, or other groupings of relatives but can also be present in friendships.”).
112 Some have argued that Obergefell leaves open the question of whether various non-marital personal relationships might also be recognized as valuable (or dignity-affirming) under the law. See Susan Frelich Appleton, Obergefell’s Liberties: All in the Family, 77 OHIO ST. L.J. 919, 978–79 (2016) (arguing that post-Obergefell doctrinal trajectories portend greater affirmative legal recognition of non-marital relationships, including friendship); Mark P. Strasser, Obergefell’s Legacy, 24 DUKE J. GENDER L. & POL’Y 61, 68–72 (2016) (positing that Obergefell may leave room for constitutional law to recognize the value of “the enduring, personal, non-marital bond itself” in constitutional law).
Perhaps concomitant with an entitlement to friendship is entitlement to financial and material resources, which make friendship more sustainable. As the work of Levine and others makes clear, resource scarcity burdens both friendship and legally recognized familial relationships, so legal recognition alone would not support friendship as a social entitlement.

Shifting the burden for the social safety net away from social networks by drastically reducing material deprivation and financial precarity 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 and the virtual end of welfare assistance in the 1990s 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. But, as explained above, reliance on friendship networks and aggressive enforcement of child support policy often tarnishes relationships. A movement for social entitlements fits in well with movements to divest funds from the crime control system in part to build a more robust and non-punitve social support system.

The movement to fund nonprofits to recruit, educate, certify, and employ “credible messengers” as part of violence-reduction efforts in marginalized communities of color is an example of how the state can recognize and support friendship in order to fulfill safety and security demands.

\[^{113}\text{See Stefanie DeLuca, Susan Clampet-Lundquist & Kathryn Edin, Coming of Age in the Other America 119–45 (2016); Levine, supra note 77, at 34–38.}\]
\[^{115}\text{See Edin & Schaefer, supra note 55, at 1–34 (declaring that “welfare is dead” and explaining the political process that led to that result in 1996).}\]
\[^{116}\text{See Deborah Dinner, The Divorce Bargain: The Fathers’ Rights Movements and Family Inequalities, 102 Va. L. Rev. 79, 101–02 (2016); see also Edin & Lein, supra note 69, at 167–78 (demonstrating that before enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (or the Clinton welfare reform bill), welfare mothers often made ends meet by working off the books while receiving the subsidy in order to scrape together enough money to meet their financial obligations). Because of welfare-reform-mandated focus on welfare fraud detection, it is much more difficult now to use welfare as a means of supplementing another income. See Spencer Headworth, Getting to Know You: Welfare Fraud Investigation and the Appropriation of Social Ties, 84 Am. Soc. Rev. 171, 184 (2019),}\]
\[^{117}\text{See, e.g., Mayra Lopez-Humphreys & Barbra Teater, Peer Mentoring Justice-Involved Youth: A Training Model to Promote Secondary Desistance and Restorative Justice among Mentors, 1 Int’l J. Restorative Just. 187, 196, 199–200 (2018) (describing the Credible Messengers Institute’s training model, which includes social capital-building as one of four pillars); Anthony Petrosino et al., Cross-Sector, Multi-Agency Interventions to Address Urban}\]
Credible messengers serve as all-purpose peer mentors to youth who are involved in the justice system or at risk of violence, and they are by design available at all times to provide every type of support.\(^\text{118}\) There are at least two major distinctions between credible messengers and traditional mentors. First, having similar life experiences to their protégés, especially justice system involvement, is a central qualification for the work.\(^\text{119}\) Second, the relationship between mentor and protégé is meant to be personal, imbued with genuine emotional care.\(^\text{120}\) While the model gained popularity through its connection to violence interruption through the Cure Violence organization (previously known as CeaseFire),\(^\text{121}\) it is now used more widely, including in government-led and government-funded policy efforts.\(^\text{122}\)

