

S AVANNAH LAW REVIEW

VOLUME 2 | NUMBER 1

BOUNDARY WORK IN BLACK MIDDLE-CLASS COMMUNITIES

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Introduction

Most African Americans are not poor. In fact, an overwhelming majority of black Americans are squarely entrenched in the rungs of the (lower) middle class.¹ Despite this statistical reality, almost all of the legal scholarship on African Americans focuses on the struggles of the very poorest black citizens. Articles on welfare benefits, unemployment, public housing projects, and even the cultural dust-ups over teen motherhood almost uniformly center on the urban ghetto and the lives of impoverished African Americans. Rarely do scholars focus on the promise and problems particular to the growing cadre of black middle-class enclaves.² This brief Article hopes to reverse the trend. Building on insights from sociology and economics, the following pages explore the housing situation of

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¹ It remains true that African Americans are disproportionately impoverished and earn less than their white counterparts. Nonetheless, 73% of blacks live above the poverty line, a majority of African American households earn annual incomes that exceed \$30,000, and household-income growth for blacks has outstripped that of their white colleagues since the mid-1960s. See U.S. DEPT. OF COMMERCE, U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2012, at 5, 13 (2013). *But see* Drew DeSilver, *Black Incomes Are Up, But Wealth Isn't*, PEW RESEARCH CENTER (Aug. 30, 2013), <http://www.pewresearch.org/fact-tank/2013/08/30/black-incomes-are-up-but-wealth-isnt/> (discussing the widening wealth gap between black and white households).

² *But see* Sheryll D. Cashin, *Middle-Class Black Suburbs and the State of Integration: A Post-Integrationist Vision for Metropolitan America*, 86 CORNELL L. REV. 729 (2001); Deborah C. Malamud, *Affirmative Action, Diversity, and the Black Middle Class*, 68 U. COLO. L. REV. 939 (1997); Leland Ware & Theodore J. Davis, *Ordinary People in an Extraordinary Time: The Black Middle-Class in the Age of Obama*, 55 HOW. L.J. 533 (2012).

middle-class African Americans and the resulting geographic setting of non-poor black neighborhoods. In short, this Article asks three questions: (1) where do black strivers live?; (2) why does it matter?; and (3) can the law mitigate the spatial phenomena that restrict black achievement?

Section I recaps an emerging body of empirical research showing that middle-class black workers reside in communities that are qualitatively worse than their white counterparts. The evidence on this count is striking: even the most affluent African Americans (those households that earn above \$100,000 a year) end up living in neighborhoods with more disadvantage than the areas that house the poorest white workers.³ Section II explains why the unique geography and character of middle-class black households should concern policymakers. Workers of the African American middle class, unlike their white peers, often live near areas with substantial gang activity, dilapidated housing, social disorder, poor schools, and shocking levels of violent crime. The presence of such deleterious conditions erodes the physical health of African American strivers, threatens the transmission of middle-class values from one generation to the next, and makes it difficult for families to pass on hard-won economic gains to their children. Finally, Section III presents five brief policy proposals that could help reinvigorate middle-class black neighborhoods and spark a sustainable revival of urban environments. Instead of focusing on grandiose but unachievable plans to reformulate the American economy or reanimate public-sector unions, decision-makers should put increased emphasis on: creating new historic preservation districts in black neighborhoods; granting middle-class African Americans greater autonomy from their less well off black peers; improving public transportation; strengthening school choice programs; and reformulating inheritance rules to prevent irresponsible children from taking over the property of their parents.

I. The Spatial Reality of Black Life

A. Majority-Black Communities

It is no secret that, on average, African American neighborhoods have fewer resources and more poverty than areas where whites live.⁴ Nevertheless, the depth of the deprivation that plagues black neighborhoods may surprise. As of 2000, 31% of African American children reside in communities where the

³ Patrick Sharkey, *Spatial Segmentation and the Black Middle Class*, 119 AM. J. SOC. 903, 927 (2014).

⁴ See generally KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES* (1985) (chronicling the history of suburbanization and its disproportionate impact on the races); BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* (2009) (exploring the factors that led to the creation of Chicago's black slums, including speculation, exploitation, and unscrupulous business practices); THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* (1996) (arguing that capitalism creates economic inequality and that inequality disproportionately affected African Americans nationwide, but particularly in Detroit).

poverty rate is 30% or greater, compared to just 1% of white children.⁵ That fact should give all policymakers pause. Fifty years after the passage of the Civil Rights Act of 1964,⁶ one-in-three black children remains surrounded by a degree of poverty that is virtually unknown among whites.⁷ The analysis becomes even more troubling if the focus shifts beyond income to a more holistic look at hardship and neighborhood distress. Recently, sociologist Patrick Sharkey created a measure of “concentrated disadvantage,” which is a single metric that combines a neighborhood’s rates of welfare receipt, poverty, unemployment, female-headed households, and the density of children.⁸ “Advantaged” neighborhoods are those with lower levels of disorder than the national average, while “disadvantaged” tracts have higher levels of combined welfare recipients, poverty, joblessness, single mothers, and children under the age of eighteen than the mean.⁹ Sharkey’s data set also measures “spatial disadvantage,” which is the amount of disorder that surrounds any given community.¹⁰ An area is “spatially disadvantaged” if it is bordered by neighborhoods with greater than average aggregate levels of disadvantage.¹¹ Conversely, a neighborhood is “spatially advantaged” if the adjacent areas have a lower level of depredation than the national mean.¹²

Based on any measure, majority-black neighborhoods fare poorly. In the United States, an alarming 87% of African-American communities are both disadvantaged and spatially disadvantaged.¹³ This is true of only 16% of majority white neighborhoods.¹⁴ Arguably, the numbers look even worse when the focus shifts to linkages with “severely disadvantaged” neighborhoods. Areas of “severe disadvantage” are those with combined amounts of disorder at least two standard deviations greater than the national average.¹⁵ Sixty-four percent of majority-black areas share a border with at least one severely disadvantaged

⁵ PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* 27 (2013); *see also* PAUL A. JARGOWSKY, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* 61 (1997) (“[N]early four out of five residents of high-poverty neighborhoods were members of minority groups . . .”).

⁶ Pub. L. 88-352, 78 Stat. 241 (July 2, 1964).

⁷ *See* Suzanne Macartney, *Child Poverty in the United States 2009 and 2010: Selected Race Groups and Hispanic Origin*, U.S. CENSUS BUREAU 3-4 (2011), <http://www.census.gov/prod/2011pubs/acsbr10-05.pdf>.

⁸ Sharkey, *supra* note 3, at 910.

⁹ *Id.* at 911.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 918.

¹⁴ Sharkey, *supra* note 3, at 910. Also worth noting: 68% of majority-white neighborhoods are both advantaged and spatially advantaged. That is true of only 4% of majority-black areas. *Id.*

¹⁵ *Id.* at 920.

community,¹⁶ yet only 8% of white neighborhoods are so closely connected to enclaves of extreme poverty and despair.¹⁷

One oft-repeated explanation for these gruesome statistics is that African Americans remain *disproportionately* poor. As a result of 300 years of immoral policy toward black communities, modern African Americans have, on average, fewer resources and less cultural capital than their white peers, which ultimately hinders movement to better and safer neighborhoods.¹⁸ But what about middle-class black workers? What happens if comparisons are drawn between the housing situation of comparable middle-class whites and middle-class blacks?

B. Middle-Class African Americans

In theory, as African Americans move up the economic ladder, they should purchase the rewards that typically accompany a middle-class existence: a tidy home in a good neighborhood, well-managed schools, and greater spatial separation from the worst forms of urban blight. But do they?

