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Just Another Day In The Neighborhood? The Shaping Of A Legal (and Social) Consciousness In Harlem

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NOTES

Just Another Day in the Neighborhood?
The Shaping of a Legal (and Social)
Consciousness in Harlem

WILLIAM PATRICK NICHOLSON*

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I. INTRODUCTION

Gentrification, as a legal concept and sociological phenomenon, is a relatively recent development in the course of urban evolution. First studied in 1964 by the British sociologist Ruth Glass,1 it is defined as

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One by one, many of the working-class quarters of London have been invaded by the middle-classes—upper and lower. Shabby, modest mews and cottages—two rooms up and two rooms down—have been taken over, when their leases have expired, and have become elegant and expensive residences. Larger Victorian houses, downgraded in an earlier or recent period—which were used as lodging houses or were otherwise in multiple occupation—have been upgraded once again. . . . Once this process of "gentrification" starts in a district it goes on rapidly
"the process of renewal and rebuilding accompanying the influx of middle-class or affluent people into deteriorating areas that often displaces poorer residents."\(^2\) Gentrification has been explored by many academics, ranging from urban planners\(^3\) and economists\(^4\) to sociologists\(^5\) and legal scholars.\(^6\) It has received attention from courts,\(^7\) as well as politicians and newspapers.\(^8\) And fewer than fifty years after its emergence in aca-

until all or most of the original working-class occupiers are displaced and the whole social character of the district is changed.

Id. (quoting RUTH GLASS, ASPECTS OF CHANGE at xviii (1964)).

2. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 522 (11th ed. 2008). Gentrification has taken on a legal connotation as well. Black's Law Dictionary defines gentrification as "[t]he restoration and upgrading of a deteriorated or aging neighborhood by middle-class or affluent persons, resulting in increased property values and often in displacement of lower-income residents." BLACK'S LAW DICTIONARY 708 (8th ed. 2004).

3. See David J. Maurrasse & Jaclyn B. Bliss, Comprehensive Approaches to Urban Development: Gentrification, Community, and Business in Harlem, New York, 1 NW. J. L. & SOC. POL'y 127 (2006) (analyzing development strategies as well as the opportunities and challenges inherent in urban revitalization in Harlem, New York); Lance Freeman & Frank Braconi, Gentrification and Displacement, 8 URB. PROSPECT 1 (2002), available at http://www.chpcny.org/pubs/UP_Gentrification_Displacement.pdf (analyzing the effects of increased demand for housing in several neighborhoods in New York City and concluding that, in the neighborhoods studied, gentrification does not lead to higher levels of displacement among low-income persons).


6. See, e.g., J. Peter Byrne, Two Cheers for Gentrification, 46 HOW. L.J. 405 (2003) (arguing that gentrification is (1) largely the product of social and economic forces and (2) largely beneficial for the low-income residents historically inhabiting gentrified neighborhoods); Audrey G. McFarlane, The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power, 8 U. PA. J. CONST. L. 1 (2006) (exploring supply- and demand-side causes of gentrification and analyzing in detail the state's use of the police power and eminent domain to revitalize urban neighborhoods); John A. Powell & Marguerite L. Spencer, Giving Them the Old "One-Two": Gentrification and the K.O. of Impoverished Urban Dwellers of Color, 46 HOW. L.J. 433 (2003) (rejecting Byrne's arguments concerning the benefits of gentrification in Two Cheers for Gentrification and proposing urban development strategies that mitigate the negative effects of gentrification on the urban poor).

