When the ghosts of the past stand in the path of justice clanking their mediaeval chains the proper course of the judge is to pass through them undeterred.\textsuperscript{13}

\textbf{Abstract}

The central thesis of my larger body of scholarly work is that remedies shape civil rights. In this Article, I argue that remedies shape civil rights. The law sometimes offers inadequate protections for redressing injuries. This shortfall is especially true for civil rights. Barriers—from immunity doctrines to constitutional limitations on monetary awards—block redress for civil rights. Such obstacles and gaps are not rare but flow with ease like the waters along the Georgia coast where aggrieved blacks have lived this shortfall from the time slave

\textsuperscript{*} Professor of Law, Savannah Law School. Washington & Lee University School of Law, J.D.; Rhodes College, B.A. Sincere thanks for thoughtful feedback from Andrew Wright and helpful suggestions from Doug Rendleman. This Article weaves law, history, and narratives to show the import of remedies in protecting and shaping rights. Thanks to my family for sharing stories and letting me tell them. Special thanks to Cherise Roberts for conscientiously fact-checking with our father, who prefers to go forward rather than look back. This Article captures a glimpse of the soul; for that I am grateful to the Savannah Law Review for inviting me to contribute substantively to \textit{[Re]Integrating Spaces}. For pushing me to tell the story as it should be told with candor and style, thanks to Jesse Centrella, who contributed painstaking craftsmanship in research, editing, map-making, the art of improvisation, and provocative dialogue.

ships docked in 1755. Often the remedy that will best right such wrongs is an equitable remedy such as an injunction. Money may compensate as far as it can, but often cannot rectify the harm. For abridgement of certain rights, money alone will not suffice: it does not undo the vestiges of slavery. Undoing vestiges requires unshackling lingering chains. Those chains block equality and identity. Laws coupled with custom, rooted in inequality, blocked access to life’s basic services and amenities, denying individuals the ability to shape their own identity. Equitable remedies restore property rights and secure access to constitutional as well as other legal rights. Equity plays a vital role in vindication and advancement of civil rights. Equitable remedies in this arena, however, are forceful, complex, and difficult to effectuate. Ideally, the very existence of the threat of equitable remedies coupled with the proof of constitutional violation leads to a consent decree under which the aggrieved and the government agree to relief mirroring a complex injunction. Otherwise, judges must exercise wise discretion to shape the equitable remedy: they must advance the right as far as reason will permit. However obtained, equitable remedies shape civil rights.

Remedies Reopening the Road to the Right

Remedies as a subject captures the imagination because it resonates with the basic human desire to fix problems. It intersects across bodies of law to take the wounded across doctrinal pitfalls to tangible relief. Remedies is not only a subject of study, but also represents a variety of forms of relief.¹

Remedies has a common meaning beyond academic walls. Whether by law or medicine, remedies cure what ails you. Further, remedies appear to arrive at the end of a story—in the legal context, at the end of litigation. This conception is incomplete both temporally and conceptually. Equitable remedies often arrive before any trial on the merits, and non-judicial relief may occur pre-litigation by agreement of the parties. Typical legal remedies arrive after litigation and, in truth, after the appeals process including any remand proceeding. Remedies, even at best, are often imperfect. Most wrongs cannot truly be undone no matter what the remedy. Remedies are thus substitutionary devices meant to serve a variety of goals such as compensation, deterrence, and punishment.² This inherent imperfection means that remedies usher in the beginning of a longer struggle to achieve justice in the real world.

That struggle exists because violations to rights harm individuals in tangible and intangible ways. For civil rights in particular, the violation may denigrate identity. For example, a civil rights violation may block an individual from access to an establishment or experience based upon the individual’s racial (as well as other) differences from the majority identity. Blocking access negatively affects one’s ability to pursue the symbolic and tangible indicia of a chosen identity. Where cultural trappings indicate affiliation and status, identity is denigrated by the denial of access to schools, jobs, transportation, hotels, hospitals,

¹ Rendleman & Roberts, supra note 1, at 1-5 (outlining typical remedial applications and goals for claims arising in tort, contract, and unjust enrichment).
² Id. at 17.
restaurants, and clubs. This denial of access alone, however, is only part of the denigration. It is the rationale for the denial—itself based on identity—that cuts the deepest. The reason for the denial declares that one’s otherness is inferior to the majority identity that holds exclusive access to the right.

No matter what the remedy, it will not wholly cure the harm to one’s civil rights. This is especially true when the right holder does not, in reality, fully possess the right. The right holder possesses the right symbolically (like holding title), but does not simultaneously possess the right tangibly (e.g., access is blocked). In other words, the law may pronounce a right on the books, but the right holder’s lived experience is without the benefits of that right. It is the chasm between de jure declarations and de facto realities.

Equitable remedies attempt to bridge this gap, bringing home the full pronouncement of the right to the right holder. The effect is a beginning effort to reshape the right, perhaps by simply making its words ring true, or more radically, by reconceptualizing the meaning of a right that was unclear or previously interpreted to not apply to a specific minority group. In turn, equitable remedies also reshape the identity of the right holder by securing meaningful access to the previously withheld or damaged right. Thus, such

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3 The opposite also may be true: the lived experience suggests equality, but the law on the books remains unequal and discriminatory. This predicament, though better, continues to injure all as a lingering vestige. For example, many real estate chains of title continue to contain discriminatory racial covenants that infect modern property transactions. These covenants represented “private acts of discrimination” by which an owner of property would place “restrictions on who used the land subject to sale.” Alfred Brophy, Alberto Lopez & Kali Murray, Integrating Spaces: Property Law and Race 98-99 (2011) Racially restrictive covenants, while legally unenforceable, remain on the recorded chain of title of real property. Shelley v. Kraemer, 334 U.S. 1 (1948) (holding racially restrictive covenants on real property legally unenforceable). The predicament also exists in the distinction between legal and social enforcement of racially restrictive covenants. See Catherine Silva, Racial Restrictive Covenants: Enforcing Neighborhood Segregation in Seattle, Seattle Civ. Rights & Labor Hist. Project, http://depts.washington.edu/civilr/covenants_report.htm (explaining that after Shelly v. Kraemer, “[r]ealtors and white homeowners continued to refuse to sell to minorities while land owners filed new covenants. Nonetheless, the Shelly decision provided legal legitimacy to the campaign against the use of racial restrictive covenants.”). Legal documents, such as recorded deeds, and practices have yet to catch up with the law’s equality pronouncements. This phenomenon is unfortunately familiar in other contexts such as school desegregation. Though Brown constitutionally invalidated segregation in 1954, decades would pass without its effective dismantling. Equitable remedies eventually reinforced the rights declared in order to begin undoing the deeply embedded social values that practically foreclosed Brown’s mandate. And even the legal remedies often required the federal militia power to ensure enforcement of court remedial orders. For example, U.S. Marshals escorted James Meredith onto the campus of the University of Mississippi with accompanying riots, and the National Guard similarly ushered the Little Rock Nine into Little Rock Central High School.

4 Equitable remedies operate in personam in that they order the defendant personally to act or not act. See Rendleman & Roberts, supra note 2, at 2. Such remedies are “specific” by compelling action or inaction. See id. at 2, 11. The primary forms of equitable relief include injunctions, specific performance (also a form of injunction) of contracts, and constructive trusts. Id. at 2.
equitable remedies, especially injunctions, provide real access to withheld status, property, education, group association, titles, voting, and other fundamental liberties and rights. With civil rights, the initial denial of the right hinders the ability to define one’s full identity. Equitable remedies reopen the road to the right and, in turn, to self-actualization of dimensions of one’s chosen identity. Given the original forces, inadvertent or purposeful, the struggle does not end with the issuance of remedies. Developing individual and community identity as well as changing hearts and minds take time and sometimes deepen conflict until we collectively progress.

The pursuit, receipt, and implementation of remedies are part of our progress. Remedies are born of conflict. They seek to resolve the preceding legal conflict. But the underlying social conflict may remain. Such conflicts must be acknowledged and addressed in order to build a path forward. Equitable remedies help push adversaries to move beyond their entrenched views and towards a new reality—a new reality in which the remedy rounds out the right to reach a wounded group. In so doing, the remedy alters the status quo and reshapes identity.

5 One reason why injunctions are particularly effective in the civil rights context is because “[t]he injunctive process essentially allocates power to the citizen-grievant (the power of initiation) and to the judiciary (the power of decision)” Owe n M. Fiss, The Civil Rights Injunction 88 (1978). Fiss classifies injunctions in three distinct groups: “The preventative injunction, which seeks to prohibit some discreet act . . . from occurring in the future; the reparative injunction, which . . . seeks to correct the effects of a past wrong; and the structural injunction, which seeks to effectuate the reorganization of an ongoing institution.” Id. at 7; see also Lampkin v. District of Columbia, 886 F. Supp. 56, 62 (D.D.C. 1995) (“Injunctions are generally characterized as preventive, structural or reparative.”). This Article focuses on the reparative injunction, which may sometimes also include structural relief if a government entity continues to fall below constitutional requirements.

6 See generally 2 Dan B. Dobbs, Dobbs Law of Remedies § 7.4(4), at 348-49 (2d ed. 1993) (outlining the role of injunctive relief in constitutional litigation) (citing, for example, Dailey v. City of Lawton, Okla., 425 F.2d 1037 (10th Cir. 1970) (enjoining city from denying building permit on racially motivated grounds) and Santiago-Negron v. Castro-Davila, 865 F.2d 431 (1st Cir. 1989) (enjoining public employer to reinstate employee whom it discriminatorily terminated)); see also Doug Rendleman, Brown II’s “All Deliberate Speed” at Fifty: A Golden Anniversary or a Mid-Life Crisis for the Constitutional Injunction as a School Desegregation Remedy?, 41 San. Diego L. Rev. 1575, 1579 (2004) (“The judge grants an injunction to compel the defendant to end the [constitutional] violation and to deliver the practical effect of the substantive decision to the plaintiffs. For the plaintiffs, while the court’s substantive decision states the abstract law, the court’s injunctive remedy is a salutary practical fact.”); but cf. id. at 1614 (describing the reality of thorny constitutional litigation, which involves “case-by-case constitutional decisionmaking” and necessitates a long-term remedial process to undo historically rooted segregation).

7 See supra note 3 and accompanying text (discussing the disconnect between legal and social enforcement of constitutional remedies).
The Role of Remedies in Altering the Status Quo

For every wrong, there is a remedy. At least, this is so in a just society. Or should be. Yet the law is not always just. For some wrongs, the remedy will not lie. This shortfall occurs either because: (i) the legal right is not coextensive with the moral injustice; (ii) legal doctrine blocks the right or remedy; or (iii) the aggrieved fails to seek or the judge fails to grant a proper remedy. The failure to seek may stem from a good-faith desire for the political branches to resolve the controversy, or more simply, for the offending actor to amend its ways. With deep wounds, especially those that stunt authentic identity, alleged wrongdoers become entrenched and political branches stalemate. Like waters that must overtop a dam, the aggrieved builds momentum to cross from advocacy and negotiation into litigation. The longer an unredressed issue has percolated, the

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8 “It is a settled and invariable principle in the laws of England, that every right when with-held must have a remedy, and every injury its proper redress.” WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 23 (emphasis added); see also Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162–63 (1803) (concluding that William Marbury had a vested legal right to the commission and asserting that the United States is “a government of laws, and not of men,” would cease being so when such “laws furnish no remedy for the violation of a vested legal right”). But see Marbury, 5 U.S. at 175-76 (denying, based on lack of jurisdiction, the remedy of a writ of mandamus to deliver the commission to Mr. Marbury).