Before jumping into the statistics, it is worth pausing for a brief moment to consider the proper definition of “middle class.” In the economics and sociology literature, there is no firm consensus about how best to divide individuals into class-based tranches.¹⁹ A person’s income, wealth, occupation, education, and lifestyle all influence class position. For the sake of efficiency (and to best align this paper with other recent work on black neighborhoods), this Article will focus squarely on income, defining as middle class any household earning above \$30,000.²⁰ Although it will not be the primary focus of these pages, recent data also make it possible to break the broad middle class into smaller segments: the lower-middle class (households with incomes from \$30,000-\$49,000); core-middle class (household incomes from \$50,000 to \$99,000); and elites (household incomes of \$100,000 and above).

Armed with a rather broad descriptor of middle class, the bleak housing situation of the black middle class quickly becomes apparent. Middle-class African American strivers are unrivalled in the way they are surrounded by areas of severe poverty. Recall that advantaged African-American communities are majority black and also contain less disorder (i.e., lower amount of poverty, joblessness, welfare recipients, single mothers, and children under the age of

¹⁶ *Id.* at 921.

¹⁷ *Id.*

¹⁸ The racial gap is further compounded by ongoing discrimination in the housing market. It is well documented that real-estate agents and mortgage brokers subtly push black home-seekers away from emerging majority-white districts and toward established black neighborhoods. See Seok Joon Choi, Jan Ondrich & John Yinger, *Do Rental Agents Discriminate Against Minority Customers?: Evidence from the 2000 Housing Discrimination Study*, 14 J. HOUSING ECON. 1 (2005); Jan Ondrich, Stephen Ross & John Yinger, *Now You See It, Now You Don’t: Why Do Real Estate Agents Withhold Available Houses from Black Customers?*, 85 REV. ECON. & STAT. 854 (2003).

¹⁹ MARY PATTILLO, *BLACK PICKET FENCES: PRIVILEGE AND PERIL AMONG THE BLACK MIDDLE CLASS* 13-30 (2d ed. 2013) (discussing the concept of “middle class” in the context of the African-American community).

²⁰ Sharkey, *supra* note 3, at 916 (adopting a similar definition of middle class).

eighteen) than the national average.²¹ But advantaged, black communities differ from their white counterparts in two profound ways.

First, these middle-class black neighborhoods contain individuals with a much wider array of incomes than comparable white communities.²² Majority-black middle-class areas contain a number of high earners but, importantly, they also have a much greater prevalence of very poor residents.²³ In Chicago, Illinois, for example, black middle-class neighborhoods had poverty rates between 7% and 17%.²⁴ White communities with similar average incomes contained far fewer impoverished persons; they had poverty rates four times lower than black communities (between 2% and 4%).²⁵

The second major difference between advantaged, black neighborhoods and advantaged, white neighborhoods is that the African-American enclaves stand in much closer proximity to poor neighborhoods.²⁶ About half of all advantaged, black communities are spatially disadvantaged.²⁷ Put more concretely, 49% of all *good*, black neighborhoods are surrounded by areas with a higher-than-average amount of disorder.²⁸ This is true of only 12% of equivalent white areas.²⁹ Additionally, advantaged, black neighborhoods are twice as likely as comparable majority-white communities to share a border with a *severely* disadvantaged area.³⁰ Almost one-in-six middle-class black enclaves sit directly adjacent to neighborhoods where more than 30% of residents live below the poverty line.³¹ Thus, for middle-class blacks, threats are everywhere; disorder emanates from within their neighborhoods and also routinely seeps into them from adjacent areas.

A skeptic might argue that the emphasis on majority-black neighborhoods is misplaced. After all, during the last thirty years, many well-to-do African Americans have moved out of majority-black areas and into either racially mixed neighborhoods or white-dominated suburbs.³² It could be argued that this

²¹ PATTILLO, *supra* note 19, at 29-30.

²² *Id.*

²³ Mary Pattillo, *Black Middle-Class Neighborhoods*, 31 ANN. REV. SOC. 305, 311-12 (2005).

²⁴ PATTILLO, *supra* note 19, at 28.

²⁵ *Id.* at 37, 228 (stating that black communities had poverty rates four times higher than comparable white communities). Overall, the average white person lives in a neighborhood with a poverty rate of less than 11%, while the average African American resides in a place where 19% of their neighbors live below the poverty line. *Id.* at 240.

²⁶ *Id.* at 25 (“[B]lack middle-class neighborhoods are often located next to predominately black areas with much higher poverty rates.”).

²⁷ Sharkey, *supra* note 3, at 920.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 921.

³¹ *Id.*

³² See generally ANDREW WIESE, *PLACES OF THEIR OWN: AFRICAN AMERICAN SUBURBANIZATION IN THE TWENTIETH CENTURY* (2005) (describing the demographic movement of millions of African Americans into the suburbs); see also Sharkey, *supra* note 3, at 932 (“[T]here has been steady growth in the

Article's analysis, centered exclusively on communities where African Americans predominate, fails to capture the important experiences of these pioneers. To answer this critique, it is necessary to pause and briefly explore the housing situation of middle-class African Americans at the household level. Rather than focus solely on the characteristics of middle-class black neighborhoods, we must ask about the housing conditions of the average middle-class black family. To be clear, this analysis ropes in data on all black households earning more than \$30,000 a year, not just those that live in majority-black areas.

Moving from a neighborhood-level to a household-based analysis does little to put a shine on the underlying figures. In comparison to their white peers, middle-class black households have had much less success translating their relative economic prosperity into geographic separation from the poorest and most dangerous neighborhoods.³³ For example, more than three-in-four white households (77%) earning above \$30,000 reside in communities that are both advantaged and spatially advantaged.³⁴ Only 31% of black families in identical income brackets live in comparably privileged circumstances.³⁵ Indeed, over half (52%) of all African-American households earning above \$30,000 find themselves ensconced in the worst types of neighborhoods—those that are both disadvantaged and spatially disadvantaged.³⁶ Just 11% of middle-class whites end up in a similar predicament.³⁷

The same basic patterns hold when the broader middle class is broken down into subgroups of lower-middle class, core-middle class, and elites. As mentioned above, the most illustrative finding is that, on average, elite African-American households—those earning above \$60,000 per year—reside in neighborhoods with more disadvantage and spatial disadvantage than whites

proportion of middle- and upper-income African-Americans living in suburban neighborhoods and in neighborhoods where blacks are not the majority group.”).

³³ Tracey L. Meares, *Social Organization and Drug Law Enforcement*, 35 AM. CRIM. L. REV. 191, 201 (1998) (“Though non-poor African Americans who are able to leave poor ghettos do so, many simply relocate to segregated areas on the periphery of concentrated pockets of poverty.”); Ron Grossman & Byron P. White, *Poverty Surrounds Black Middle Class: Upscale Neighborhood Virtually an Island*, CHICAGO TRIB., Feb. 7, 1997 at C1, available at http://articles.chicagotribune.com/1997-02-02/news/9702020273_1_middle-class-middle-class-neighborhoods.

³⁴ Sharkey, *supra* note 3, at 925.

³⁵ *Id.* In some metropolitan areas “there are virtually no majority-black neighborhoods that are advantaged and spatially advantaged.” *Id.* at 923. For those looking for a sliver of good news, the proportion of middle- and upper-income African Americans that live in advantaged neighborhoods surrounded by spatial advantage has almost tripled since 1970. *Id.* at 930.

³⁶ *Id.* at 925.