The credible messenger concept is not unlike state-supported friendship. It recognizes that poverty may rob some people of the types of relationships that will help them desist from violent situations, and that one approach to reducing violence is to directly intervene on this byproduct of...
dispossession with the state’s imprimatur. Critics of behavior-focused anti-violence approaches might argue that such an approach takes an individualistic approach to violence, blaming people rather than institutions for creating the conditions of violence and seeing violent behavior as a consequence of bad norms (such as weak relationships) instead of structural conditions and morally complex situations. Mentoring programs, including those that rely on credible messengers, have received criticism for lacking a strong theoretical foundation. Recognizing that distressed relationships are a consequence of structural disadvantage bridges the gap between seemingly individualistic violence-reduction approaches such as mentorship and reforms that are more readily cognizable as root-cause approaches, such as poverty reduction, sentencing reform, and residential integration. The connection between friendship and racial and economic injustice thus provides a novel theoretical justification for the state to promote and fund credible messengers.

Finally, legal and policy support for friendship, and perhaps social capital writ large, 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.

124 For scholarship amplifying the situational characteristics of violence, see, e.g., RANDALL COLLINS, VIOLENCE: A MICRO-SOCIOLOGICAL THEORY 19–22 (2008); WESTERN, supra note 77, at 63–82.
125 See Buck, supra note 119, at 1028; Anthea Huckleby & Emma Wincup, Assistance, Support and Monitoring? The Paradoxes of Mentoring Adults in the Criminal Justice System, 43 J. SOC. POL’Y 373, 377, 387 (2014).
Because his experiences have taught Fayard to worry about death, his resistance to musing on the future is unsurprising. A large body of social science research points to this as the problem of leveled aspirations. Young people who grow up in disadvantaged, isolated contexts may start out with big dreams but, over time, those aspirations may shift to match more closely 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.

Institutions and institutional actors—for example, for-profit colleges and guidance counselors—play a central role in this leveling process. In 1960, Burton Clark famously referred to this institutional program of ambition-leveling for poor and minority college students as “cooling out.”

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.132 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.133 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 remain stable for youth from families of high socioeconomic status. Importantly, of the youth with consistently low expectations—a small group—nearly all of them were of a low-socioeconomic status background.134 Stability of dreams is key: consistently high aspirations are a better predictor of positive outcomes like college enrollment than shaky hopes.135 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.136 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 such as poverty and school quality.137

adaptation to loss, to “handl[e] persons . . . whose expectations and self?conceptions have been built up and then shattered”).

133 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, 262 (2010); Berzin, supra note 129, at 112–13 (on poor students’ lower aspirations); Kao & Tienda, supra note 129, at 349. 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.

134 Bozick et al., supra note 129, at 2040.


136 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. However, those dreams are often untethered and ineffective because structural conditions deny certain people necessary information and resources to fulfill their goals.\(^{138}\) The relevant research, which focuses mostly on educational aspirations,\(^{139}\) is mixed with regard to the link between high ideals and outcomes. For example, scholars have found that community college students often retain high aspirations of bachelor’s degree completion even when graduation rates are exceedingly low and their own paths have been interrupted. They retain these aspirations not necessarily as practical goals, but as moral scripts, recognizing the social significance of college aspirations.\(^{140}\) 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 explore community colleges, vocational schools, and the military instead.\(^{141}\) Yet, much reform needs to happen


\(^{139}\) 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 occupational aspirations, 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, 107–108 (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, 747 (2013); Mariko Lin Chang, Growing Pains: Cross-National Variation in Sex Segregation in Sixteen Developing Countries, 69 AM. SOC. REV. 114, 115 (2004); Shelly J. Correll, Constraints into Preferences: Gender, Status, and Emerging Career Aspirations, 69 AM. SOC. REV. 93, 93–94 (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.


at many community colleges and vocational/technical schools to make them acceptable alternatives to four-year colleges.\footnote{142 See \textsc{DeLuca, Clampet-Lundquist \\ \\ & Edin}, supra note 113, at 164–65 (cataloguing Baltimore-area community college graduation rates); see also Jennie Brand \\ & Yu Xie, \textit{Who Benefits Most from College? Evidence for Negative Selection in Heterogeneous Economic Returns to Higher Education}, 75 \textsc{Am. Soc. Rev.} 273, 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., \textit{Race and Economic Opportunity in the United States: An Intergenerational Perspective}, NBER Working Paper No. 24441 (Mar. 2018), https://www.nber.org/papers/w24441.pdf, archived at https://perma.cc/F37H-N6ZP.}