9 Full redress may not lie where the harm to the right is even slightly attenuated, delayed, or commingled with other factors. See, e.g., Vill. Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 265 (1977) (blocking relief, despite discriminatory effect of government action, when plaintiff lacks “[p]roof of racially discriminatory intent or purpose . . . required to show a violation of the Equal Protection Clause”).

10 See, e.g., Memphis Cmty. Sch. Dist. v. Stachura, 477 U.S. 299, 306, 310 (“[D]amages for § 1983 violations of constitutional rights [are] ordinarily determined according to principles derived from the common law of torts [which include] damages grounded in determinations of plaintiffs’ actual losses[]. Thus,] damages based on the abstract ‘value’ or ‘importance’ of constitutional rights are not a permissible element of compensatory damages in § 1983 cases.”); see also Carey v. Piphus, 435 U.S. 247 (1978) (holding plaintiff must show proof of actual injury for procedural due process violations and declining to presume compensatory damages). This principle yields its own discriminatory effects: “Race discrimination cases, which might be regarded as particularly strong cases for the notion that violation of the right is harm in itself, have sometimes yielded awards so low that they seem almost discriminatory in themselves.” DORES, supra note 6, § 7.4(3), at 344.

11 While “a lawyer will select the remedy that will best advance a client’s interest,” remedial actualization is subject to various other factors. Economic, moral, administrative, political, and societal values all play a role in the court’s willingness or ability to grant a remedy for a harm. See RENDLEMAN & ROBERTS, supra note Ω, at 3-5.

12 With any alleged ongoing wrongdoing, an injured party hopes the perpetrator will stop the harm—stop violating the law. If the perpetrator continues a constitutional violation, an injured party may hope, or strategically seek, a legislative or executive branch solution. If the perpetrator is an arm of the state (executive branch actor), executive entrenchment and legislature deadlock may follow. Yet, the nature of an ongoing violation will motivate an injured party to seek judicial relief.
deeper the injury and the more likely the court will grant bold, equitable relief that alters the status quo as it advances the rights at stake. With all equitable remedies, judges must be careful to exercise this power with proper restraint. Dangers of exceeding the proper judicial role are structural (exacerbating separation-of-powers tensions), atmospheric (causing cries of judicial activism), and functional (ordering complex injunctions that require excessive judicial oversight). If Congress perceives judicial overreaching into governmental functions, it recalibrates judicial involvement in remedying constitutional violations, and the Court confirms Congress’s power to so limit federal court discretion. The challenge for judges is to craft the necessary remedy within legal and practical constraints, while maintaining legitimacy. No matter how judges meet this challenge, the resulting remedy will in turn (re)shape rights.

For the violation of certain rights, such as civil rights, the harm is often intangible. Intangibility means a simple monetary substitution does not exist.

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13 See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1 (1971) (allowing race-conscious remedies, including busing, racial quotas, and racially-gerrymandering attendance zones, as within the broad equitable discretion of district courts to eliminate all vestiges of segregation in schools); Brown v. Bd. of Educ., 349 U.S. 294 (1955) (Brown II) (endorsing flexibility for district courts in fashioning equitable remedies to effectuate desegregation, including ordering school boards to craft transition plans to integrate the schools). Of course, cases like Brown II may simply represent the beginning of a remedial process that takes decades to bring the right into reality. Rendleman, supra note 6, at 1608-09 (“Brown II was, however, a low-keyed starting point for school desegregation. That decision and the way the lower courts implemented it with school-desegregation injunctions earn fewer laurels because ending segregation proved elusive.”).


15 See, e.g., Miller v. French, 530 U.S. 327, 350 (2000) (5-4 decision) (finding no separation-of-powers violation where Congress mandated automatic stays of ongoing injunctions despite the fact that such stays “preclude[ed] courts from exercising their equitable powers to enjoin the stay”).

16 Abram Chayes, The Judge in Public Law Litigation, 89 Harv. L. Rev. 1281, 1316 (1976) (“[J]udicial action only achieves such legitimacy by responding to, indeed by stirring, the deep durable demand for justice in our society.”).

17 Cf. Fiss, supra note 5, at 6 (writing that the “triumph” of the civil rights injunction represents an intellectual shift in the remedial paradigm, which enables “abstract[ing] right from remedy”); Chayes, supra note 16, at 1282, 1293-94 (rejecting, in the context of public law litigation, the conventional paradigm of a remedy’s correlation to the right, and instead asserting that “relief does not flow ineluctably from the liability determination, but is fashioned ad hoc; . . . right and remedy have been to some extent transmuted”); Dobbs, supra note 6, § 7.4(4), at 351-52 (explaining that injunctions in constitutional cases extend “beyond the right in question” for example when the court orders a public employer not only to provide the aggrieved a due process hearing but also to give notice of hearing rights to all employees and institute a grievance procedure for all).
Equitable remedies such as injunctions must fill the void and remedy ongoing violations. If a right is being denied or limited, an injunction orders the defendant to stop blocking the right or, more affirmatively, to grant access to the right. This often means, for example, ordering access to property, status, or affiliation. Such remedies strike the heart of the violation because equitable remedies have the power to affect property and (re)shape identity.

**A Long-Term Struggle for Civil Rights**

*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.*

The struggle for civil rights is long. It is not over. It extends nationwide. It affects us all.

Civil rights conceptually encompasses many meanings. Though this Article focuses on the civil rights of black Americans, modern civil rights protections extend more broadly to additional categories of people. More than any standard definition, the concept of civil rights to this author constitutes efforts to attain the ideal that all experience “equal justice under law.” The phrase civil rights

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19 Common captured this sentiment in his Golden Globe acceptance speech for Best Original Song in a Motion Picture, *Glory* (Common & John Legend, on *Selma: Music from the Motion Picture* (Paramount Pictures 2015)):

> I am the hopeful black woman who was denied her right to vote.
> I am the caring white supporter killed on the front lines of freedom.
> I am the unarmed black kid who maybe needed a hand but was instead given a bullet.
> I am the two fallen police officers slain in the line of duty.
> Selma has awakened my humanity.
> Selma is now.

Common

20 This Article focuses more specifically on black Americans of coastal Georgia. To candidly address the historical and modern-day racial tensions along the color line, this Article adopts a binary black-white distinction. The reality of American racial and ethnic identity, however, is much more complex than simply black and white. Moreover, class disparity perpetuates injustice that cuts across racial and ethnic lines. Still the black-white chasm has deep roots in the Old South that must be unlearned to move forward.


22 “EQUAL JUSTICE UNDER LAW.” These powerful words are etched onto the edifice of the United States Supreme Court. *About the Supreme Court, Supreme Ct. U.S.*, http://www.supremecourt.gov/about/constitutional.aspx (last visited June 25, 2015). The phrase captures the essence of the equal protection guarantee of the Fourteenth Amendment to the U.S. Constitution. See, e.g., Cooper v. Aaron, 358 U.S. 1, 19 (1958) (“The Constitution created a government dedicated to equal justice under law.”)
more commonly represents a modern historical movement, the struggle for civil rights of the 1950s and 1960s, including landmark cases, and culminating in the passage of an amalgamation of laws. The landmark law is the Civil Rights Act of 1964, which prohibited certain types of discrimination in housing, voting, education, and beyond. Related civil rights legislation includes further protections for equal housing, adoption, employment, and more. Such laws were passed in large part to bring home the promise of the Civil War amendments for black Americans.

The civil rights movement also elicits a geographic connotation. Though the movement was nationwide, the heart of the struggle occurred in the South. The Fourteenth Amendment embodied and emphasized that ideal. Though Chief Justice Charles Evans Hughes ultimately approved the Court’s keeping “Equal Justice Under Law” on its edifice, the building’s architects originally suggested the phrase, the source of which is unknown. The West Pediment Information Sheet, Supreme Ct. U.S., http://www.supremecourt.gov/about/westpediment.pdf (last visited June 25, 2015). The Supreme Court Building Commission empowered architect Robert I. Aitken with broad discretion to choose the inscription as long as the message “be worthy of the Great Supreme Court.” This fact illustrates the connection among physical space, words, and identity.

See, e.g., housing: Jones v. Alfred H. Mayer Co., 392 U.S. 409, 413 (1968) (holding that “§ 1982 bars all racial discrimination, private as well as public, in the sale or rental of property”); voting reapportionment: Reynolds v. Sims, 377 US 533 (1964) (ruling that voting district populations must be roughly equal for state legislature); education: Brown v. Bd. of Educ. of Topeka, 347 U.S. 483 (1954) (holding that segregated schools are inherently unequal to each other and, thus, unconstitutional).

24 See infra note 27 and accompanying text (listing significant pieces of civil rights legislation).


26 While the Civil Rights Act of 1964 guaranteed certain protections against discrimination, the Act itself did not fully actualize these protections; rather, carrying out the Act’s guarantees required numerous other pieces of legislation. See infra note 27.


27 See infra note 27 and accompanying text (listing significant pieces of civil rights legislation).

28 U.S. Const. amend. XIII, XIV, XV. See, e.g., Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441 (1968) (“[T]his Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery—its ‘burdens and disabilities’—included restraints upon those fundamental rights which are the essence of civil freedom . . . .”); South Carolina v. Katzenbach, 383 U.S. 301, 325-26 (1966) (“[T]he Fifteenth Amendment expressly declares that ‘Congress shall have power to enforce this article by appropriate legislation.’ . . . Some legislation is contemplated to make the [Civil War] amendments fully effective.”) (citing Ex parte Virginia, 100 U.S. 339, 345 (1879)).

The struggle was intense in the South—disparities in conditions more extreme, manifestations of prejudice more systemic, and violence more frequent and egregious. Iconic struggles arose in the Deep South such as the voting rights march in Selma, Alabama. This Article centers on Georgia: picture a line extending a bit more than one hundred miles beginning in Brunswick, then north to Darien, then to Eulonia, then ferry over to Sapelo Island, back to Eulonia, and then north to Savannah. Most of these towns are in McIntosh County; Savannah is in Chatham County. Savannah represents one of Georgia’s quintessential beacons of the Old South. Savannah and its surrounding towns and counties were no strangers to the civil rights movement, especially given that Dr. Martin Luther King Jr. operated from his hometown of Atlanta.
Georgia. Other pivotal leaders in Savannah’s civil rights story include: Westley Wallace (W.W.) Law, Benjamin Van Clark, and Hosea Williams. For every reader, the civil rights movement likely presents a series of snapshots in one’s mind involving key tragedies, protests, and victories from Montgomery, Alabama to Albany, Georgia or from Little Rock, Arkansas to Greensboro, Georgia. The key to the Savannah campaign was the local NAACP, led by W.W. Law, who served as president of the Savannah Chapter of the National Association for the Advancement of Colored People (NAACP) from 1950-1976. Davis, supra note 35, at 183; see also Charles J. Elmore, W.W. Law (1923-2002), New Ga. Encyclopedia (Jan. 23, 2004), http://www.georgiaencyclopedia.org/articles/history-archaeology/w-w-law-1923-2002.

Benjamin Van Clark is considered an “unsung hero of Savannah’s civil rights movement,” playing an active role in the movement while still in high school, and leading the Chatham County Crusade for Voters when Hosea Williams was jailed for over a month. Kim Gusby, Who Was Benjamin Van Clark?, WSAV, http://www.wsav.com/story/24701427/who-was-benjamin-van-clark (last visited June 25, 2015).

Hosea Williams, a member of Martin Luther King Jr.’s inner circle, was one of the many instrumental leaders in the Savannah civil rights movement. Davis, supra note 35, at 183. Williams “spearheaded the Chatham County Crusade for Voting, which mounted an impressive registration campaign, whose efforts, in part, resulted in “57 percent of eligible black citizens [being] registered to vote by 1960, a higher percentage than among whites.” Id. The strength of the black citizen voting registration “influenced the election in 1960 of white moderate Mayor Malcolm Maclean, who promptly appointed a black official to each city council board and authority.” Id.; see also W. Michael Kirkland, Hosea Williams (1926-2000), New Ga. Encyclopedia (Mar. 24, 2006), http://www.georgiaencyclopedia.org/articles/history-archaeology/hosea-williams-1926-2000.