³⁷ *Id.* The numbers are no better when one considers spatial links to severe disadvantage. A third of middle-class African-American households live adjacent to a neighborhood with high concentrations of poverty, compared to 6% of analogous white families. *Id.* at 926.

earning less than \$30,000.³⁸ Similarly, blacks with salaries over \$75,000 are more likely to have their cars stolen than whites making less than \$7,500.³⁹

Compiling all of these statistics reveals one important truth: black and white workers who earn similar incomes inhabit distinct worlds.⁴⁰ In the aggregate, being the child of a black teacher or nurse means you grow up in a wholly different kind of neighborhood than the child of a white teacher or nurse. Even though your family earns as much (or more!) income as the families of your peers, you grow up in a place with more poverty, fewer college graduates, higher rates of violence, and more vacant houses.⁴¹

II. Why Neighborhoods Matter

Disparities between the white and black middle class amount to more than academic naval-gazing. The differences impose real and identifiable costs on minority communities. Specifically, the inability of middle-class African Americans to gain physical and social distance from the poor has three broad repercussions. First, it undermines the physical health of non-poor black families. Second, it thwarts the accumulation of African-American wealth. And, finally, it inhibits the transmission of middle-class values to succeeding generations.

The geography of African-American neighborhoods imposes easily discernible costs on the health of the black middle class. As canvassed above, non-poor African-American neighborhoods often sit immediately adjacent to areas of extreme disadvantage. Middle-class blacks, as a result, are regularly confronted with the crime and violence that accompany severe poverty. “The difference between the black and white middle class,” notes Professor Robert J. Sampson, “is proximity to risk.”⁴² Borders between prosperous and

³⁸ Joe T. Darden, *Residential Apartheid American Style*, in *THE BLACK METROPOLIS IN THE TWENTY-FIRST CENTURY: RACE, POWER, AND POLITICS OF PLACE* 67, 73 (Robert Doyle Bullard ed., 2007).

³⁹ PATTILLO, *supra* note 19, at 242.

⁴⁰ Robert J. Sampson & William Julius Wilson, *Toward a Theory of Race, Crime, and Urban Inequality*, in *CRIME AND INEQUALITY* 37, 42 (John Hagan & Ruth D. Peterson eds., 1995) (“[T]he ‘worst’ urban contexts in which whites reside are considerably better than the average context of black communities.”); Sharkey, *supra* note 3, at 936. (“Middle-class African-American communities and middle-class African-American households remain unique in their residential proximity to areas of extreme disadvantage.”).

⁴¹ See DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 153 (1993); PATTILLO, *supra* note 19, at 29, 258; Robert M. Adelman, *Neighborhood Opportunities, Race, and Class: The Black Middle Class and Residential Segregation*, 3 *CITY & COMMUNITY* 43, 54 (2004); Pattillo, *supra* note 23, at 310.

⁴² David Mendell & Darnell Little, *Poverty, Crime Still Stalk City’s Middle-Class Blacks*, *CHICAGO TRIB.*, July 27, 2003, at A1, available at http://articles.chicago.tribune.com/2003-07-27/news/0307270299_1_middle-class-block-groups-black (quoting Professor Robert J. Sampson, former Chair of the Department of Sociology at the University of Chicago, and current Henry Ford II Professor of the Social Sciences and Director of the Boston Area Research Initiative).

impoverished black areas are porous and disputes between angry young men often spill across neighborhood lines. Take, for example, the plight of Roseland, a stable, black middle-class enclave in Chicago, Illinois, with a median household income above \$38,000.⁴³ Despite the economic success of Roseland's residents, the area has one of Chicago's highest rates of violent crime.⁴⁴ In 2010, Roseland—a stronghold of the black middle class—accounted for 13% of all murders in the City.⁴⁵ As one scholar summarized, “using a measure of the most violent kind of crime, homicide, there are clear perils associated with living in a black middle-class neighborhood.”⁴⁶

Other, less immediate health threats also loom. Many African-American communities, for instance, lack adequate access to healthy foods. Across the country, farmers' markets and quality grocery stores have resisted locating in the places where black strivers make their homes.⁴⁷ Although charges of discrimination are often leveled at national chain supermarkets, the grocers consistently explain that the poverty of black communities—not racism—motivates their location decisions.⁴⁸ Shoppers in inner-city communities, they report, simply do not buy enough of the luxury items and impulse purchases that keep stores profitable.⁴⁹ Left with access to few large supermarkets, black neighborhoods have become more dependent on 7-Eleven stores and bodega-style, corner groceries, which often burst with junk food and rarely offer fresh fruits, whole-grain food, or natural dairy products.⁵⁰ The consequences for the health of black communities are predictable. Numerous studies tie the prevalence of fast food and the lack of quality grocery stores to increased rates of

⁴³ Environment, Culture, and Conservation (ECCo), a Division of Science at the Field Museum, *Engaging Chicago's Diverse Communities in the Chicago Climate Action Plan*, THE FIELD MUSEUM 8 (April 2011), http://www.fieldmuseum.org/sites/default/files/DOE%20Roseland%20Report%20FINAL_1.pdf.

⁴⁴ *Crime Rates by Chicago neighborhood*, CHICAGO TRIB., <http://crime.chicagotribune.com/chicago/community> (last visited July 24, 2015).

⁴⁵ *Promise Neighborhoods: U.S. Department of Education*, ROSELAND'S CHILDREN'S INITIATIVE, <http://173.226.70.152/pn/grantee/roseland-childrens-initiative> (last visited July 24, 2015). For an interactive map of current crime trends in the neighborhood, see *Crime Trends in Roseland*, CHICAGO TRIB., <http://crime.chicagotribune.com/chicago/community/roseland> (last visited July 24, 2015).

⁴⁶ PATTILLO, *supra* note 19, at 29.

⁴⁷ Elizabeth Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition*, 53 GEOJOURNAL 125, 128 (2001) (“Several observers, including the US Conference of Mayors, have identified the industry's practices as ‘supermarket redlining.’”).

⁴⁸ It is more difficult and expensive to assemble the land for a large supermarket in an urban area. *Id.*

⁴⁹ One store operator remarked: “Stores in low-income communities have higher costs, and customers who typically make smaller purchases and buy items with smaller profit margins.” David Slade, *‘Food Deserts’ Create Hardships for Residents Without Cars*, POST & COURIER (Jan. 30, 2013), <http://www.postandcourier.com/article/20130130/PC16/130139953>.

⁵⁰ See Paul A. Diller, *Combating Obesity with a Right to Nutrition*, 101 GEO. L.J. 969, 986-89 (2013).

obesity, diabetes, and heart disease.⁵¹ When it is cheaper to buy a Slurpee than a salad and easier to find a quarter-pounder than quinoa, it is unsurprising that African-American waistlines have expanded and black health has suffered.

The ecological linkage of the black middle class and the black underclass also has far-reaching effects on the accumulation of wealth in African-American communities. To start, black workers generally pay more for home insurance and car insurance than their white peers because they live surrounded by greater concentrations of crime and poverty.⁵² More importantly, home values in middle-class African-American communities appreciate at a slower rate than houses in comparable white areas.⁵³ From 2005 to 2009, in the aftermath of the real estate crash, the median, black-owned home also lost a greater percentage of its value than the comparable white-owned property.⁵⁴ The effects of these discrepancies are far-reaching. While home equity is the largest asset in most families' portfolios, the wealth of black families remains particularly dependent on home values. Research shows that 53% of the net worth of African Americans remains tied up in home equity, compared to 39% for whites.⁵⁵ Lower home values also translate into both a diminished property tax base with which to fund schools and a reduced ability to secure home equity loans in times of need.

Skeptics might charge that the differences in home equity cannot be tied to geography. This argument contains some truth. Many factors contribute to the divergence in the home values between white and black communities. The difference in property values springs, in part, from the well-documented unwillingness of whites to purchase homes in integrated neighborhoods, putting an artificial cap on the demand for most black-owned property.⁵⁶ However, the setting of black neighborhoods certainly plays an important role. The poverty

⁵¹ Donald Rose et al., *Deserts in New Orleans?: Illustrations of Urban Food Access and Implications for Policy* 4 (Feb. 2009), http://www.npc.umich.edu/news/events/food-access/rose_et_al.pdf (unpublished conference paper) (citing a "wave of studies associating dietary outcomes to proximity to supermarkets").