7. See, e.g., Kelo v. City of New London, 545 U.S. 469, 477–90 (2005) (exploring the public and private interests at stake in government economic development strategies in the context of a Fifth Amendment challenge to a city's use of its eminent domain power in furtherance of one such economic development plan); Chinese Staff and Workers Ass'n v. City of N.Y., 502 N.E.2d 176, 180–81 (1986) (discussing the secondary displacement of residents and businesses and the state's role in managing such displacement when promulgating environmental and economic development strategies); Yonkers Cmty. Dev. Agency v. Morris, 335 N.E.2d 327, 332–33 (1975) (discussing the State's ability to define and redevelop areas of "urban blight" as a function of its police power).

demic circles, gentrification has now become an entrenched part of our popular urban culture.\(^9\)

Nonetheless, the topic remains as controversial and polarizing as ever,\(^10\) and the debate over gentrification's social and economic value (and cost) rages on. And no definitive answer, no solution to satisfy all interested parties has been sufficiently developed. Inevitably, those who are politically underrepresented and powerless, ethnic minorities and low-income persons of color, tend to benefit least from gentrification's benefits, while suffering the most from its costs and externalities.\(^11\) This result is not new or groundbreaking,\(^12\) nor is it a surprise to the academic community.

Lost in the fray of this academic and public policy debate, however, are the fates and lives of those living through this period of urban transition. For those caught in gentrification's crosshairs, it may mean a new, inexpensive home in an upwardly mobile and transitioning neighborhood or displacement into another neighborhood and a loss of community identity. It may mean new business opportunities or the closing of a family-owned restaurant in favor of a new Starbucks.\(^13\) For those living

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\(^9\) See Brian Raftery, *Slice and Dice*, N.Y. MAG., Oct. 13, 2008, at 57 (discussing a vandal's defacing of subway art on the New York City subway system to create political commentaries on, among other subjects, gentrification); Adam Sternbergh, *The What You Are Afraid Of*, N.Y. MAG., June 2, 2008, at 24 (describing the advent of Brownstoner.com, a blog dedicated to housing developments and happenings in Brooklyn that has evolved into an online-sounding board for the triumphs and struggles surrounding gentrification in the borough).

\(^10\) Compare Byrne, supra note 6 (lauding the positive effects of gentrification), and Freeman & Bronconi, supra note 3 (citing the lack of displacement among low-income residents in gentrifying areas), with Powell & Spencer, supra note 6 (rejecting the contentions of Byrne and Freeman & Bronconi and arguing for urban redevelopment strategies that mitigate low-income displacement and improve opportunities and justice for the urban poor).


\(^11\) See Powell & Spencer, supra note 6, at 440, 442 ("Gentrification is bound up in class, as well as race. . . . [G]entrification ignores concentrated poverty by pushing it elsewhere, [and] it ignores and actually intensifies concentrated wealth. Suburban economic growth continues unabated, as gentrification recreates the same discriminatory opportunity patterns in city neighborhoods. Serious biases in policies seek to deconcentrate poor households in gentrifying neighborhoods without seeking to deconcentrate wealthy households in wealthy neighborhoods.").

\(^12\) See id. at 440–41 (quoting Smith, *The New Urban Frontier*, supra note 5, at 17–18) ("[G]entrification infects working-class communities, displaces poor households, and converts whole neighborhoods into bourgeois enclaves . . . rationaliz[ing] social differentiation and exclusion as natural, inevitable.").

in gentrifying or newly gentrified neighborhoods, gentrification is not academic. It is both real and personal.

This comment will explore gentrification—the historical, legal, political and economic forces that shape it—and its effects on the lives and personal experiences of the residents of New York City’s Harlem. In effect, this comment will examine how legal and market forces have shaped the consciousness of those living through the process of gentrification in Harlem. This pursuit is anthropological in nature, with the purpose of developing a more nuanced view of gentrification and identifying workable solutions to maximize the benefits (and minimize the costs) of gentrification.

This essay is organized into six parts. Part II is an historical narrative of Harlem’s economic, social and cultural development. This historical narrative will track Harlem’s development from the turn of the twentieth century to today. Part II examines together the legal, economic and social forces bearing upon Harlem’s historical development. One cannot cognize the development of Harlem, and more importantly the contemporary legal and social consciousness of the neighborhood’s residents, without first understanding the legal, economic and social context of this evolving narrative.