The bus boycott of 1955 and 1956 in Montgomery, Alabama, was the first city-wide protest of the civil rights movement—“the frontier of [the movement’s] nonviolent protest.” Davis, supra note 35, at 22. The Montgomery Bus Boycott, led by the Montgomery Improvement Association, initiated protests to desegregate public buses in Alabama’s capital city that was “segregated from the cradles of the city hospitals to the headstones in separate graveyards.” Id. Sparked by the 1955 arrest of Rosa Parks, the boycotts would last nearly thirteen months until the Supreme Court invalidated segregation on public buses as unconstitutional. Id. at 22-24; see also Gayle v. Browder, 352 U.S. 903 (1956) (endorsement lower court’s holding that “statutes and ordinances requiring segregation of the white and colored races on the motor buses of a common carrier of passengers in the City of Montgomery and its police jurisdiction violate the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States”), aff’g Browder v. Gayle, 142 F. Supp. 707, 717 (M.D. Ala.). Dr. King became a central figure in the Civil Rights Movement, in part, due to his participation in the Montgomery Bus Boycott. King described “the real meaning of the Montgomery Bus Boycott to be the power of a growing self-respect to animate the struggle for civil rights.” Martin Luther King, Jr., Stride Toward Freedom: The Montgomery Story (1986).

Albany, Georgia, was the site of the first large-scale civil rights movement when a local movement was joined by the Student Nonviolent Coordinating Committee (SNCC), the NAACP, the Ministerial Alliance, the Federation of Women’s Clubs, the Negro Voters League, and the Southern Christian Leadership Conference (SCLC) to challenge discriminatory practices of a “town that was as firmly entrenched in the old ways as
North Carolina. But the movement did not just happen in those well-known
locations—“it happened in McIntosh County, too. Whether you see the place
as a footnote or as the front lines, it happened here, too.”

...
Racial injustices were not then, or now, unique to the South. Racial tension honors no geographic boundary. This point is highlighted by recent incidents of police violence involving white police officers killing black men, culminating in protests based upon the events and exacerbated by the failure to hold the police officers legally accountable. The first occurred in Ferguson, Missouri; the second in Brooklyn, New York; the third in Cleveland, Ohio; and a fourth incident of police violence by a white police officer leaving a slain black man occurred in Savannah, Georgia.

Yet, if one wants to fully grasp the incomplete journey of race relations in America, to the South one must go. Not to judge or to fix, but to experience; to understand and work toward progress within the still racially bifurcated communities. A college professor of mine in Washington, D.C., once suggested I return to the South, which at the time I had no intention of doing. More than two decades later, I heeded the call of my professor, strangely feeling compelled to return to the home of my father, Georgia, a place he fled as a young teen, never to look back.

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46 For example, recent, widely publicized black victims of police altercations include: Michael Brown, shot during an altercation with police in Ferguson, Missouri, on August 9, 2014; Eric Garner, strangled during an altercation with police in Brooklyn, New York, on July 14, 2014; Tamir Rice, shot during an encounter with police in Cleveland, Ohio, on November 22, 2014; and, here in Savannah, Georgia, on September 19, 2014, Charles Smith, shot by a Savannah police officer while Smith was handcuffed.

47 But see Michael S. Schmidt, South Carolina Officer Is Charged With Murder in Black Man’s Death, N.Y. TIMES (Apr. 7, 2015), http://nyti.ms/1N58v7V (“A white police officer in North Charleston, S.C., was charged with murder on Tuesday after a video surfaced showing him shooting in the back and killing an apparently unarmed black man while the man ran away.”); Richard Pérez-Peña & Michael Wines, Volunteer Deputy Charged With Manslaughter After Mistaking Handgun for Taser, N.Y. TIMES (Apr. 13, 2015), http://nyti.ms/1IXXten (“Sheriff’s officials said [the reserve deputy] had intended to subdue the fleeing suspect, Eric C. Harris, with a Taser, but mistakenly fired his handgun instead.”).


52 This professor, Kathrine Kravetz, was my professor in the Justice Program at American University in Washington, D.C., which some still consider the South, but this is not the South that she meant, or the South that I had lived: in rural, Appalachian East Tennessee. Surrounded by the Great Smoky Mountains and the rhythms of Dolly Parton, I am forever tied to the place of my birth. Like my father, however, my soul could not resist the pull of other places.
Even though Georgia’s founder, General James Oglethorpe, outlawed slavery in 1735, by 1750, under pressure from Georgia’s inhabitants, a new act took effect that permitted slavery in the Georgia Colony, and by 1755, the first slave ships from Jamaica, Gambia, Senegal, and the Ivory Coast landed on the shores of Georgia. Thirty-five years later, slaves constituted seventy percent of Georgia’s coastal population. We are no longer of that time, yet we are not finished with it. It is from this departure point that this Article will explore a couple vignettes to show the import of place in shaping one’s identity and the role of remedy in reshaping those places, identity, and civil rights: (i) my father’s early memories of rural South Georgia; and (ii) landmark civil rights cases of McIntosh County, Georgia. Americans possess a collective memory with respect to the key struggles of the civil rights movement. But in addition to the well-known hallmarks, mini eruptions, tragedies, and victories also rippled the waters helping to bring in the tides of change. This Article will mine the stories of my father and McIntosh County as a historical and modern watershed to expose classic racial tensions of the Old South and examine the role of equitable remedies towards long-term progress. From historical to current struggles, this

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53 Slavery in Savannah, CITY OF SAVANNAH, http://www.savannahga.gov/index.aspx?NID=1060 (last visited June 25, 2015) (detailing the evolution of legal slavery in Georgia and noting that Oglethorpe and the Georgia Colony Trustees originally did not allow slavery because they desired that the “colonists performed their own work” and that they also felt that the slave trade would make Georgia more vulnerable to foreign powers).

54 GREENE, supra note 44, at 102. The import of slaves to the Atlantic Coast began in 1619. Id. at 101. Most Georgia colonists pushed for slaves, but the London Trustees who bankrolled the Colony of Georgia initially resisted. Id. at 101-02. Scottish settlers of Darien, Georgia, advanced the first antislavery petition in North America, The New Inverness Petition of 1739, and decried: “It is shocking to human nature that any Race of mankind, and their posterity, should be sentenced to perpetual Slavery.” Id. at 102 (quoting the Petition). Despite this protest, in 1749, London approved shipping in slaves. Id. And so began the life of slavery off the coast of Georgia, a cycle that would endure long after slavery’s end:


Id. at 105. This excerpt captures Miss Fanny’s recollection of “being a bare-legged young thing waist deep in the cotton field, threatened with a switch waved by a fierce, hooting grandmother who raised children to work, just like she herself had been raised [in slavery]: Bed. Field. Table. Field. Church.” Id. at 102, 104.

56 Anthony V. Baker, [Re]Integrating Psychic Space: Law, Ontology, and the Ghosts of Old Savannah, 2 SAVANNAH L. REV 1,14 (2015) (explaining that the ghosts from America’s history of legal slavery “clearly reflect their cause of earthly torment to be somehow, some way, still with us”).
Article will explore the Gullah-Geechees’ modern plight to keep their Sapelo Island land—key to their identity—with their ring shouts calling out from their ancestors’ past for equitable remedies to help shape rights. This Article will close with suggestions for handling contemporary struggles of integration and property development with care as we design remedies with and without courts to secure yet-to-be-realized rights.

The Import of Place

Do you mean to tell me, Katie Scarlett O’Hara, that Tara, that land doesn’t mean anything to you? Why, land is the only thing in the world worth workin’ for, worth fightin’ for, worth dyin’ for, because it’s the only thing that lasts.\(^57\)

The place where one finds oneself matters. The place of birth, of school, of first kisses, of love, of death. Place affects identity from the beginning. Ideally, at a certain age, one chooses the places of one’s life. The place of living. The place of work. The place of play. The places of association. The place of dying. The geography and architecture of the place and its inhabitants all become part of one’s makeup—whether one embraces these places or rebels against them like my father.

There is a reason my father never wanted to return to the place of his birth, rural South Georgia. “I spent my whole life trying to get onto a paved road” is his way of summing it up these days. His childhood was rough.

My father was born on Black Tuesday,\(^58\) October 29, 1929, in the home like his brothers, in a town in Georgia I can’t locate. When he was very young, his family lived in Eulonia,\(^59\) in McIntosh County, Georgia. His County was home to

\(^57\) Character Gerald O’Hara, GONE WITH THE WIND (Metro-Goldwyn-Mayer 1939) (describing Tara, the O’Hara family’s cotton plantation near Jonesboro south of Atlanta, Georgia). In the fictional story inspiring the movie Gone with the Wind, Gerald followed a common path to Savannah: he came from Ireland with his older brothers, but Gerald preferred farming to the merchant industry of his brothers and was thus thrilled to have won Tara in an all-night poker game. MARGARET MITCHELL, GONE WITH THE WIND (1936).

\(^58\) “A dark day in history,” Black Tuesday was the first day of a historic Wall Street stock market crash triggering the beginning of the ten-year Great Depression. Depression & WWII, LIBRARY OF CONGRESS, http://www.americaslibrary.gov/jb/wwii/jb_wwii_subj.html (last visited June 25, 2015).

\(^59\) Fast, constant traffic and car wrecks were common on U.S. Highway 17 in Eulonia before the advent of modern Interstate-95 in the mid-1970s, because it was the primary route from the Northeast to Florida. GREENE, supra note 44, at 2, 243. Praying for Sheetrock begins with a telling description of a common two-truck accident on Highway 17 in Eulonia, McIntosh County, Georgia, where long-time, white Sheriff Tom Poppell fostered a culture of dependency and “plantation mentality” sanctioning “redistribution of wealth” by permitting the local black community to take all the contents spilling on the road: “We had the postwar South, the poorest-of-the-poor South right here in McIntosh County. It was the dirt-poor type of people swarmed the place like ants, and Tom wasn’t about to stop anybody from getting a pair of shoes.” Id. at 2-3, 5, 7 (quoting former volunteer white McIntosh fireman). My father’s wreck took place in 1933 and the shoe-
“431 miles of swamp, marsh, and forest.” Though my father’s poor family was white, Eulonia was “the dark, rich territory of the black people since the end of the Civil War, when William Tecumseh Sherman himself had waved a pistol at the district and given it to the newly freed slaves.”

He was one of seven brothers, who would endure unspeakable abuses set amidst a backdrop of incomprehensible racial strife. My father’s earliest of memories include seeing a young black boy running through his yard with several white men chasing him. His last image of that scene was the boy’s baseball cap getting clipped on his father’s clothesline as the boy and his pursuers disappeared into the distance. Later my father boarded the school bus to his all-white, public primary school and asked the driver if he knew what happened to the boy. The driver shrugged and said, “you know how it goes, the men caught up to him and the boy was shot up fifty times and lynched on the big oak tree.”

My father can’t remember a time he didn’t want to escape this place. He was hungry to leave and eager to serve in World War II, which he did until the service discovered that he had lied about his age. During these years, he also made many attempts to flee his home. At first, he went south eyeing Cuba, but returned to find his family had moved to Brunswick, Georgia. Still only a teenager, he ran away hopping trains to New York City, where he would remain for most of his adult life. He wasn’t simply trying to move from rural to urban, from country to cosmopolitan, from Brunswick to Brooklyn. He was in search of justice, progress, and a new identity.