⁵² MANNING MARABLE, *BLACK LIBERATION IN CONSERVATIVE AMERICA* 27-28 (1990) (discussing car insurance); MECHELE DICKERSON, *HOMEOWNERSHIP AND AMERICA'S FINANCIAL UNDERCLASS* 156 (2014) (discussing home insurance premiums).

⁵³ MICHAEL C. DAWSON, *BEHIND THE MULE: RACE AND CLASS IN AFRICAN-AMERICAN POLITICS* 7 (1994); KARYN R. LACY, *BLUE-CHIP BLACK: RACE, CLASS, AND STATUS IN THE NEW BLACK MIDDLE CLASS* 43-44 (2007) ("Generally, houses appreciate more slowly in black middle-class neighborhoods than they do in white communities."); DeSilver, *supra* note 1.

⁵⁴ Rakesh Kochhar, Richard Fry & Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics*, PEW RESEARCH CENTER 4 (July 26, 2011), http://www.pewsocialtrends.org/files/2011/07/SDT-Wealth-Report_7-2611_FINAL.pdf.

⁵⁵ THOMAS SHAPIRO, TATJANA MESCHEDE & SAM OSORO, *THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK-WHITE ECONOMIC DIVIDE* 3 (2013). Other studies have uncovered slightly different numbers, but the significant gap is consistent. *See, e.g.*, DeSilver, *supra* note 1 (stating that 49% of the net worth of African Americans remains tied up in home equity, compared to 28% for whites).

⁵⁶ SHAPIRO, MESCHEDE & OSORO, *supra* note 55, at 3.

that infuses and surrounds the streets where black property owners live results in more vacant homes, poorer schools, higher rates of crime, and lackluster yard maintenance—all factors that drag down home prices. As Professor Dorothy Brown summarizes, “When blacks buy homes in majority minority neighborhoods, we increase the racial wealth gap.”⁵⁷

The nexus between poor and non-poor black neighborhoods creates one final significant drawback; it undermines the ability of middle-class African Americans to firmly embed their values and habits into succeeding generations. Geography, again, provides the explanation. Recall that 50% of middle-class black communities are surrounded by neighborhoods with a level of disadvantage that exceeds the national mean, while 15% of these advantaged areas sit directly adjacent to a *severely* troubled neighborhood.⁵⁸ Moreover, black middle-class communities themselves have higher concentrations of impoverished residents and, as a result, contain “a greater lifestyle diversity” than comparable white neighborhoods.⁵⁹ In this setting, middle-class African Americans grow up sharing schools, parks, hospitals, city pools, and little league teams with their much poorer neighbors.

Although there are certainly benefits to mixing outside of one’s class position, the jumble of economic circumstances and cultural backgrounds among residents of black neighborhoods reduces the ability of middle-class parents to control the types of experiences their children encounter. Children of the black middle class find themselves simultaneously exposed to many legitimate role models *and* confronted with some profoundly deviant social networks.⁶⁰ Unlike their white contemporaries (who are largely ensconced in economically homogenous suburbs), the children of the black middle class must often navigate gang activity, drug dealing, and packs of adults with tenuous links to the formal economy. Such spatial phenomena change the texture of daily life and increase the number and nature of the temptations available to the average rebellious teenager in a black neighborhood. It takes little imagination to see that children are more likely to veer away from middle-class life paths when drugs course through a neighborhood, apathetic students populate local schools, and few community members have stepped foot on a college campus. The extreme lifestyle diversity that swirls around middle-class African Americans enables even *good kids* to easily stumble into destructive, even life-threatening, choices. Recent scholarly work on economic mobility supports this argument. A study put out by the Pew Charitable Trust, for example, found that differences in neighborhood composition (as measured by poverty rates) “accounts for a greater portion of the black-white downward mobility gap than the effects of parental education, occupation, labor force participation, and a range of other

⁵⁷ Dorothy Brown, *How Home Ownership Keeps Blacks Poorer Than Whites*, FORBES (Dec. 10, 2012, 12:28 PM), <http://www.forbes.com/sites/forbesleadershipforum/2012/12/10/how-home-ownership-keeps-blacks-poorer-than-whites/>.

⁵⁸ See *supra* notes 34-38 and accompanying text.

⁵⁹ PATTILLO, *supra* note 19, at 92.

⁶⁰ *Id.* at 75.

family characteristics combined.”⁶¹ In short, the unique geography and composition of black neighborhoods makes it more difficult for African-American strivers to succeed as parents. The hard-won social and economic gains eked out by one cohort often fail to inhere in succeeding generations.

III. Making Boundaries, Shaping Space

How should policymakers respond to the unique spatial challenges facing middle-class black communities? The legal literature offers few answers. Only a small handful of scholars have ever bothered to explore the circumstances of middle-class African Americans, and their discussions often fail to look beyond the unrepresentative, black suburbs of Washington, D.C.⁶² Sociologists, on the other hand, have employed a wider lens in their study of non-poor, black communities. Their policy prescriptions, however, trend toward sweeping re-imaginings of the American economy. For example, Mary Pattillo’s excellent discussion of middle-class African Americans concludes with a call for “radical systemic changes,” including a rebirth of Affirmative Action programs, reviving public sector unions, and transforming fair housing laws.⁶³ Although some of these ideas hold promise, they remain untenable in the current political climate.

The remaining pages of this Article search for more practical approaches to solve the particular problems of middle-class African Americans. Scholars and politicians should put increased emphasis on creating new historic preservation districts in black neighborhoods, granting middle-class African Americans greater autonomy from their less well-off black peers, improving public transportation, strengthening school choice programs, and reformulating inheritance rules to prevent the ne’er-do-well children from taking over the property of their parents.

A. Administrative Independence

To recap, middle-class African Americans have largely failed to translate their economic success into a physical separation from areas of extreme poverty. Advantaged, black neighborhoods across the country bump against significantly poorer neighborhoods as a result of the legacy of government redlining, racial covenants, mortgage discrimination, realtor bias, and individual preferences for racially homogenous environments. In recent years, some commentators have proposed bold (and expensive) policy initiatives to help unwind these historical wrongs.⁶⁴ But such radical policies are not necessary to improve outcomes. Many

⁶¹ PATRICK SHARKEY, NEIGHBORHOODS AND THE BLACK-WHITE MOBILITY GAP 3 (2009).

⁶² For an extended discussion of the black middle class that does not focus on Washington, D.C., see generally Ware & Davis, *supra* note 2 (examining the status of middle-class African-American families after the election of President Barack Obama in 2008).

⁶³ PATTILLO, *supra* note 19, at 208, 215-17, 241-42.

⁶⁴ One cadre of scholars, for example, suggests awarding vouchers to black Americans that would fund moves from blighted urban centers to more prosperous suburban areas. See, e.g., OWEN FISS, A WAY OUT: AMERICA’S GHETTO’S AND

of the problems facing non-poor, black communities would dissipate if the law simply granted middle-class African Americans greater administrative independence from the poor.

As currently constituted, administrative boundaries within cities have little regard for the communities that middle-class African-American strivers have established, often indiscriminately lumping impoverished and affluent blacks into the same organizational units.⁶⁵ School attendance boundaries, for example, typically ignore the economic gradations within majority-black areas.⁶⁶ Students from middle-class black families, as a result, often get shunted into schools with slow learners from the poorest families, few advanced classes, and teachers with comparatively little experience.⁶⁷ Similarly, local election districts tend to see black populations as a monolith rather than as specific sub-communities with distinct challenges and needs.⁶⁸ In a recent study, Professor Valerie Johnson suggests that the extreme economic diversity in majority-black voting districts inhibits the ability of residents to unite around particular issues or candidates, which often results in the election of white politicians in areas heavily populated

THE LEGACY OF RACISM (2003); James Rosenbaum et al., *New Capabilities in New Places: Low Income Black Families in Suburbia*, in *THE GEOGRAPHY OF OPPORTUNITY: RACE AND HOUSING CHOICE IN METROPOLITAN AMERICA* 150, 150-51 (Xavier de Souza Briggs ed., 2005).