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, and being able to meet their financial needs; they even exhibited fewer signs of depression than those who had low aspirations.\footnote{143 Anne Martin \\ & Margo Gardner, \textit{College Expectations for All? The Early Adult Outcomes of Low-Achieving Adolescents Who Expect to Earn a Bachelor’s Degree}, 20 \textsc{Applied Developmental Sci.} 108, 113–16 (2016).} College dreams, for working-class young people in particular, can be proxies for dreams of self-actualization and adulthood.\footnote{144 Silvia \\ & Snellman, supra note 140, at 570–74.} Dreams can also be the criterion in which major institutions, legal institutions, perceive a human being as hopeful or hopeless. For example, Professor Nicole Gonzalez Van Cleve describes negative bias directed toward “de-futurized” criminal defendants in the Cook County criminal court system.\footnote{145 \textsc{Nicole Gonzalez Van Cleve}, \textit{Cook County: Racism and Injustice in America’s Largest Criminal Court} 101–02 (2016).} Similarly, 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.\footnote{146 \textsc{Silva \\ & Snellman, supra note 140, at 570–74.} See, e.g., Lisa Beth Greenfield Pearl, \textit{Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency}, 37 \textsc{N.Y.U. Rev. L. \\ \\ & Soc. Change} 553, 584 (2013); Erik S. Pitchal, \textit{Where Are All the Children? Increasing Youth Participation in Dependency Proceedings}, 12 \textsc{U.C. Davis J. \\ \\ Juv. L. \\ \\ & Pol’y} 233, 242 (2008); Jessi Carriger, Note, \textit{Teach Me to Act: California’s Use of Title 1D Funds for Delinquent Students}, 30 \textsc{Whittier L. Rev.} 329, 357 (2008); see also Donna M. Bishop, Michael Leiber \\ & Joseph Johnson, \textit{Contexts of Decision Making in the Juvenile Justice System: An Organizational Approach to Understanding Minority Overrepresentation}, 8 \textsc{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. 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 Essay, it is probably most central to American identity. Values that are arguably much less central to American identity, such as equality, gun ownership, and healthcare are legally protected and facilitated. Given the salience of dreaming, 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, 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. The Court ruled 5-4 that this book removal violated the First Amendment because “the Constitution protects the right to receive information and ideas.” In 2017, an Arizona district court judge relied on Pico to find that the State of Arizona’s sweeping 2010 legislation banning ethnic studies curricula from public and charter schools violated the First Amendment. 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


149 San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 35 (1973). Recent scholarship has argued—based on the Fourteenth Amendment’s original public meaning as identified through Congress’s requirement that Southern states include a right to equal education as a condition for readmission to the Union—that Rodriguez should not be interpreted to foreclose a state citizenship-based procedural right to education. Today, every state’s constitution requires the state to provide a public education system. Derek W. Black, The Constitutional Compromise to Guarantee Education, 70 STAN. L. REV. 735, 741–44, 802–07 (2018).


151 Id. at 867 (quoting Stanley v. Georgia, 394 U.S. 557, 564 (1969)).

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 federal constitutional right, the ideas and information it shares with students are 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 education 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 lives under, the state intended to limit his capacity to dream. I make reference to the right to information and ideas acknowledged in *Pico* 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. Thus, the right articulated in these cases is simultaneously negative and affirmative.

Although education is a key institution tasked with enabling the power to dream and thus warrants special attention in this Part, one might also take a cross-institutional perspective rooted in entitlements to children and youth. Professors Anne Dailey and Laura Rosenbury have offered 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 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

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153 Id.; see also Arce v. Douglas, 793 F.3d 968, 983 (9th Cir. 2015); Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1027 n.5, 1028–32 (9th Cir. 1998); Virgil v. School Bd. of Columbia Cty., 862 F.2d 1517, 1520–22 (11th Cir. 1989).