At the age of 25, my father would learn of Brown v. Board while living in Brooklyn. In the summer of 1954, he was rolling dice, smoking cigarettes, chasing ladies (including my mother), earning bread, and hearing a white boy named Elvis (whom he and his bar cohorts all assumed was black) on the jukebox for the first time sing: That’s Alright Mama. He instantly loved the groundbreaking sound, but all wasn’t alright. He didn’t see how integration

iteration of the two-truck wreck of 1971 both “occurred at the crossroads called Eulonia in the deeply wooded, north end of the county.” Id. at 3.

Id. at 3-4.

Of the seven, all save my father met early deaths: one by train and five by vices.

A Savannah black tour guide similarly lamented while standing in front of an old oak tree in one of Savannah’s oldest black cemeteries: “Right here is the whipping tree . . . . You look at this and you don’t have to wonder why so many black folks left the South.” Ron Stodghill, Savannah, Both Sides, N.Y. TIMES (Oct. 3, 2014), http://www.nytimes.com/2014/10/05/travel/savannah-both-sides.html?_r=0. As my father’s story shows, it wasn’t just black folks who left the South. We all bear the collective burdens of our history.

“Brunswick was a flat, hot, industrial little city, steaming with paper mills and crammed with fast-food joints, but adjacent to Georgia’s ‘Golden Isles,’ including those millionaires’ haunts, St. Simons Island, Jekyll Island, and Sea Island.” Greene, supra note 44, at 163.

347 U.S. 483 (1954). The Warren Court handed down this historic, unanimous decision on May 17, 1954. Id.

Elvis Presley, That’s Alright, Mama (Sun 1954) (recorded at Sun Studio in Memphis, Tennessee, on July 5, 1954, and released on July 19, 1954).
would happen and worried about how hearts and minds could change. How could the law accomplish its pronouncement that separate was not equal? Even in cosmopolitan Manhattan and the surrounding boroughs, the races, ethnic groups, and classes continued to stick to their own. All he knew was that he wasn’t going back to the South. Not yet anyway.

The pronouncement, of course, didn’t just take effect. Brown v. Board didn’t just repeal ancient precedent, washing away the structural barriers to equality much less the hardened hearts and minds. It would take protests, violence, more litigation, more laws, and bold equitable remedies. Twenty years after Brown, federal court involvement (as well as executive branch military support in especially thorny instances) remained necessary to grant equitable remedies to effectuate Brown’s pronouncement. All of these efforts would combine to move the country toward progress. Even still, we have not arrived in the “Promised Land”:

Let us all hope that the dark clouds of racial prejudice will soon pass away and the deep fog of misunderstanding will be lifted from our fear drenched communities, and in some not too distant tomorrow the radiant stars of love and brotherhood will shine over our great nation with all their scintillating beauty.

In January of 1964, months before the passage of the Civil Rights Act, Dr. King described Savannah “as the most desegregated city south of the

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67 Plessy v. Ferguson, 163 U.S. 537 (1896) (upholding the constitutionality of state laws mandating segregation by race in public facilities under the doctrine “separate but equal”).
68 See supra note 3 and accompanying text (noting the need for federal forces to enforce desegregation injunctions). Still, educational desegregation would take time. Though Brown and its remedial counterpart, Brown II, granted the district courts power to enact desegregation “with all deliberate speed,” many states remained segregated while mired in social resistance, appeals, and practical hindrances. See, e.g., United States v. Jefferson Cnty. Bd. of Educ., 380 F.2d 385 (5th Cir. 1967); Stell v. Savannah-Chatham Cnty. Bd. of Ed., 220 F. Supp. 667, 668 (S.D. Ga. 1963) (denying a class action suit to enjoin the Savannah Board of Education for failure to integrate the school system on the basis that “total group integration as requested by plaintiffs would seriously injure both white and Negro students in the Savannah-Chatham County schools and adversely affect the educational standards and accomplishments of the public school system”), rev’d, 333 F.2d 55 (5th Cir. 1964).

69 Martin Luther King Jr., I’ve Been to the Mountaintop (Apr. 3, 1968):

Like anybody, I would like to live a long life. Longevity has its place. But I’m not concerned about that now. I just want to do God’s will. And He’s allowed me to go up to the mountain. And I’ve looked over. And I’ve seen the Promised Land. I may not get there with you. But I want you to know tonight, that we, as a people, will get to the Promised Land!

Id.

70 King, supra note 18, at 11.
Mason-Dixon line.”71 This sentiment generates pride in many as a testament to Savannah’s progressiveness: “Savannah’s relative racial liberality stemmed in part from its coastal location. As a major Atlantic seaport, the community was traditionally less introverted or closed than other towns, having long experienced a regular transient influx of people of different nationalities.”72 The city valued something more than tradition: a reputation for civility and beauty. Even within Georgia, Savannah had a unique sensibility: “Savannah society is traditionally self-contained and aloof from the rest of Johnny-come-lately Georgia [as] Savannah aristocrats nod coolly to Atlanta, smile at Charleston,73 but bow only to London and Florence.”74 As with the Civil War, the power brokers of the era sought to shield and protect Savannah’s property: its architectural gems and its identity as genteel.75 Again, property was at the heart of identity, representing the city’s soul.

These southern historical places matter. It cannot be understated what it means that many Americans were forcibly brought to our shores. This action—a series of actions committed by powerful, profiting white families controlled by men76—caused a lasting negative legacy by treating and defining people as human property. These two words are a quintessential oxymoron: one cannot be human and be property. One cannot be a person and be owned like personal property. But this is exactly the predicament—the lived experience—of the institution of slavery.77 To have been chattel78 in this place that so many freed

71 TUCK, supra note 41, at 127; Stephen Tuck, Civil Rights Movement, NEW GA. ENCYCLOPEDIA (Sept. 9, 2014), http://www.georgiaencyclopedia.org/articles/history-archaeology/civil-rights-movement.
72 TUCK, supra note 41, at 45.
73 Id. at 129 (quoting reporter Douglas Kiker’s description of Savannah in June 1960) (citing ATLANTA JOURNAL, June 22, 1960).
74 Id. at 130 (noting that Savannah attorney and leader in civil rights negotiations, Malcolm Maclean, represented the “typical view of the city’s white consensus—his primary aim was ‘to preserve Savannah’s good name’”). Savannahians believed their national identity of civility and non-violence was at stake. Id.
75 It is difficult, uncomfortable, but true to speak of slavery beyond its institution, beyond passive voice. It is easier and more common to say slavery wrought injustice and it was wrong than it is to say specific actors chose to institute slavery and perpetuate it commercially, legally, and practically. Yet history must be acknowledged by all those who perpetrated slavery, including those who witnessed but took no steps to stop what was always a human injustice.
76 “The African slave trade is contrary to the law of nature, but is not prohibited by the positive law of nations.” The Antelope, 23 U.S. (10 Wheat.) 66 (1825). This oxymoron has existed and, unfortunately, vestiges persist in other contexts such as the treatment of women as property of men.
slaves and their descendants then had to call home. This would be promulgated through daily (mis)treatment and laws on the books. Ripping people from their place and consigning them to slavery in a place not of their choosing damaged their ability to shape identity freely and fully. What they experienced, especially in the South, matters. What we all still experience in the South matters if we wish to advance. They are not just a part of the history but must also be part of any path to progress because place shapes identity. It is only through examining tensions arising in our shared spaces that we forge a way forward.

So what of this place where we reside and study law, Savannah, Georgia?

I am the lawyer my father never had the chance to become; I teach law in a place he never wished to return. I am now reintegrating the space that my father escaped. I teach civil rights and remedies law in a building, the Old Candler Hospital, where my father convalesced as a young boy with a broken leg from a

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Insurance Company printed a pamphlet offering slave owners in six Southern states the option of insuring the lives of their slaves. For just $2, Kentucky, Missouri and Tennessee residents, for example, could purchase a 12-month policy from the Hartford-based insurer on a 10-year-old domestic servant that would yield $100 if the slave died. Policies for older slaves, like a 45-year-old, were more expensive, costing the slave owner $5.50 a year.

"Upon information and belief, AETNA’s predecessor in interest, actually insured slave owners against the loss of their human chattel."

Despite this unthinkable reality, the human spirit is determined and resilient. Maya Angelou captured this human capacity to sing and be heard even when caged in this excerpt from her powerful poem, *Caged Bird*:

But a bird that stalks
down his narrow cage
can seldom see through
his bars of rage
his wings are clipped and
his feet are tied
so he opens his throat to sing.

The caged bird sings
with a fearful trill
of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.

*Maya Angelou, The Complete Collected Poems of Maya Angelou* 194 (1994). Despite the horrific reality of slavery, slaves and their descendants created (and now carry forth) every indicia of free identity they could shape: songs, religion, cooking, stories, and other dimensions of identity that even evil cannot tamp.

*See Appendix C (Old Candler Hospital).*
hit-and-run car accident on Highway 17 in Eulonia. The bridge to the nearest town of Brunswick had flooded, so the ambulance took the longer route, and fate brought my father to the Old Candler Hospital in Savannah, Georgia. My father would recuperate in that hospital overlooking the historic Candler Oak for two months, with the nurses of Old Candler serving as his family. Significant historic preservation now transforms Old Candler Hospital into Savannah Law School, which overlooks Forsyth Park and the same Candler Oak, all just miles north of the lynching incident that scarred my father’s childhood.

Exposing and Embracing Tension

_We merely bring to the surface the hidden tension that is already alive. We bring it out in the open, where it can be seen and dealt with. Like a boil that can never be cured so long as it is covered up but must be opened with all its ugliness to the natural medicines of air and light, injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured._

Dr. King’s characterization of Savannah may serve as a point of pride for locals because it distinguishes Savannah as both more civilized and independent by acting before more violence or law forced its hand. This characterization,
however, does not mean Savannah was devoid of racial tension or a bastion of equal treatment. The compliment was a testament to the fact that Savannah resisted some of the deeper evils of anti-civil rights venom: “Savannah displayed the racial discrimination and supremacist mores characteristic of the Old South without the overwhelming bitterness and proclivity to violence associated with the Deep South.” “After the hot summer of protest in 1963,” Savannah, a “community conscious of its place in American history,” followed the lead of its “business community to end the blight of racial conflict through negotiations” rather than violence. This distinction offers a moment for pride, but also shame. As a racially diverse city of the South with an imperfect record but hearts and minds aimed toward progress, Savannah has the opportunity to be a beacon of equality. But we are not there yet.

Id. (quoting a prominent student civil rights activist of the time, Otis Johnson, who would later become Mayor of Savannah). Milder racism included “tokenism and do-nothingism of white people when confronted.” (quoting Benjamin Van Clark, then twenty-year-old Chairman of the Youth Division of the Chatham County Crusade for Voters, and author of Siege of Savannah). Even nonviolent racism has dire consequences, such as the 1961 firing of W. W. Law from his position at the post office “because of his leadership in the NAACP.” Id. at 129. As of 1960, Savannah had almost 150,000 residents, of which thirty-six percent were black. Id. Employment, economic, and housing disparities between white and black residents were stark:

[Of the employed,] over three times as many whites were skilled worked while nearly 40 percent of blacks were employed as laborers. The black unemployment rate of nearly 10 percent was double that of their white counterparts. [T]he median black individual income was only about one-third of the white income. Housing conditions also reflected a massive racial divide. Only half of the housing units in the black community were classified as sound, and nearly one in five were dilapidated. In the white community, by contrast, more than four in five houses were sound and a mere one in every twenty-five was dilapidated.

Id. “This racial barrier was not accompanied by the vindictive race relations of the Deep South.” Id. W. W. Law and other civil rights leaders of the region and of the NAACP later attributed Savannah’s more liberal outlook and openness to its Atlantic trade.” Id. at 130.