⁶⁵ See Nikole Hannah-Jones, *Class Action: A Challenge to the Idea that Income Can Integrate America's Campuses*, PROPUBLICA (June 24, 2013, 12:46 PM), <http://www.propublica.org/article/class-action-a-challenge-to-the-idea-that-income-can-integrate-americas-cam> (“[M]ost black children—regardless of their family’s income—attend schools where two-thirds of their classmates are poor and resources and college prep courses are limited.”); see also Patricia Phelan et al., *Students’ Multiple Worlds: Negotiating the Boundaries of Family, Peer, and School Cultures*, 22 ANTHROPOLOGY & EDUC. 224 (1991).

⁶⁶ Tomeka M. Davis & Adria N. Welcher, *School Quality and the Vulnerability of the Black Middle Class: The Continuing Significance of Race as a Predictor of Disparate Schooling Environments*, 56 SOC. PERSP. 467, 478 (2013) (showing that black students from families with high socio-economic status attend worse schools than white students from families at the bottom of socio-economic scale); Sharkey, *supra* note 3, at 908-09, 912.

⁶⁷ See, e.g., Davis & Welcher, *supra* note 66, at 486 (“[R]ace has strong meaningful effects on school environment that are not fully captured or completely mitigated by class.”); Jonetta Rose Barras, *Neighborhood Schooled*, WASH. CITY PAPER (Aug. 26, 2011), <http://www.washingtoncitypaper.com/articles/41381/dc-neighborhood-schooled/full/> (highlighting the concerns of middle-class black parents with local neighborhoods schools in the Washington, D.C., area); Ovetta Wiggins, *Middle-Class Parents Closely Watching Changes in Prince George’s Public Schools*, WASH. POST (May 26, 2013), http://www.washingtonpost.com/local/education/middle-class-parents-closely-watching-changes-in-prince-georges-public-schools/2013/05/26/1d21d492-c330-11e2-914f-a7aba60512a7_story.html (discussing reluctance of middle-class blacks to send their children to local schools).

⁶⁸ In the last thirty years, politicians and activists have pushed for the creation of more majority-minority voting districts to increase the number of black elected officials. Often this results in the “packing” of all African Americans into a single electoral district regardless of their class interests. See Grant M. Hayden, *Solving the Dilemma of Minority Representation*, 92 CAL. L. REV. 1589, 1600-09 (2004).

by African Americans.⁶⁹ Additionally, police districts often group together “the residents of housing projects as well as those who live in owner-occupied, single-family homes” even though the two populations have very different public-safety priorities.⁷⁰ Thus, even when middle-class African Americans attempt to carve-out oases of bourgeois values, they often remain handcuffed to disadvantaged populations by the structure of local government.

Administrative boundaries, however, are not fixed by the hand of God. Many of the bonds that fuse together *core ghetto* and nearby middle-class areas would instantly unravel if governments granted advantaged African Americans greater control over the administrative functions of their neighborhoods (or if local governments grouped middle-class black enclaves among the nearby middle-class white communities with which they have much common ground). Put another way, life for middle-class blacks would improve if they ran their own schools, if election districts enabled them to choose their own representatives, and if police departments were forced to confront the distinction between *blackness* and poverty. Redrawing administrative boundaries is a cheap and efficient means of accomplishing these goals.

Skeptics might argue that greater administrative independence for the middle class would further isolate the poorest and most vulnerable citizens. Without the leadership and social capital of moneyed African Americans, so the argument goes, the underclass would have even fewer champions and less access to local power-holders.⁷¹ While this claim carries some theoretical weight, it is ultimately misguided. First, the notion that the life outcomes of middle-class blacks should be yoked to the poorest members of the community seems profoundly un-American. In every other context, commentators celebrate the successes of strivers who distance themselves from the general deviance of their home environments.⁷² Black bootstrappers deserve the same respect and the same freedom to make gains without policymakers knitting an anchor of guilt around their achievements. Second, the argument against administrative independence ignores that the interests of black middle-class residents and the black underclass often diverge.⁷³ Poorer African Americans may end up better off

⁶⁹ VALERIE C. JOHNSON, *BLACK POWER IN THE SUBURBS: THE MYTH OR REALITY OF AFRICAN AMERICAN SUBURBAN POLITICAL INCORPORATION* 77-79 (2002).

⁷⁰ PATTILLO, *supra* note 19, at 28.

⁷¹ See, e.g., Nicholas Lemann, *The Origins of the Underclass* (pt. 1), *ATLANTIC MONTHLY*, June 1986, at 31.

⁷² The classic American “Horatio Alger” story is based on this very premise. See HARLON L. DALTON, *RACIAL HEALING: CONFRONTING THE FEAR BETWEEN BLACKS AND WHITES* 133-34 (1996) (discussing the Horatio Alger myth as it applies to the black community).

⁷³ For examples of the class-based tensions in black communities, see EUGENE ROBINSON, *DISINTEGRATION: THE SPLINTERING OF BLACK AMERICA* (2011). See also Shawn A. Ginwright, *Classed Out: The Challenges of Social Class in Black Community Change*, 49 *SOC. PROBS.* 544 (2002). It is also worth noting that “class segregation between rich and poor blacks . . . is still considerably *lower* than that observed among other racial and ethnic groups.” MASSEY & DENTON, *supra* note 41, at 145.

if they are not competing with middle-class communities over resources, school curricula, and the attention of local government officials. Far from punishing the poor, greater administrative division within black areas may be a Pareto improvement.

B. Charter Schools

The preceding discussion touched, briefly, on the importance of schools to the health of middle-class black enclaves. Schools remain a profound locus of concern for more affluent black families.⁷⁴ The strong spatial linkage between poor and non-poor African-American communities means that the children of the black middle class often end up in neighborhood schools where a high proportion of the students come from impoverished backgrounds.⁷⁵ This poverty matters. A legion of studies shows a wide gap in school readiness between needy and well-off children as they enter kindergarten—an achievement gap that only widens over time.⁷⁶ Thus, throughout their primary school years, most middle-class black children must attend classes with peers who need significant remedial attention. The children of the poor not only consume a disproportionate share of school resources, they also may lack the bourgeois values that middle-class parents esteem.⁷⁷ There are further sources of alarm for more affluent African Americans. On average, schools in segregated areas are more violent, have less-credentialed teachers, and offer less challenging curricula.⁷⁸

⁷⁴ Brian Patrick Larkin, *The Forty-Year "First Step": The Fair Housing Act as an Incomplete Tool For Suburban Integration*, 107 COLUM. L. REV. 1617, 1639 (2007) (“[S]trong college preparatory public schools are difficult to find in black middle-class communities, especially relative to their majority white counterparts.”).

⁷⁵ SHERYLL D. CASHIN, *THE FAILURES OF INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM* 146-47 (2004) (stating that even schools in the nation’s most prosperous black suburbs are filled with students from poor families).

⁷⁶ See, e.g., ANGEL L. HARRIS, *KIDS DON’T WANT TO FAIL: OPPOSITIONAL CULTURE AND THE BLACK-WHITE ACHIEVEMENT GAP* 191 (2011) (stating that not only is there a black-white achievement gap “prior to students entering grade school, but that gap widens over time as children matriculate through the early schooling process”); Meredith Phillips, James Crouse, & John Ralph, *Does the Black-White Test Score Gap Widen After Children Enter School?*, in *THE BLACK-WHITE TEST SCORE GAP* 229 (Christopher Jencks & Meredith Phillips eds., 1998) (showing that the achievement gap is significant before the start of formal schooling and it widens from elementary school through high school).