155 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).

156 Cf. Lea Shaver, *The Right to Read*, 54 COLUM. J. TRANSNAT’L L. 1, 5 (2015) (arguing that the right to read “has characteristics of both negative rights as well as positive rights—it implicates both liberty interests and social welfare entitlements”).

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.” Dailey and Rosenbury’s approach is resonant with the notion of enti-
tlements I describe here; their interest in relationships aligns with an entitle-
ment 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, provo-
cative framework for thinking about people’s relationships to authority—for
them, the domain is children’s interests.

One unfortunate aspect of Dailey and Rosenbury’s interesting article is
that it does not take into account the raced and classed aspects of children’s
interests. (If anything, their article argues for making canonical cases such as
Brown v. Board and Plyler v. Doe less about the problem of racial segre-
gation and discrimination generally and more about the particular harms of
segregation and discrimination to children.) Scholars of race and inequal-
ity could repurpose Dailey and Rosenbury’s work to think about expanded
notions of basic entitlements, or the privileges of American citizenship. 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. Implicit here is an understanding of citizenship
that is not restricted based merely upon legal status. Khalila and Fayard’s
claim to safety, friendship, and dreams is not conditional upon legal citizen-
ship, but social citizenship.

The twenty-first century movement for racial justice still needs to fight
against discrimination, segregation, and dispossession, as the work to elimi-
nate them is far from complete. However, the twenty-first century movement
for racial justice should make space for new frameworks in service of these
fights, including re-imagination of a future orientation as part of the bundle
of goods that is meant to come with American social citizenship. Moreover,
an entitlement to dream is an entitlement to the bundle of supports that make
dreams tangible and productive.

158 Id. at 1484. As Dailey and Rosenbury acknowledge, their conception of children’s in-
terests is compatible with, though not equivalent to, the partly affirmative vision of children’s
rights articulated in the United Nations Convention on the Rights of the Child. Id. at 1479
n.120; see also G.A. Res. 44/25, United Nations Convention on the Rights of the Child (Nov.
20, 1989), https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx, archived at https:/
/perma.cc/X72P-ZQZQ. The United States is the sole United Nations member state that has
not ratified the Convention on the Rights of the Child.

159 457 U.S. 202 (1982) (holding that a Texas statute that withheld funds from school
districts for educating undocumented children violated the Equal Protection Clause of the
Fourteenth Amendment).

160 See supra note 158.

161 See supra note 1.
CONCLUSION

In this 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 these techniques is to help stimulate creative thinking about what the United States government owes to people living within the country, especially people who are members of historically marginalized communities, and why the government owes these entitlements. This effort asks the reader to “turn legal thought into an instrument of institutional imagination,”¹⁶² not a set of insurmountable obstacles. Identifying safety, friendship, and dreams as “rights” or fundamental entitlements would elevate them as potential justifications for reparative intervention, and it should open space to approach old conversations about racial equity and economic justice from new vantage points. For low-income people of color living in high-poverty contexts, rights have never been trumps.¹⁶³ They have been jacks, not aces—but they nonetheless envision marginalized people as powerful political constituencies, not mere supplicants before the state.¹⁶⁴ Expanding our understanding of the underpinnings of social, political, and legal entitlements is key to reimagining the state’s broader relationship with those it has disrespected, controlled, and estranged.¹⁶⁵

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 twenty-first 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.

¹⁶³ See generally Greene, supra note 24.
¹⁶⁴ I am reminded of Professor Richard Delgado’s three decades-old commentary on the feeble but persistent virtue of rights: “Rights do, at times, give pause to those who would otherwise oppress us.” Delgado, supra note 23, at 305. Cf. Pelet del Toro, supra note 26, at 834–36 (describing rights-talk as a tool of restitution in the context of colonialism); Tani, supra note 26, at 23 (identifying the development of a “rights-bearing attitude” as a core mission for the 1970s and 1980s disability rights movement).