Id. at 130.

Id. (quoting M. S. Handler, Savannah Truce Shaped by Priest: A Leading Role in Parleys Taken by Msgr. Toomey, N.Y. TIMES, Aug. 4, 1963).

Id. (quoting Handler, supra note 91).

We should not squander this opportunity because “more than ever Savannah’s quandary mirrors the nation’s.” Martin Gottlieb & Peter Applebome, Jim Crow’s Ghost; Savannah and Civil Rights—A Special Report; Ways of Older South Linger in the City of
It is recognition of this duality that holds the keys to moving forward. Much work is left for the realization of equality. Savannah is not now a place of racial integration and harmony. This is so because the ghosts of our collective civil rights struggle remain. Savannah (as well as surrounding regions) has largely segregated housing patterns and de facto segregation in public schools that mirror the white flight from public schools to the robust private school infrastructure created in reaction to the implementation of desegregation after Brown.94 It also remains largely socially segregated by race.95 The ghosts of racial tension are not that distant.

Savannah, whether then or now, despite stark inequalities of opportunity, is more prosperous than its rural counterparts such that “the overall welfare of the

See Herring, supra note 86 and accompanying text (discussing Savannah’s relative lack of violence during the civil rights movement).


Two Savannahs indeed exist. One . . . is a beautiful jewel of a city nestled on the Atlantic, awash with culture, blessed with a world-class public school system, the land of endless opportunity, a desired place to conduct business and a summer vacation destination. Then there is the other Savannah, one whose residents live with burglar bars at every window and doorway, where the sounds of gunfire pierce the silence of the night, [where s]chool takes place on the street, [where b]usiness is usually conducted at gunpoint . . . . The inequality of poverty, race, and justice lives in this Savannah.

Id.
black community was less bleak than in much of the Deep South.\textsuperscript{96} The glow of prosperity can mask deep unhappiness while the projection conveys optimism. Whether satisfied or not, observers concluded that the black community of Savannah lacked “the impression of utter gloom and hopelessness found in the other Southern cities and in Northern urban centers.”\textsuperscript{97} Though injustice abounded in Savannah, the relative position of Savannah blacks appeared better than blacks living in rural Georgia.\textsuperscript{98}

If the impression was accurate, something about Savannah offered hope, or perhaps, opportunities for empowerment and advancement. This hope resonates still, even in the face of persisting inequality. Savannah, as a place, has a sunny disposition that infects its inhabitants and visitors. Call it charm, charisma, romanticism, pheromones, or kavorka: whatever it is, Savannah exudes something compelling and attractive to residents ushering hope. And whatever the reason, such seeds of hope and empowerment had yet to bloom in rural towns on the coast of Georgia.

Returning to the place of my father’s early days in McIntosh County, but fast-forwarding to events occurring almost two decades after Brown. The word of the Brown victory “barely had filtered into McIntosh County.”\textsuperscript{99} The races were not integrated. Not by law. Not by custom. Not by habit of white community or the black community.\textsuperscript{100} The impact of Brown’s promise was nonexistent as a political matter despite the fact that “McIntosh County was a majority-black county with virtually 100 percent black voter registration.”\textsuperscript{101} Its citizens had yet to experience the sort of political freedom that results in tangible representation or advancement:

[T]he residents had never elected a black person to the mayor’s office, the county commission, the city council, or the school board; had never seen a black person appointed to any governing board or selected for grand jury or trial jury service; had not elected a black to state government since the end of Reconstruction; and had not seen any black person hired by any local employer above the level of unskilled laborer, maid or cook. The black residents saw their children bussed...
past the white school to an all-black school furnished with used supplies and outdated textbooks. Despite the fact that separate was not equal, separate persisted. Equality of opportunity had not yet reached McIntosh County.

During this time, as all too familiar in the South, a central, powerful figure was the county sheriff, Thomas (Tom) Hardwick Poppell, part of a white family political empire. Sheriff Tom Poppell “inherited the office from his father, old, cranky, tobacco-chewing Sheriff Ad Poppell.” Tom was in the middle of “a thirty-one-year reign,” the people of McIntosh County continuously reelected Tom to office until his death—“completing the longest-running sheriff’s dynasty in the history of Georgia.” During his lengthy and popular reign, Tom ran the “county just like an old plantation” by encouraging a cycle of dependence on his goodwill. With his permission, black and other poor folks of McIntosh County would take the spoils of all manner of cargo trucks that wrecked on Highway 17 including: “canned goods, fresh produce and meats, building materials and tools, cookies and cakes, candy and guns, and once, fur stoles and fur coats.” Tom also held the keys to confinement or liberation, which result depended on your loyalty to him. This culture of dependence perpetuated a cycle of fear and gratitude.

Sheriff Tom Poppell knew everyone by name and delivered both good news and bad to his constituency. The sheriff “glided along the leafy sand streets in Darien in his Buick and turned north onto U.S. 17, bumping onto the rocky dirt dead ends in the pine woods,” where the black community lived, “with his car windows rolled down and his elbow stuck out, waving affably to one and all.” If anybody, white or black, got in to potential trouble, they did not fear Sheriff Poppell because they all knew he was open to bribery. Though the black community did not have money, they owned property, “hundreds of acres of prime Confederate land waved into their family lines by General Sherman.” They, the black residents and Sheriff Poppell, had “[a]n understanding”: “an

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102 Id. at 2.
103 Id. at 2.
104 Id. at 2.
105 Id. at 3.
106 Id. at 2.
107 Id. at 3.
108 Id. at 7.
109 Id. at 7.
110 See id. at 38 (explaining Sheriff Tom Poppell’s self-declared mantra regarding the “[o]nly way [to] control” the black community of his county: “keep them hungry”); id. at 82 (recounting Sheriff Poppell’s bribery system for black property owners).
111 Id. at 82.
112 Greene, supra note 44, at 82.
113 Id.
arrest warrant or an indictment might be mislaid permanently, or even formally dropped, in exchange for their land.” With slavery in the not that distant past, black citizens, “descended from the freedmen,” would exchange their land for freedom: “Titles would change hands in return for clemency and freedom, more valuable to the blacks than the richest land.” Sheriff Poppell, amassing significant wealth, “gained the loyalty—and the property—of the black families whose sins he forgave, whose debts to outsiders he severed, and whose crimes he forgot.” Easy come, easy go.

Criminal law, with Sheriff Poppell’s looming threats of charges well-founded or not, did little to instill confidence in the rule of law. The law had mainly furthered inequities and constituted threats. It was widely believed that, even as black police officers worked under Sheriff Tom Poppell, a black person who bucked the control of Tom would literally disappear: “We used to say they took a swim across the river wearing too much chain.” The governing narrative was that Sheriff Poppell “had people killed.” Yet the deeply entrenched consequences of racism and prejudice would require legal challenges with enforceable, forceful equitable remedies on the road to change. To right the wrongs, civil remedies would be needed. And the remedies that would be most needed were equitable. Such remedies truly would alter the status quo. The habeas corpus remedy might be needed to release anyone from unlawful and arbitrary confinement. The remedies of replevin and constructive trusts might be needed to return property wrongfully taken. And injunctions would be needed to undo Jim Crow laws, to repair intangible wrongs, to ensure proportional representation, to usher in tangible bricks-and-mortar equality, and to build the bridge to rights not yet extended to black citizens. But the black community of McIntosh County could not see that yet: neither the need, nor the cure.

114 Id.
115 Id.
116 Id. at 82-83.
117 Id. at 87.
118 Greene, supra note 44, at 87 (“I think everybody in the county knew the sheriff had people killed. He was too powerful to do it himself. He always have somebody to have it done.”) (quoting Thurnell Alston, a black resident of McIntosh County, one of twenty children, and ultimately an unexpected civil rights hero in the struggle for equality in the county).
119 U.S. Const. art. I, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”); 28 U.S.C. §§ 2254, 2255 (federal habeas corpus remedy for wrongful state detention, and federal habeas corpus remedy for unconstitutional federal custody, respectively).
121 “Bricks-and-mortar equality” is a phrase I am coining to describe remedies that unlock blocked access to physical buildings and spaces necessary for equality such as hospitals, housing, and schools.
Under the haze of Sheriff Tom Poppell’s regime of benevolence and threats, the black citizens of McIntosh County could not see the inequities or could not imagine any way to change it. Empowerment did not yet exist in the culture of this sliver of the Old South. Yet the rattling of (status quo) cages had begun in the protests of civil rights movement across the South and beyond. These acts of black empowerment (and racial confrontation and violence) and racial solidarity were unknown and unfelt among the McIntosh County black community:

When messages from the outside world began to leak into McIntosh County about riots and civil disobedience and racial confrontations, white Darien shuddered. And when images appeared on television of bitter mobs of blacks torching their own ghettos and smashing windows, of contorted-faced mobs of whites barely restrained by police lines and hurling rocks, and—strangest of all, hardest to decipher—of lines of blacks and whites singing and marching together with linked arms, Darien wilfully sank deeper into its own ladylike foliage of magnolia and tupelo and wisteria, and maintained a sweet-as-honey, slow-as-molasses pace of life, wishing the outer world would go away.

And blacks in their distant cabins shut their doors and windows and located, through static, on their radios and televisions, the voices and images of Martin Luther King, Jr., Malcolm X, and Bobby Seale. In Leningrad and Moscow in the same years, Jews and intellectuals drove far into the country to escape the censor’s blackout of the airwaves over the city. They parked in starry fields in the small hours of the morning and captured fragments, falling from the night sky, of the Voice of America, on black-market radios. Just this exotic and incredible and forbidden did the voices of the civil rights movement sound to the fishermen, gardeners, and maids in McIntosh County.

Living the Separate, But Unequal Water Fountains

Though the outside echoes of the movement were faint, Thurnell Alston began to experience the patent inequities of the daily predicament as a black resident of McIntosh County. He witnessed and experienced inequalities along gender, class, and racial lines. Low-paying manual labor was a fact of

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122 Greene, supra note 44, at 87 (“He was a benevolent dictator, but he was a racist.”).
123 Id. at 36 (emphasis added).
124 Id. at 37-42.
125 Thurnell Alston’s mother and other young black girls would walk miles to dehead shrimp at a canning factory, and along the way to work, they would hide in the woods from white men, who “know they be coming along that time of the morning, nothing but womens.” Id. at 37.
126 His father, “a pulpwoofer and a turpentininer,” would introduce his fourteenth child, Alston, to manual labor at the age of 15. Id. at 37-38. It was a bad year for pulpwooding; his father was laid off without pay. Id. at 38. Alston and others went to Sheriff Tom Poppell for aid, to no avail this time. Id.
life for Alston and his family and friends. After long hard days out in the woods, he was still cold, hungry, and poor. As my father often says, and Alston likely thought, there’s got to be a better way.

Alston thought he had found a better way when he secured a well-paying boilermaker position with Babcock & Wilcox in Brunswick, Georgia. It would be the seeds of empowerment in his soul that would prove more valuable than status or money. Segregation permeated his job. The segregated, unequal water fountains pushed Alston to his first act of protest for equal rights: Alston would “stand up” at the “hot, rusty black water fountain” holding up “thirsty others waiting their turn, unwilling to stoop and bend and push his lips forward to take the warm water offered [to] him and his race.”

After this protest, Alston, along with other black coworkers “demand[ed] audience with the plant supervisor[,]” who replied civilly but quickly beckoned a union representative for the discussion. This civil conversation with black men speaking and being heard by white men in power led to Alston serving as the Babcock & Wilcox’s “first black union steward.” The seeds of empowerment were growing again. Those seeds would be needed before long.