⁷⁷ RICHARD D. KAHLBERG, *ALL TOGETHER NOW: CREATING MIDDLE-CLASS SCHOOLS THROUGH PUBLIC SCHOOL CHOICE* 66 (2001) (“All agree that it is more expensive to educate poor children than middle-class children; estimates of the differential range from 20% to 300% more.”).

⁷⁸ C. Kirabo Jackson, *Student Demographics, Teacher Sorting, and Teacher Quality: Evidence from the End of School Desegregation*, 27 J. LAB. ECON. 213, 213 (2009) (demonstrating that “[s]chools that experienced a repatriation of black students experienced a decrease in various measures of teacher quality”); Douglas Massey, *The Brown Decision 50 Years Later: Why Race Still Matters*, 9-13 (unpublished manuscript), <http://www.ers.princeton.edu/sites/ers/files/events/brown.decision.pdf>.

Importantly, in the overwhelming number of districts, families have no control over where their children attend school. They must either send their kids to the assigned neighborhood school or pay private school tuition—a financial impossibility for many.⁷⁹ One solution to the problem, as mentioned above, is to redraw the attendance boundaries of neighborhood schools to better shield middle-class black students from their needier peers. A slightly bolder and perhaps more equitable solution is to eliminate the primacy of neighborhood schools altogether in favor of a model that relies on charter schools and greater choice. Neighborhood school systems, after all, have not served African Americans well.⁸⁰ They suffer from two obvious design flaws. First, neighborhood schools are a form of public monopoly and, as a result, they have little incentive to innovate or respond to the concerns of parents.⁸¹ Second, the process of assigning schools based solely on a student's address, coupled with America's tradition of residential segregation, has profoundly exclusionary effects.⁸² Neerav Kingsland summarizes, "Historically, having neighborhood schools kept black students from learning alongside white students; poor students from attending school with wealthy students; immigrant students from studying with native-born students—and the list goes on."⁸³

An alternative system that turns the management of schools over to a variety of non-profit organizations and then allows parents to choose between those schools eliminates many of the obstacles that have kept middle-class black students trapped in underfunded and segregated learning environments. The Recovery School District in New Orleans, Louisiana, provides an excellent model for how this can work.⁸⁴ Before Hurricane Katrina, the public school system in New Orleans was considered one of the least effective in the nation.⁸⁵ In the wake of the hurricane, the State of Louisiana established the Recovery School District and turned management of all the public schools over to non-profit charter programs.⁸⁶ The centralized school board has much-reduced responsibilities—it ensures that the individual charter programs meet certain

⁷⁹ For some of the benefits of neighborhood schools, see Patrick James McQuillan & Kerry Suzanne Englert, *The Return to Neighborhood Schools, Concentrated Poverty, and Educational Opportunity: An Agenda for Reform*, 28 HASTINGS CONST. L.Q. 739, 742-48 (2001).

⁸⁰ Davis & Welcher, *supra* note 66, at 468-69.

⁸¹ PETER W. COOKSON, JR., *SCHOOL CHOICE: THE STRUGGLE FOR THE SOUL OF AMERICAN EDUCATION* 19-20 (1994).

⁸² Neerav Kingsland, *The Costs of Neighborhood Schools*, WASH. POST (Aug. 8, 2014), http://www.washingtonpost.com/opinions/the-costs-of-neighborhood-schools/2014/08/08/82276e1c-06c1-11e4-a0dd-f2b22a257353_story.html.

⁸³ *Id.*

⁸⁴ *Recovery School District*, LA. DEP'T. OF EDUC., <http://www.rsdl.net> (last visited July 24, 2015).

⁸⁵ Lyndsey Layton, *In New Orleans, Major School District Closes Traditional Public Schools for Good*, WASH. POST (May 28, 2014), http://www.washingtonpost.com/local/education/in-new-orleans-traditional-public-schools-close-for-good/2014/05/28/ae4f5724-e5de-11e3-8f90-73e071f3d637_story.html ("When Katrina struck in 2005, the public schools in New Orleans were considered among the worst in the country.").

⁸⁶ *Id.*

minimum standards and assigns each school a letter grade based on student performance on standardized tests.⁸⁷ School assignments are not based on geography; rather, all families new to the district fill out a common application listing their top eight school choices.⁸⁸ Spots in oversubscribed schools are then assigned by a centralized lottery (although students with a sibling already enrolled at a popular school move to the top of the list).⁸⁹ A system like this—based on the principles of competition, transparency, and choice—can benefit all students but seems especially important for middle-class African Americans. The decoupling of school assignments from geography lowers the costs of living near the poor. Middle-class African Americans can, if they choose, continue to live around other families who share important aspects of their culture and racial identity without condemning their children to a lifetime of underfunded and underperforming schools.

C. Transit Issues

More thoughtful transit planning would also help buttress middle-class African-American communities. For example, middle-class workers (especially lower-middle-class wage-earners) would benefit greatly from better public transportation infrastructure. After all, it is challenging to hold a low-skill job if you cannot get to work on time, and it is difficult to arrive on time consistently if buses appear infrequently and at erratic times.⁹⁰ Improving and enlarging bus networks would not only make it easier to hold a job, but also would expand the number of job openings that individuals without private vehicles can access. A recent report by the Brookings Institute found that an average public-transportation-dependent worker can only reasonably access around 30% of jobs in her metropolitan area because of deficiencies in local bus networks.⁹¹

Better and quicker public transit would also strengthen middle-class families. Many black workers possess the resources, the know-how, and the desire to emplace their children on productive career paths. What they lack—

⁸⁷ Stacy Teicher Khadaroo, *New Orleans Goes All in on Charter Schools*, CHRISTIAN SCI. MONITOR, Mar. 1, 2014, <http://csmonitor.com/USA/2014/0301/New-Orleans-goes-all-in-on-charter-schools-Is-it-showing-the-way> (describing mechanics of the charter school system in New Orleans).

⁸⁸ For an accessible primer on school assignments in the Recovery School District, see Andrew Vanacore, *Centralized Enrollment in Recovery School District Gets First Tryout*, TIMES-PICAYUNE (Apr. 16, 2012), http://www.nola.com/education/index.ssf/2012/04/centralized_enrollment_in_reco.html.

⁸⁹ *Id.*

⁹⁰ EDWARD ROYCE, POVERTY & POWER: THE PROBLEM OF STRUCTURAL INEQUALITY 235 (2009) (“Suburban employers sometimes even cite the unreliability of public transportation as an explanation for why they do not advertise jobs in metropolitan newspapers.”).

⁹¹ AIDE TOMER ET AL., MISSED OPPORTUNITY: TRANSIT AND JOBS IN METROPOLITAN AMERICA 12 (2011) (“The typical metropolitan resident can reach about 30% of jobs in their metropolitan area via transit in 90 minutes.”).

and this is especially true of single parents—is the time.⁹² Any policy initiative that cuts the length of daily commutes will increase the hours that parents can spend making breakfast, supervising homework, and shuffling kids to extracurricular activities.

Luckily, policy solutions to these problems are not complicated. Cities could purchase more buses and schedule them to run through middle-class black communities more often. Bus stops could also provide digital signs that announce information (provided by a global positioning system) about when buses are arriving.⁹³ Bus arrival information systems are both psychologically reassuring for passengers and allow commuters to begin planning immediately if they see their bus is running catastrophically late.⁹⁴ Local transportation authorities could also reduce travel times by providing more dedicated bus lanes,⁹⁵ improving boarding speeds,⁹⁶ and eliminating lightly used bus stops.⁹⁷ Whittling down the current number of stops seems especially promising. Fewer bus stops would encourage more investment at each stop (in the form of bus shelters and digital signs) and allow for more frequent service. A vehicle that zips efficiently through its route can make more circuits per day, delivering more workers to job-sites with less waiting.