Part III explores the legal and market forces that shaped the ghettoization and gentrification of Harlem. Building from an examination of law’s impact on the development and gentrification of Harlem, Part

Feelings as Change Sweeps 125th Street, N.Y. TIMES, June 13, 2008, at B1 [hereinafter Williams, Mixed Feelings].


My hypothesis is that the legal consciousness of individuals in Harlem is one that is distinct from the rest of Manhattan, but also one that is shared by many historically disadvantaged African American neighborhoods throughout the United States. I believe that the residents of Harlem, long neglected by government and business, may view the law more as a tool to advance the interests of the middle-class and bourgeois majority and, as an ancillary consequence, to exploit and hinder minority advancement. For more on this hypothesis, see Part IV infra.

15. The term “ghettoization” means the process of racial segregation and the concentration of a single ethnic group within a single neighborhood. In using this term, I draw upon Douglas S. Massey and Nancy A. Denton’s definition of “ghetto” in American Apartheid:

The term “ghetto” means different things to different people. . . . For our purposes, a ghetto is a set of neighborhoods that are exclusively inhabited by members of one group, within which virtually all members of that group live. . . . For urban blacks, the ghetto has been the paradigmatic residential configuration for at least eighty years.

IV examines how law has shaped the behavior of Harlem's urban underclass. This section will be anthropological in scope, and will attempt to capture a glimpse of Harlem on the brink of gentrification. After developing this anthropological approach to gentrification in Harlem, Part V evaluates the role of the law in developing sustainable, responsible solutions to urban redevelopment. Ultimately, I hope to demonstrate that legal instruments can serve to positively reshape the legal consciousness of Harlem's urban underclass. In this way, the law can be a healing, rather than destabilizing force.

II. HARLEM: A CENTURY MEASURED IN NUMBERS, BUT PAINTED IN SHADES OF BLACK

Harlem's historical development over the last hundred years is shaped by a long period of racial segregation, followed by urban revitalization and gentrification. At the turn of the twentieth century, Harlem was an integrated neighborhood. However, as more African Americans moved into the neighborhood, either from the lower Manhattan neighborhoods of Tenderloin and San Juan Hill or, in growing numbers, the rural South, the neighborhood became increasingly isolated and racially segregated. Social, political and, importantly, legal forces shaped Harlem's decline into an economically depressed ghetto. Over a 70-year period, from the 1930s until the late 1990s, Harlem languished as public and private officials contributed to its decline. During the course of this period, crime, hopelessness, family instability, and social and economic decay led to the creation of an urban underclass in Harlem. By

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16. I use the term "underclass" as it is understood by Professors Massey and Denton. Massey and Denton describe the urban "underclass" as "a large population of poorly educated [inner city inhabitants] who were likely to exit poverty and become self-sufficient." Id. at 5; see also MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1363 (11th ed. 2008).

One must recognize that this definition is largely the product of a white, middle-class culture that sought to provide an image of urban poverty during the late 1970s and early 1980s. See MASSEY & DENTON, supra note 15, at 4–5. Within this definition, then, one also recognizes racial and ethnic overtones. Massey and Denton note that the definition encompasses mainly "poor minority families mired in an endless cycle of... persistent poverty." Id.

17. See id. at 24 tbl.2.2 (showing a black isolation index in New York of 5.0 in 1900, compared with 41.8 in 1930); see also GILBERT OSOFSKY, HARLEM: THE MAKING OF A GHETTO 77–80, 84 (1966) (describing Harlem in the 1890s as an affluent and middle-class community consisting of European as well as African American peoples).

18. See MASSEY & DENTON, supra note 15, at 29–31 (describing increasing racial antagonism and segregation in Northern United States cities as blacks migrated North in the early 1900s); see also JAMES WELDON JOHNSON, BLACK MANHATTAN 58–59, 145–51 (1968).