Then They Shot a Black Man in Broad Daylight

The pivotal turn for black community empowerment in McIntosh County was a shooting on March 22, 1972. The shooting involved Darien’s white
police chief, Guy Hutchinson, and black resident, Ed Finch. A verbal argument about the need to be quiet in the middle of a workday quickly turned violent, culminating in Hutchinson shooting Finch in the mouth and then arresting Finch.

Word spread swiftly through the Darien black community. This incident struck a formidable blow to “the fiction . . . of two separate societies living rather gingerly side-by-side, each with its own hub of social and business life.” This disrupted their “lives of civilized repression, separated from white Darien in dignified and orderly fashion according to state and municipal laws and the prevailing social codes.” But certainly this sort of an attack was impermissible: “the blacks were not, after all, to be slaughtered like hogs.” Rather, notwithstanding the reality of police sanctioned shootings and hangings of “underworld” black men, this “vicious and unprovoked attack by the chief of police against a citizen was a violation of the unspoken social contract that allowed the whites and the outcast blacks to live in peace.”

**A Seventeen-Year Civil Rights Battle Waged from a Kitchen Table**

The night Police Chief Hutchinson shot Ed Finch, troubled members of the black community knocked on Thurnell Alston’s door, which led to the black leaders of McIntosh County convening around his kitchen table for what would become a seventeen-year long battle for civil rights remedies. Over that first night, the black leaders strategized and rallied their base throughout the

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139 A spring flirtation between Mary Harmon and one of her hopeful suitors, Ed Finch, unfolded in the yard of her shack, which faced the Darien city jail’s back entrance. *Id.* at 117-18. Finch’s powers of persuasion were not working smoothly; instead, “[f]ussing and drinking and shouting and scolding, the voices rose” sufficiently to draw the unwelcomed attention and ire of police chief, Guy Hutchinson, known as “Hard Rock,” and described as a reddish-skinned, mean Archie Bunker. *Id.* at 119-20.

140 *Greene, supra* note 44, at 120-21. “Hutchinson approached him from behind, they wrestled briefly—Finch reached for a hoe lying in the yard, then Hutchinson stuck his .38-caliber revolver into Finch’s mouth and fired. . . . Having been shot point-blank in the face, jailed, and denied medical attention, Ed Finch was charged with aggravated assault—a felony—and drunk and disorderly conduct—a misdemeanor [as well] having obstructed a law enforcement officer in the lawful discharge of his duties.” *Id.*

141 *Id.* at 122 (“The black people stood and spoke in quiet voices under the dogwood trees.”).

142 *Id.*

143 *Id.*

144 *Id.*

145 *Greene, supra* note 44, at 122-23. “Bodies [of McIntosh County black men] had been found in the pine woods, as had new ownerless cars; bodies had surfaced in the marshes.” *Id.* at 123. But for those disappearances and murders, Sheriff Poppell “had the propriety, the good manners, to keep such acts far from the flowery streets of Darien.” *Id.*

146 *Id.* at 122.

147 *Id.* at 123.

148 *Id.* at 126-27.
McIntosh County with the hopes of a non-violent solution. By the next morning after the shooting, “[m]ore than 200 black men and women” of Darien and from all over the County “circled City Hall” sitting in their cars with guns as even more cars with “white men sat wearing sunglasses, holding loaded shotguns”—all with Sheriff Poppell already on high alert. “The black community of McIntosh County had long been obliquely described, by whites speaking among themselves, as ‘the sleeping giant.’” Now, “for the first time in a hundred years, the sleeping giant had been prodded awake.”

For Alston, this incident was the “breaking point”—“there is just no excuse for a white guy shooting a black guy in the mouth.”

Amidst rising tensions, the black community found its voice. They stood up to the chief deputy, warning him “to tell Sheriff [Poppell] that his office was going to be next if anything happened.” Their demands were met, including Finch’s release and the removal of Police Chief Hutchinson.

Yet that didn’t stop a grand jury of twenty white men and one black man from immediately indicting Finch for “aggravated assault and obstructing an officer.” Ultimately, an all white jury convicted Finch on both counts of the criminal indictment and sentenced him to twelve months jail time for each count; six months of which Finch would serve before parole.

“Many years later, few whites even recalled Finch’s name,” while it was a “historical,” “watershed” moment for many blacks who remembered it. For Alston, the event awakened in him the need for deeper changes, so he ran for

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149 Id. at 128.  
150 Id.  
151 Greene, supra note 44, at 130.  
152 Id.  
153 Id. at 138.  
154 Tensions ran high inside City Hall that day: “Sheriff Poppell sent reinforcements,”—his chief deputy—“uniformed, freshly shaved, unflappable, and armed.” Id. He tried to placate the crowd and delivered Poppell’s command that they go home. Id. at 134. But no one would “disperse until Thurnell Alston gave the word to do so.” Id.  
155 Alston encouraged village members to talk because he resided just outside Darien’s city limits. Id.  
156 Id.  
157 Greene, supra note 44, at 135. They “got Finch out of jail that day” and also discovered Finch’s jawbone was broken such that he couldn’t eat. Id. Ultimately, “the city council acquiesced to all the black demands,” including medical care for Finch and the removal of Police Chief Hutchinson from office pending investigation. Id. Only after Alston gave the nod, did the black crowd disperse. Id.  
158 Id. at 136. With funds donated from black churches, Finch retained Bobby Hill, “a flamboyant young black lawyer from Savannah,” who “brought a civil suit against Hutchinson, Mayor Caldwell, and the city of Darien.” Id.  
159 Id. Following this conviction, the court dismissed his civil suit for damages. Id. “[Finch] died in 1976.” Id. Police Chief “Hutchinson was shot to death in Texas.” Id.  
160 Id. at 139.
office, more than once, and lost. Still the seeds of empowerment could not be
tamped.

The McIntosh County Grand Jury, in May of 1975, “appointed a new
member to the McIntosh County Board of Education”—naming the brother of
the jury’s foreman and ousting “Chatham Jones, the only black member of
the board of education.” Through “a system of patronage and nepotism, the all-
white grand jury created in its own likeness the all-white school board to preside
over the majority-black public schools.” The black community was shocked by
the blatant racism, and this time they would retaliate. Countless
discriminatory voting offenses of the past had failed to generate protest: “they
had passed unnoticed, unremarked upon, and were shelved away in file cabinets
in the basement of the courthouse.” This time, the McIntosh County black
community was “ready to fight now.”

Ultimately, the black community leaders would launch a jury discrimination
case. This federal lawsuit would be the first in a series of civil rights cases in
McIntosh County. These cases would generate powerful consent decrees and
equitable remedies that would begin to alter the status quo—moving the social
and political landscape of the region towards a path to equality.

Creative energy and impassioned speeches would be needed to rally
support. Further, the path to equality would require both grass roots and legal
maneuvers. All would take time. Fortunately, local black leaders were disciplined
and prepared to overcome challenges to fix broken discriminatory systems this
time. They would not stop until they achieved tangible remedies.

As a first step in reaction to the County’s all-white grand jury and school
board, Alston and Minister Nathanial Grovner “revived the McIntosh branch of
the NAACP with Grovner as president and Alston as vice-president.” Alston
would also serve as president, and Grover as vice-president, of a new body, the
McIntosh County Civic Improvement Organization (MCCIO). To no avail,
they launched a formidable written campaign protesting the County’s grand jury
maneuver. They decried the injustice in a letter to the Darien News, but the

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161 Id. at 139–40. For example, Alston “ran against Deacon Danny Thorpe for his seat
on the county commission,” but Thorpe had Sheriff Tom Poppell who would “go around
and ask them white people to work and vote for [him].” Id. (quoting Thorpe).
162 Id. at 140.
163 GREENE, supra note 44, at 140.
164 Id. at 141.
165 Id. at 140.
166 Id.
167 See infra note 200 and accompanying text.
168 GREENE, supra note 44, at 233 (describing three years of constitutional litigation
based on the efforts of local black leaders and legal aid lawyers—all of which would result
in fundamentally altering for the better: the jury system, the board of education members
selection process, and the voting districts).
169 See infra notes 208–14 and accompanying text.
170 See infra notes 171–201 and accompanying text.
171 GREENE, supra note 44, at 141.
172 Id.
173 Id. at 142.

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Grand Jury stood by its decision and denied any “conscious effort on the part of any member to discriminate against members of the Black community in McIntosh County.”

“[O]n the pulpit,” Alston and Grovner continued to sound the drumbeat of inequality and injustice of McIntosh County.

In a county 50 percent black, there was no black mayor, city councilman, or county commissioner, nor any black sheriff, judge, or grand jury member—and never had been. Nor was there a single black store owner, clerk, salesperson, cashier, bookkeeper, bank teller, librarian, state park employee, firefighter, or mailman. In the poorest county in Georgia, there were no black employees at the welfare office or Social Security office, nor at the phone company, the power company, the courthouse, or the convenience store.

Hoping for momentum, reinforcements arrived: Sammie Pinkney, who had returned home to McIntosh County from New York City. These three, called the “Three Musketeers” or the “Three Wise Men,” would try to shift the entrenched racial politics of the County.

With political momentum being stymied, what the Three Musketeers needed were civil rights remedies—they just did not all fully know that yet. During those days, the “controversial” Georgia Legal Services Program (GLSP), founded in 1972, operated “in a creaking old edifice right in the center of Brunswick” and handled “thousands of cases.” Pinkney sought the services

174 Id. Their letter reminded all that it was only five years prior that the jury had appointed the first black representative to the board. Id. Then, they lambasted the Grand Jury’s ouster of the only black member only to replace him with a white relative: “The 1975 Grand Jury, all White with no Black representation, apparently elected to turn the clock of progress back (100) one hundred years by failing to reappoint the Black member.” Id. (quoting their letter to the Darien News).
175 Id.
176 Id. at 145.
177 Id. (quoting their letter to the Darien News).
178 Id. at 149. The three met regularly to strategize; Sheriff Tom Poppell was well aware of every meeting. Id. Poppell even threatened to sue Pinkney for derogatory remarks he made about the sheriff in a taped lecture to a political science class at Brunswick College. Id. at 151.
179 Id. (“[Pinkney’s] experience of the American West, of Europe, and of New York gave him the status almost of a prophet when he returned home to McIntosh.”). Upon Pinkney’s return in the summer of 1974, he “bought a brick ranch house in the lovely all-white area called The Ridge, he felt as if he—a wounded and decorated officer of the law—were likely to be stopped again on the sidewalk in Darien and questioned about his right to walk there, as had happened in slave times, when blacks needed permission slips from their owners to walk downtown.” Id. at 148.
180 Id. at 147. He was thirty-eight years old that summer. Id. at 146.
181 Id. at 145. Pinkney was a former schoolmate of both Alston and Grovner. Id. at 147.
182 Id. (Greene, supra note 44, at 152-53 (quoting Thomas Affleck, then Georgia Legal Services Program’s managing attorney of the Brunswick office and graduate of
of local legal aid lawyer, Marian Smith, who was “circuit-riding” from Brunswick for “twice-monthly appearances” at “a borrowed . . . cubicle at the welfare office in Darien” to assist with welfare case referrals. Pinkney also arranged a meeting with Affleck, the managing attorney of the Brunswick GLSP office, and “invited Alston and Grovner—worn out and hoarse from the nightly church meetings—to take a ride with him down the coast.” Accordingly, “the Brunswick GLSP office—perhaps the most conservative of all the regional offices in its interpretation of the lawyers’ mandate to handle the divorces and other individual cases one, by one, by one—was introduced, by a trio of rural-dwelling black men, to the wider world of class-action suits and impact litigation.”