D. Historic Preservation

In addition to worrying about the condition of public transportation networks and the negative pressures their children experience at school, middle-class black families also report that property-maintenance issues plague their communities. Many disputes between neighbors arise when aging homeowners

⁹² William de Kooning once quipped: “The trouble with being poor is that it takes up all your time.” STEPHEN L. SLAVIN, *MACROECONOMICS* 437 (2009). *See also* PATTILLO, *supra* note 19, at 145; ROYCE, *supra* note 90, at 235 (“Low-income workers spend more time getting to and from their jobs not because their commute *distance* is so great necessarily, but because their commute *mode*, public transportation, is so slow.”).

⁹³ Matthew Yglesias, *Doing it Low-Tech*, THINK PROGRESS (Feb. 13, 2010, 3:59 PM), <http://thinkprogress.org/yglesias/2010/02/13/196164/doing-it-low-tech/> (discussing global positioning system signs and other potentially cost-effective improvements to bus lines).

⁹⁴ TRANSIT COOP. RESEARCH ASS’N., *TRANSP. RESEARCH BD. OF THE NAT’L. ACAD., REAL-TIME BUS ARRIVAL SYSTEMS* 28 (2003). Washington, D.C., has moved to implement electronic signs on key bus corridors. Luz Lazo, *Real-Time Bus Arrival Information Signs to be Installed at Bus Stops This Year—Really*, WASH. POST (May 23, 2014), <http://www.washingtonpost.com/blogs/dr-gridlock/wp/2014/05/23/real-time-bus-arrival-signs-coming-to-a-bus-stop-near-you/>.

⁹⁵ *See* Michael Eichler & Carlos F. Daganzo, *Bus Lanes with Intermittent Priority: Strategy Formulae and an Evaluation*, 40 *TRANSP. RESEARCH PART B* 731 (2006) (discussing the advantages of bus lanes with intermittent priority).

⁹⁶ *See generally* Rodrigo Fernandez et al., *Influence of Platform Height, Door Width, and Fare Collection on Bus Dwell Time*, 2143 *TRANSP. RESEARCH REC.* 59 (2010) (examining factors that influence boarding speeds).

⁹⁷ VUKAN R. VUCHIC, *URBAN TRANSIT SYSTEMS AND TECHNOLOGY* 273-74 (2007) (noting that bus lines in the United States stop much more frequently than in comparable world cities).

die and pass property down to their children.⁹⁸ Time and again, these new legacy owners—who have not invested any sweat equity in the homes—fail to take care of the properties.⁹⁹ Some lack the motivation. One Chicago resident summarizes, “You might get a grandchild that moves in the house that doesn’t have the same type of respect for the fact that they grandmother or grandfather . . . had to work for that property, to maintain that property.”¹⁰⁰ Others have the desire to keep their neighborhoods clean, safe, and attractive but lack the necessary financial resources.¹⁰¹ Structural changes in the economy since the 1950s have made it difficult for the new generation of black property owners to find the types of steady, well-paying jobs that enabled their parents and grandparents to prosper.¹⁰² When money gets tight, these homeowners often make ends meet by skimping on routine home maintenance expenses.¹⁰³ Lawns sit untended. Broken windows go unfixed. Vinyl siding droops, unmended. In the most extreme instances, property owners may turn properties into unregulated businesses or loci of illicit drug deals.¹⁰⁴ This, in turn, can set off a larger cycle of neighborhood decline. “When homes show signs of disrepair and residents question the character of their neighbors, further disinvestment and disorder are sure to follow.”¹⁰⁵

An increased use of local historic preservation districts in African-American neighborhoods offers middle-class black families legal tools to stop the rot. After a community has implemented a historic preservation district, a local board—backed by the overwhelming power of the state—can be empowered with the ability to influence the property maintenance disputes that bubble-up in black neighborhoods.¹⁰⁶ Preservation boards, for example, have the authority to review and approve all significant alterations to the exteriors of existing buildings.¹⁰⁷

⁹⁸ PATTILLO, *supra* note 19, at 47-52 (providing many examples of property-maintenance disputes in one Chicago neighborhood); WILLIAM H. WILSON, HAMILTON PARK: A PLANNED BLACK COMMUNITY IN DALLAS 191 (1998); *see also* SUGRUE, *supra* note 4, at 197-98 (discussing some of the structural reasons that many black homeowners delay property maintenance when purchasing homes).

⁹⁹ PATTILLO, *supra* note 19, at 47.

¹⁰⁰ *Id.* at 49.

¹⁰¹ MARY PATTILLO, BLACK ON THE BLOCK: THE POLITICS OF RACE AND CLASS IN THE CITY 75 (2007) (providing an example of a legacy homeowner struggling to “pay for the maintenance of the house”).

¹⁰² PATTILLO, *supra* note 19, at 53.

¹⁰³ This is a common strategy used by homeowners of all races. *See* Joseph Gyourko & Joseph Tracy, *Using Home Maintenance and Repairs to Smooth Variable Earnings*, 88 REV. ECON. & STAT. 736 (2006).

¹⁰⁴ PATTILLO, *supra* note 19, at 47-52.

¹⁰⁵ *Id.* at 53.

¹⁰⁶ For a good summary of the role of experts and citizens on these boards, see Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473, 518-24 (1981). For an updated appraisal of the benefits of historic preservation, see J. Peter Byrne, *Historic Preservation and Its Cultured Despisers: Reflections on the Contemporary Role of Preservation Law in Urban Development*, 19 GEO. MASON L. REV. 665, 670-87 (2012).

¹⁰⁷ “The centerpiece of local historic preservation law is the power to control owner changes in the exterior of designated properties. Generally, the owner must obtain a

Thus, in a local historic district, imprudent homeowners cannot merely rig-up quick fixes to their home maintenance problems. Any substantial changes to windows, doors, siding materials, yards, or landscape features must conform to the historic character of the neighborhood. Additionally, many historic preservation codes require property owners to prevent significant deterioration to their homes.¹⁰⁸ Violators are subject to fines, and unpaid penalties may result in liens against the property.¹⁰⁹ Historic preservation laws, in effect, give neighbors a third-party enforcement mechanism to prevent irresponsible homeowners from replacing broken glass with cardboard and morphing their yards into car repair businesses.

Skeptics of this approach may charge that most black neighborhoods will fail to qualify for preservation status because they are not sufficiently *historic*. This argument, however, fails to understand recent trends in the historic preservation movement. In the last fifteen years, the discipline has “expanded its emphasis from preserving grand homes and famous public buildings to preserving the vernacular history of everyday American life.”¹¹⁰ Black neighborhoods that survived the destruction of urban renewal are, in fact, prime candidates for historic preservation because they offer a unique glimpse into the American past.

Others critics may argue that given the tight social networks in many black neighborhoods (and the troubled relationships between African Americans and municipal governments), introducing a state-backed enforcer to settle property disputes is both unnecessary and unwise. This critique has some basis in fact. It remains true that the social fabric in many black neighborhoods is thick—there are high rates of residential stability, individuals form dense friendship networks, and neighbors take responsibility for each other.¹¹¹ Additionally, scholars from the Law and Social Norms Movement have demonstrated that under the right conditions, tight-knit groups can control deviant behaviors without the

permit from the local historic preservation board before demolishing, altering, or replacing any visible feature of a historic building.” SARA C. BRONIN & J. PETER BYRNE, *HISTORIC PRESERVATION LAW* 271 (2012).