And so they prepared to launch civil rights litigation in federal court. While the Three Musketeers met in Brunswick to amass documents and strategize with the legal aid lawyers, they publicly showcased “their racially integrated circle” at local restaurants in downtown Brunswick. They were most frustrated with the McIntosh County Board of Education selection process given its “Byzantine structure.” Consequently, the coalition was “having a really hard time figuring out what the legal remedy would be.”

The litigation strategy sessions—in search of a remedy that would somehow alter the status quo of the School Board—led to a theory for a jury discrimination lawsuit: “no black people had been on the grand jury in the last forty years” and

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Georgetown University Law School). The cases were commonly welfare or divorce related. Id. at 169. In fact, Sheriff Poppell asked Affleck to provide legal aid assistance for McIntosh residents who needed divorces. Id. at 168.

183 Id. at 168-69. “Sammie Pinkney, . . . probably the most well read and worldliest black man in McIntosh, assumed the legal aid lawyers would be capable of analyzing more complex cases than divorces and food stamps.” Id. at 169.

184 Id.

185 Id. at 170.

186 Another legal aid lawyer, David Walbert, “an affluent, superbly educated, fast-talking social revolutionary,” flew down from Atlanta to hear their stories. Id. at 171. Though Walbert was a “hothead,” who cursed likely more than anyone in the State (save perhaps Sheriff Poppell), Walbert “initiated fifteen voting rights suits across Georgia” that effectively redrew voting districts of dozens of affected communities. Id. at 171-72. The Three Musketeers came to rely and honor Walbert through engaging in “his rapid-fire, wide-ranging legal discourse” about the Constitution, universal truths, and human rights. Greene, supra note 44, at 172.

187 Id. at 171. Thomas Affleck recalled how much he loved that the white legal aid lawyers had significant “contact with the black community,” supporting them and showing up at all manner of events including functions and rallies. Id. at 174. The Three Musketeers also met with the Democratic Senatorial Campaign Committee in Washington, D.C., to strategize about remedies. Id. at 173.

188 Greene, supra note 44, at 173. It would not be simple to alter the selection process for the County’s Board of Education because of the layers of politic machinery at work in McIntosh as well as several other counties in Georgia: “[T]he grand jury appointed the school board. And the local jury commissioners appointed the grand jury. And the local superior court clerk supervised the jury commissioners.” Id. at 174-75.
perhaps ever.\textsuperscript{190} Alston had known—lived—these facts, but the team began conducting extensive research to find supporting data,\textsuperscript{191} and he would be pleased to learn that these wrongful acts constituted “discrimination” and “a violation of due process.”\textsuperscript{192} The Constitution, “[h]oused in distant Washington, under glass, indecipherable script fading from parchment, it spoke to the black people, for the black people, and would protect the black people, according to the lawyers.”\textsuperscript{193} This “white boys’ Bible,” the Constitution, “had something to say about the miserably low status of his small community on the Georgia coast.”\textsuperscript{194} The Three Musketeers would trust their white lawyers,\textsuperscript{195} and their civil rights lawsuit would claim “that the McIntosh County Board of Education had been appointed by an unlawfully composed grand jury, one nonrepresentative of the population and non-randomly drawn from the voting lists.”\textsuperscript{196}

Suit in federal court was a must given local fiefdoms. Filing in “federal court meant not in or from McIntosh County, meant appearing before a federal judge, one not owing his position to Sheriff Poppell.”\textsuperscript{197} The team recruited plaintiffs for the class action; the GLSP lawyers drove up “the old highway slicing through darkening pine forest” until they reached “the Calvary Baptist Fundamental Independent Missionary Church,” where they would convince black residents to sign unto the complaint despite the risks of retaliation.\textsuperscript{198} And sign they all did.\textsuperscript{199}

On September 9, 1975, the team filed the lawsuit in the United States District Court for the Southern District of Georgia, located in Brunswick:

This action arises under 42 U.S.C. Sec. 1983, the Sixth Amendment and the Equal Protection and Due Process Clauses of the Fourteenth

\textsuperscript{190} Id. at 175.
\textsuperscript{191} Id. at 178. The team uncovered troubling census and jury data: the books had been cooked. The data showed “the total population of McIntosh County was 7,371, of which 50 percent were black and 50 percent white, 51 percent female and 49 percent male.” Id. at 177. Those of voting age were 4251 citizens, “of which 45 percent were white and 54 percent were black, 53 percent female and 47 percent male.” Id. The jury pool, supposedly coming from registered-voter lists, “were 56 percent white and 44 percent black, 52 percent female and 48 percent male.” Id. “But the 1973 biennial traverse jury list—the list created by the McIntosh County jury commissioners from the voter-registration rolls—contained the names of only 398 persons, of which 87 percent were white and 13 percent black, 92 percent male and 8 percent female.” Id. Similarly, the 1973 grand jury list “contained only 156 names, of which 90 percent were white and 10 percent black, 92 percent male and 8 percent female.” Id. at 178.
\textsuperscript{192} Id.
\textsuperscript{193} Greene, supra note 44, at 180.
\textsuperscript{194} Id.
\textsuperscript{195} Id.
\textsuperscript{196} Id. at 178.
\textsuperscript{197} Id. at 181.
\textsuperscript{198} Id. at 182-83.
\textsuperscript{199} Id. at 185-86. “The lawyers drove back down the narrow, dark highway in subdued silence, feeling now that the signed document riding inside the briefcase between them on the seat—the document they’d earlier tossed into the car truck after work—was a priceless thing, almost a holy thing.” Id. at 186.
Amendment to the United States Constitution. . . . This is an action for injunctive and declaratory relief to secure the right of qualified adult Black residents and adult female residents of McIntosh County, Georgia, to be fairly chosen for Grand Jury and traverse jury service in McIntosh County, Georgia, without discrimination as to race or sex.\textsuperscript{200} Only equitable relief would do. An injunction would be necessary to order the County to comply with the Constitution’s guarantees.

The GLSP lawyer team “presented the statistical claim, the underrepresentation, the almost complete nonrepresentation of blacks and women on the lists compiled by the jury commissioners.”\textsuperscript{201} The evidence was forceful. The judge took notice.

Judge Anthony Alaimo persuaded the defendant to see that the facts warranted a dramatic remedy without a trial.\textsuperscript{202} Judge Alaimo helped generate an agreement by informing the County’s attorney that “the law was clear on this and there wasn’t any point in fighting the case.”\textsuperscript{203} The equitable relief sought via an injunction would come in the form of Judge Alaimo’s consent order, which commanded that McIntosh County grand and traverse jurors be selected at random, “laid out step by step, lest there be some mistake: ‘The defendant jury commissioners shall place the voters’ list\textsuperscript{204} in an identifiable order, alphabetical or otherwise, and shall choose a name as a starting point [and] will select every third name . . . ’ and so forth.”\textsuperscript{205}

These stories of McIntosh County and its racial strife do not end there. This case was a watershed in the County’s civil rights struggle with other cases to

\textsuperscript{200} Greene, supra note 44, at 187. As for the defense, Charles Stebbins, the attorney representing Darien, said that they basically were prepared for the suit given the tide of litigation in other places. Id. Describing himself as “a typical southern person,” Stebbins confirmed the entrenched nature of racial segregation:

My relationships with black people have hardly changed over the years. I hardly ever had any occasion to deal with black lawyers. There are none here. There might possibly be one in Brunswick; I think there is. I haven’t dealt with him. I spoke to a black woman dentist on one occasion . . . . I’ve forgotten what about, but that’s been my only contact with the black professional.

\textit{Id.} at 187-88. Stebbins also noted that, though the schools were separate when he attended, “we played with black children all the time, sandlot football” and “always had perfectly happy relationships with them, from my standpoint.” \textit{Id.} at 188. As for Sheriff Poppell, he was calm and even tried to observe the proceeding until Dan White, the attorney representing McIntosh County, asked Poppell to leave—about which he exclaimed: “Thrown out of my own damn courtroom!” \textit{Id.} at 190 (Affleck’s recollection of the sheriff’s reaction to the ouster).

\textsuperscript{201} \textit{Id.}

\textsuperscript{202} \textit{Id.} at 191.

\textsuperscript{203} \textit{Id.} at 190-91.

To the county attorney’s credit, White consented that “if leaders of the black citizens would go to the next grand jury meeting with a list of four potential nominees for the board of education, that somebody black would be selected.” \textit{Id.} at 191.

\textsuperscript{204} Greene, supra note 44, at 191.
follow.\textsuperscript{206} Subsequent litigation, even bolder, aimed “to carve McIntosh and Darien into majority-white and majority-black districts so that freely chosen candidates might arise and be elected from within each, so that the blacks really might control the politics in a single district.”\textsuperscript{207} When political negotiations stalled,\textsuperscript{208} the coalition filed two voting rights suits charging dilution of black votes.\textsuperscript{209} This time the black citizens, however, would not be plaintiffs, as they feared retaliation.\textsuperscript{210} The NAACP would assume the mantel in this “bigger, bolder” attack aimed “right at the heart of the power structure;”\textsuperscript{211} \textit{NAACP v. The City of Darien} and \textit{NAACP v. McIntosh County}.\textsuperscript{212} Again, the coalition appeared before Judge Alaimo, but this time he would dismiss the claim because plaintiff had not shown depressed minority voter registration.\textsuperscript{213} But all hope was not lost; the coalition appealed and won: the United States Court of Appeals for the Fifth Circuit reversed and remanded.\textsuperscript{214} This led to a significant restructuring of the voting district in that the City agreed to carve Darien into districts with a majority-black district.\textsuperscript{215} This result, borne out of litigation, mirrors a judicially ordered equitable remedy. These litigation efforts, spanning three years, would ultimately help change the racial atmospherics of the City of Darien and McIntosh County and create tangible inroads into positions of power, including Alston finally winning a political office.\textsuperscript{216} Though Alston

\textsuperscript{206} Lawsuits were not the only tactics, as racial violence loomed large with both sides “equally armed,” but it would be lawsuits and their remedies that would prove pivotal for change. \textit{Id.} at 202. The black community also sought to negotiate with politicians prior to suing, including specific demands for improvements in black representation. \textit{Id.} at 204.

\textsuperscript{207} \textit{Id.} at 211. This goal began as a pipe dream, but the coalition kept working towards this bold remedy based upon the continued racial entrenchment and biases contaminating local power struggles such as the immediate firing of seven black city workers by a newly elected white mayor of Darien. \textit{Id.} at 195.

\textsuperscript{208} After three weeks of the black community boycotting Darien stores, the county commission assented to the black community’s demand to install “a biracial committee to oversee affirmative action hiring in the county.” \textit{Id.} at 211. After a year-and-a-half without notable progress, the coalition filed the voting rights lawsuits. \textit{Id.}

\textsuperscript{209} \textit{Id.}

\textsuperscript{210} \textit{Id.}

\textsuperscript{211} \textit{Id.}

\textsuperscript{212} \textit{Id.}

\textsuperscript{213} \textit{Id.} at 218.

\textsuperscript{214} McIntosh Cnty. Branch of the NAACP v. City of Darien, 605 F.2d 753, 759 (5th Cir. 1979) (citing evidence of black voter dilution and concluding: “The effects of past racial discrimination may persist for many years after the discrimination has ended”).

\textsuperscript{215} Greene, supra note 44, at 219. At this point and through similar machinations, the litigation had also caused the slicing up of McIntosh County. \textit{Id.}

\textsuperscript{216} \textit{Id.} at 228 (Yet “[t]here was no simple happiness in winning” because Alston needed “to show the whites that filing the lawsuits and carrying this election arose from a powerful sense of history that they refused to understand; that everything that had happened so far was just Thurnell Alston rolling up his sleeves”); \textit{Id.} at 252 (relaying that Pinkney believed Alston’s election dramatically changed the commission because before his election, Sheriff Poppell, without the right to do so, sat at the corner of every meeting and gave his blessing on all final decisions).
would not stay in power for his life, 217 a black resident would replace him and other black community members would steadily make their way into political offices. 218

The underlying abuses of power and discriminatory acts reached a tipping point with Finch’s shooting and conviction. These racially charged events swiftly led to the black community’s first civil rights suit. That suit, led by the Three Musketeers, culminated in a meaningful equitable remedy. With that powerful remedy actually in effect, the tides of empowerment began to flow and would not be stopped. Remedies, therefore, constituted a critical part of the strategy for change such that multiple civil rights suits followed. Ultimately, the confluence, no doubt influenced by the sounds of freedom seeping in from beyond local borders, yielded a powerful civil rights coalition, garnering tangible remedies to begin undoing injustices. Even with this altering of the status quo and other powerful remedies that would follow, tensions and inequality remain all along the Georgia coast.

Intangible Civil Rights Harms Still Remain Uncured

[W]e still creep at horse and buggy pace toward gaining a cup of coffee at a lunch counter. 219

The dilemma of civil rights violations is that deep harms are often intangible. Put another way: “[A] civil rights plaintiff seeks to vindicate important civil and constitutional rights that cannot be valued solely in monetary terms.” 220 Rather, equitable remedies are necessary to address the intangible harms. Such remedies uniquely comprise “a special blend of what is necessary, what is fair, and what is workable.” 221 In the civil rights context, judges historically exercised equity’s characteristic “practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs.” 222 Flexibility and discretion add to the challenges trial judges face in crafting ideal relief within the limits on judicial role.

Decades have passed since the civil rights movement, but we are not finished with court cases or the necessary remedies. Some of the problems are collective patterns reinforced over time through prejudice or preference for the known. Racial entrenchment and misunderstanding abound. Disparities in income, housing, education, and related opportunities continue to persist along racial lines. Such gaps affect the cycles of violence, drugs, and incarceration that disparately affect black communities. Courts cannot fix all that, but certain

217 Alston’s story of triumph would not last his whole life; in fact, he would experience a social and political free fall, which began when the local department of family and children services investigated him and ended with Alston’s conviction for getting mixed up in a federal drug bust. Id. at 264, 293-94.

218 Id. at 335.

219 King, supra note 18, at 69.


221 Park View Heights Corp. v. City of Black Jack, 605 F.2d 1033, 1036 (8th Cir. 1979).

222 Id.
Travesties of justice will not abide. Sometimes, however, courts undo the critical aid that remains necessary. For instance, the Supreme Court’s recent unraveling of hard-earned voting rights remedies.\(^{223}\) Sustained legal challenges, as well as looming threats, also have and likely will continue to dismantle civil rights advancements in education\(^ {224}\) and housing.\(^ {225}\) Ongoing constitutional violations should not continue without remedy. Housing remains nonintegrated. Remedies remain elusive. As communities work through struggle, and at times litigation, remedies will aid in the correcting of injustices and ideally in the shifting of long-held misconceptions.

Pockets of conflict persist with historical, racial significance that will require delicate solutions, and more than likely, judicial involvement to craft ideal remedies. One need not look far for just such an example: the Gullah-Geechees inhabitants of Sapelo Island. The Gullah-Geechees are descendants of slaves who “have long held their land as a touchstone.”\(^ {226}\) Their island is “a tangle of salt marsh and sand reachable only by boat.”\(^ {227}\) Many creature comforts and daily requirements—water, police, fire rescue, doctors, hospitals, and paved

\(^{223}\) Shelby Cnty., Ala. v. Holder, 133 S. Ct. 2612, 2615-16 (2013) (holding Section 4 of the Voting Rights Act unconstitutional and noting that the nation is no longer divided along the racial lines and discriminatory voting procedures of fifty years ago).

\(^{224}\) Black access to the U.S. public school systems has been declining since the 1990s. Gary Orfield & Erica Frankenberg et al., Brown at 60 Great: Progress, a Long Retreat and an Uncertain Future, UCLA CIVIL RIGHTS PROJECT/PROYECTO DERECHOS CIVILES 10 (May 15, 2014), http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/brown-at-60-great-progress-a-long-retreat-and-an-uncertain-future/Brown-at-60-051814.pdf. At the peak of school integration, black access was forty-four percent; however, starting in 1991, the percentage has dropped to its current level of twenty-three percent, a level equal to that in 1968. Id. at 10-11.

“Throughout the 1980s there was a strong legal attack on desegregation orders, led by the Reagan and Bush administrations’ Justice Departments and, in 1991, the Supreme Court authorized the termination of desegregation plans in the Oklahoma City (Dowell) decision.” Id.; see also Bd. of Educ. of Okla. City v. Dowell, 498 U.S. 237 (1991).

\(^{225}\) Sherrilyn Ifill, President and Director-Counsel of the NAACP Legal Defense and Educational Fund, warns that the Fair Housing Act, a “landmark civil rights law is in jeopardy, as the U.S. Supreme Court prepares to hear a case about whether to overturn foundational fair housing protections.” Sherrilyn Ifill, Op-Ed., Protect Fair Housing Legacy, SAVANNAH MORNING NEWS, Jan. 19, 2015, at 10A (forecasting the import of pending Supreme Court case, Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc., No. 13-1371, argued Jan. 21, 2015). The stakes are high because the Act “has been instrumental in eliminating policies like racially-exclusive zoning rules, subsidies for segregated communities, and redlining, all of which perpetuated racial segregation, stripped individual African Americans of their right to choose where to live, and relegated entire communities to ghettos of inferior opportunity.” Id.; see also Shelby Cnty., Ala., 133 S. Ct. at 2650 (Ginsburg, J., dissenting) (“Throwing out the Voting Rights Act when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”).


\(^{227}\) Id.
roads—common to other communities have not reached Sapelo Island. Yet the Gullah-Geechees have culturally thrived despite modern threats to traditions. Their unique cultural heritage continues in many forms, including sweetgrass basketmaking, painting, and the distinct music of the McIntosh County Shouters, performing ring shouts carried down from slavery times. Though the Gullah-Geechees maintain these and other rich cultural traditions, survival in modern times remains a battle.

The Gullah-Geechees of Sapelo Island must now stem the tides of commercial beachfront development: Fewer than fifty people—all descendants of slaves—fear they may soon be taxed out of the property their families have owned since the days of slavery. Property assessments have raised taxes on their ancestral properties as much as 600% for some residents. The County Attorney, Adam Poppell, handling the political response is the nephew of Sheriff Tom Poppell, who was at the center of the McIntosh County civil rights cases. Adam Poppell acknowledges the cultural treasure of the Gullah-Geechees, but asserts that, under the letter of the law, the taxes are valid as a reflection of rising fair market values. Political solutions include garnering a special tax exemption for the Gullah-Geechee as a cultural community. But, as the McIntosh County civil rights cases showed, “McIntosh County has a history of bureaucratic mistakes and election corruption.” With faith in the political processes lacking, the Sapelo Island Gullah-Geechee contacted lawyers. When politics stalemates, equitable remedies are sometimes required to dislodge the status quo. An equitable remedy could be exactly what the Gullah-Geechees need to protect them from irreparable harms: a tax freeze injunction. Whether such a remedy is warranted or how to fashion more creative equitable relief will need to be part of the wise discretion of a judge.

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228 Id. In recent years, the County began providing garbage pickup service, though residents must drop off their trash at the dump.
230 Severson, supra note 226.
231 Id.
232 Id.
233 Id. A ninth-generation resident and descendant of slaves from Angola, Cornelia Walker Bailey vocally defends the Gullah-Geechee land and opposes the property tax increases, which for her have been raised more than 600%. Id. And, for seventy-three-year-old Annie Watts, property taxes for her one acre of ancestral property have jumped roughly 540%, from $362 to $2312. Id.
234 Terry Dickson, Jones Still McIntosh County Sheriff, Florida Times-Union (Nov. 9, 2004), http://jacksonville.com/tu-online/stories/110904/geo_17138878.shtml (describing an eighty-person crowd in the Darien courtroom listening to the final, very tight recount vote—2695-2659—in the race for McIntosh County Sheriff between the declared winner Charles “Chuck” Jones and opponent Stephen Jessup, for whom Adam Poppell III appeared); id. (reporting Adam “Poppell is the former county attorney and son of Adam Poppell Jr. and Ann Poppell, both of whom served as clerk of the Superior Court, and he is the nephew of the late Tom Poppell, the longtime county sheriff”).
235 Severson, supra note 226.
236 Id.
To Conclude Is To Begin

Listen! The tide’s coming in and you might as well be ready for it. 237

As we move forward to live and rebuild communities as well as craft ideal remedies for complex situations, we cannot forget the collective ghosts of our history. The actions and interactions of the past affected lives and shaped identities. The places that served as a historical situs for struggles and victories have meaning that remains. As we enhance our public and private schools, our roads that connect communities from one side of the tracks to the other, let us not simply follow the march of economy because progress requires human flourishing along with economic advancement.

Buildings, once abandoned, now to be historically refurbished, including the transformation of the Old Candler Hospital into Savannah Law School238 and the old Greyhound station into The Grey Restaurant.239 We have to listen to the Greyhound station ghosts, who all rode separated by race,240 and Old Candler’s employees and patients who witnessed, perpetrated, and experienced injustices on the bases of racial and cultural differences.

Each of us, within our own communities, has the opportunity to contribute positively toward meaningful change. Progress requires social change.241 It is insufficient to say that old harms, having been dealt with, are long dead. It is not enough to have forcibly opened gates to schoolhouses, buses, and lunch counters. Whether one’s community acted without court remedies or required decades of judicial orders to cure ongoing violations long after such rights existed, all communities have a role to play in bringing the dream of equality and appreciation of differences to fruition. Every town and city with a road named Martin Luther King Boulevard,242 or a civil rights museum nearby, must understand our work is not done with an ordered remedy or a dedicated monument. Rather, conflict must be admitted; fears acknowledged; and differences embraced. Finally, the struggle towards justice through the implementation of well-crafted remedies must be thoughtfully pursued and carefully executed. It is only then that we may all experience true progress.

237 Tuck, supra note 41, at 136-37 (quoting Arthur Gordon, founder of the biracial Savannah Greys, reflecting on what he viewed as “his most powerful argument” in overcoming white fears and moving towards racial progress after the sustained black protests of the civil rights movement).

238 See Appendix E (Historic Renovation of Savannah Law School).


240 See Appendix F (Greyhound Bus Images).

241 Even social stability benefits from change. Tuck, supra note 41, at 137 (“In the face of unremitting black pressure, the establishment concluded that social stability required social change.”).

242 Stodghill, supra note 63 (“It’s tough to imagine now, but for decades during segregation—and before the urban renewal projects of the 1960s—the pride of Savannah’s black movers and shakers was West Broad Street, now a gritty stretch of vacant lots, public housing and highway overpasses known as Martin Luther King Jr. Boulevard.”).
Equitable remedies are particularly crucial in helping to cure civil rights violations. This is true because remedies for civil rights harms are often otherwise intangible. Such harms cannot be quantified into monetary substitutes. Equitable remedies in the context of civil rights violations reshape the boundaries of the right and, in the process, inform the identities of the right holders. Accordingly, this Article demonstrates one example of my broader thesis: remedies shape rights.  

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243 Caprice L. Roberts, Remedies Shaping Rights (forthcoming manuscript).
APPENDIX A
Map of Coastal Georgia
APPENDIX B

Map of McIntosh County, Georgia
Appendix C

Old Candler Hospital
Appendix D
Candler Oak

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Appendix E

Historic Renovation, Savannah Law School
Appendix F

Greyhound Bus Images from The Grey postcards