¹⁰⁸ Sandra G. McLamb, Note, *Preservation Law Survey 2001: State Preservation Law*, 8 WIDENER L. SYMP. J. 463, 475 (2002) (stating that most local historic preservation ordinances contain an affirmative maintenance requirement).

¹⁰⁹ See, e.g., Bradford J. White & Lee Keatinge, *Recent Developments in Historic Preservation and Architectural Control Law*, 25 URB. LAW. 847, 866-67 (1993) (discussing fines under Michigan law); Robin D. Rice, Note, *By What We Have Destroyed: Historic Preservation and the Preservation of Individual Property Rights*, 52 U. LOUISVILLE L. REV. 153, 178 (2013) (discussing the historic preservation ordinance in Louisville, Kentucky).

¹¹⁰ Tad Heuer, Note, *Living History: How Homeowners in a New Local Historic District Negotiate Their Legal Obligations*, 116 YALE L.J. 768, 771-72 (2007).

¹¹¹ KAREN R. LACY, *BLUE-CHIP BLACK: RACE, CLASS, AND STATUS IN THE NEW BLACK MIDDLE CLASS* 68-71 (2007) (examining social organization in middle-class black suburbs outside of Washington, D.C.); PATILLO, *supra* note 19, at 35, 69-70 (discussing the thick social fabric in one black middle-class neighborhood in Chicago).

intervention of the state.¹¹² Neighbors, for example, can employ social sanctions like gossip, shame, and ostracism to cajole one another toward contributing to the collective good.¹¹³ This theory, however, falls flat in middle-class black enclaves. The difficulty is that the dense social networks in African-American neighborhoods often work against enforcement rather than in support of it.¹¹⁴ Residents may hesitate to confront a local deviant out of fear that a conflict will rupture cherished relationships with the deviant's family and close friends. Other neighborhood delinquents can escape censure because they provide vital economic support and social services to their more law-abiding kith and kin.¹¹⁵ The presence of gang members and drug activity in many of the troubled properties also increases the risk to individual citizens of attempting to enforce community norms.¹¹⁶ Thus, even accepting that state-backed authorities often act overzealously and without nuance, the increased use of historic preservation districts might be the most effective method of resolving the property-maintenance problems that plague middle-class black neighborhoods.

E. Inheritance Law

Of course, historic preservation law is not the only point of intervention in the struggle to untangle the related problems of property succession and property maintenance. A broader (and more radical) approach would focus on reforming inheritance laws and the probate system. For example, states could prohibit residential properties from passing to children at the death of a parent. Under this alternative vision of the law, when a property owner died, the personal representative of the estate would be required to: (1) hire a realtor to sell the home, (2) evaluate purchase offers, (3) approve a final sale, and (4) distribute the sale proceeds to the decedent's heirs (or the beneficiaries of the decedent's will). Such an approach would have two worthwhile effects. First, a forced sale would discourage fights between siblings over who gets to reside in the family home.¹¹⁷ Second, this regime would keep properties out of the hands

¹¹² See generally ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* (1991) (discussing how people largely self-govern through social norms that do not evolve with the assistance of centralized governmental authorities). For a brief survey of the development of the Law and Social Norms Movements, see Lior J. Stahilevitz, *Social Norms from Close-Knit Groups to Loose-Knit Groups*, 70 U. CHI. L. REV. 359 (2003).

¹¹³ *Id.* at 211-21.

¹¹⁴ RICHARD A. CLOWARD & LLOYD E. OHLIN, *DELINQUENCY & OPPORTUNITY* 171 (1960) (arguing that criminal networks are likely to arise in neighborhoods with dense social ties).

¹¹⁵ Mary E. Pattillo, *Sweet Mothers and Gangbangers: Managing Crime in a Black Middle-Class Neighborhood*, 76 SOC. FORCES 747, 749 (1998).

¹¹⁶ Richard D. Alba, John R. Logan & Paul E. Bellair, *Living with Crime: The Implications of Racial/Ethnic Differences in Suburban Location*, 73 SOC. FORCES 395, 427 (1994) (“[E]ven the most affluent blacks are not able to escape from crime, for they reside in communities as crime-prone as those housing the poorest whites.”).

¹¹⁷ See, e.g., Denise Buffa, *Fallout of a Revised Will: Bitter Siblings*, HARTFORD COURANT, Feb. 27, 2012, at A1; Scott Hanson, *Family Inheritances Can Be Difficult to Handle*, SACRAMENTO BEE, Nov. 20, 2005, at D3; Marilyn Kennedy Melia, *2nd Homes*

of irresponsible children who lack the time and resources necessary to perform routine household maintenance. Homes would transfer through the market to the owners who value them most—owners whose investments depend on preserving the condition of the house and upholding neighborhood standards.

To make this plan palatable, a robust exception for non-probate property is necessary. Many families, after all, have longstanding ties to specific pieces of property and would balk at any system that threatened their attachment to the land. Allowing property owners to duck the forced sale regime by placing real estate in a trust or joint tenancy would assuage those concerns. This opt-out compromise would dull the most vocal resistance but still prevent many properties from falling under the care of owners who either cannot or will not follow community standards.

For critics, this may appear as an unethical intrusion on the property rights of the poor and unsophisticated. Importantly, however, many middle-class homeowners are already subjected to similar sets of property restrictions. In newer suburban neighborhoods, developers commonly use covenants to ensure that homeowners follow an invasive set of rules that preserve middle-class standards of behavior.¹¹⁸ The conditions that govern a typical suburban property require owners to pay dues to a homeowners association that has the power to control everything from tree height to roofing materials to some forms of political expression.¹¹⁹ These covenants drastically limit the ability of property owners to make decisions about their homes, yet they are widely seen as beneficial because they impose a shared sense of neighborhood values and reduce disputes over property maintenance.¹²⁰ In middle-class black enclaves (many of which are older and lack covenants), forced sales after the death of homeowners could bring many of the same benefits at a fraction of the liberty cost.

Conclusion

The cornerstone promise of the American Dream is that hard work and dedication ensure access to neighborhoods with safe streets, affordable homes, and good schools. Yet, all too often, middle-class African Americans—those who get up and go to work every morning—find themselves living in degraded communities that contain violence and hardship rather than desirable amenities. The inability of black strivers to achieve physical distance from the blight of

Can Wind Up Splitting Heirs, CHICAGO TRIBUNE (July 15, 2007), http://articles.chicagotribune.com/2007-07-15/business/0707120505_1_estate-planning-inheritance-heirs.

¹¹⁸ SETHA LOW, *BEHIND THE GATES: LIFE, SECURITY, AND THE PURSUIT OF HAPPINESS IN FORTRESS AMERICA* 167 (2003).

¹¹⁹ Hannah Wiseman, *Public Communities, Private Rules*, 98 GEO. L.J. 697, 711-14 (2010) (providing some examples of the restrictions imposed by typical suburban developments).

¹²⁰ Lee Anne Fennell, *Contracting Communities*, 2004 U. ILL. L. REV. 829, 831 (stating that the covenants that undergird homeowners associations “are usually treated as autonomy- and value-enhancing” arrangements that are presumptively enforceable).

poverty imposes steep costs on African-American communities: it is more difficult to accumulate wealth, more difficult to raise children, and more difficult to preserve one's health.

Although there is no magic elixir to solve all of the problems of the black middle class, the correct response to these challenges is not surrender. This Article has tried to offer a range of nuts-and-bolts strategies geared toward improving the housing conditions of African-American strivers. While commentators of different political stripes may quibble about the details, the goal of buttressing the black middle class should resonate with all. For anyone who believes in either basic principles of fairness or in the power of incentives to shape the behavior of individuals, the rewards of escaping poverty and reaching the middle class should not vary based solely on race.