19. MASSEY & DENTON, supra note 15, at 158–59 (describing the politically-charged decision of New York City officials to reduce social services in Harlem during the 1970s); see also KENNETH B. CLARK, DARK GHETTO: DILEMMAS OF SOCIAL POWER (1967) (noting the role of public and private forces in creating ghetto communities).

20. See MASSEY & DENTON, supra note 15, at 158–59 (describing the effects of a reduction in
the time Harlem experienced its revival, at the turn of the twenty-first century, its underclass was ill equipped to experience the benefits of gentrification. In a sense, the underclass was doubly mistreated by legal and market forces, destined to remain impoverished while middle-class whites and blacks derived the benefits of gentrification and urban renewal.

By the end of the nineteenth century, New York City was a center of industrial and commercial activity. As industry grew, so too did the population. By 1900, the city was home to over 3.4 million people, a 126 percent increase over a 10-year period.21 Throughout the late nineteenth and early twentieth century African Americans joined in the movement to New York City in search of jobs and opportunity.

At the beginning of the twentieth century, New York City was not racially segregated. In 1900, the city had a black isolation index—a measure of African American segregation—of 5.0 percent.22 The isolation index increased only slightly, to 6.7 percent, by 1910.23 New York’s black population lived in several neighborhoods during this period, many of them below 110th Street. James Weldon Johnson, a prominent African American and New York historian, noted that African Americans first settled in lower Manhattan, mainly in the areas around Little Italy and Greenwich Village.24 In the decades preceding 1900, some of New York City’s African Americans began to move northward, first to the “upper Twenties and lower Thirties west of Sixth Avenue,” and eventually to San Juan Hill on the Upper West Side.25 At all times during this period it appeared that New York’s black population lived amongst, rather than isolated from, the city’s White population.

Several events at the turn of the twentieth century dramatically reshaped the geographic diversity of New York’s African American population and led to the development of the African American ghetto in Harlem. Racial tensions in New York began to boil over in the late 1800s and early 1900s.26 An increase in black migration to New York City during this period likely fueled racial animosity.27 Additionally, the

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22. MASSEY & DENTON, supra note 15, at 24 tbl.2.2.
23. Id.
24. See JOHNSON, supra note 18, at 58.
25. Id. at 59.
27. See id.
tactical use of African American employees as strikebreakers by New York’s industrial employers also helped fan racial animus amongst the city’s largely White, immigrant and unionized industrial base. New York employers used black strikebreakers eight times between 1895 and 1920.

Amidst this increased racial tension, a race riot erupted in New York City in 1900. The riot originated in the aftermath of an altercation between Arthur Harris, a black man, and Robert J. Thorpe, a white policeman. Following Thorpe’s death at the hands of Harris, a white mob gathered and converged upon the black-inhabited neighborhoods of Manhattan’s Lower West Twenties and Thirties. James Weldon Johnson described what followed:

A mob of several thousands raged up and down Eighth Avenue and through the side streets from Twenty-Seventh to Forty-Second. Negroes were seized wherever they were found, and brutally beaten. Men and women were dragged from street-cars and assaulted. When Negroes ran to policemen for protection, even begging to be locked up for safety, they were thrown back to the mob. The police themselves beat many Negroes as brutally as the mob . . . . The riot of 1900 was a brutish orgy, which, if it was not incited by the police, was, to say the least, abetted by them.

In the wake of this violence and heightened racial tension, African Americans were increasingly segregated from the White community. As Massey and Denton describe, African Americans faced restricted opportunities for employment, education and housing. Indeed, by 1920 the black isolation index in New York reached 20.5 percent. By 1930, the black isolation index was 41.8 percent. An unofficial policy arose during this period to force African Americans into specified black neighborhoods known as “Bronzevilles.” One of these “Bronzevilles” was Harlem.

Social and economic forces facilitated the influx of African Americans to Harlem as well. In 1904, an African American businessman

28. See id. at 28.
29. See Ososky, supra note 17, at 42.
30. See Massey & Denton, supra note 15, at 30; see also Johnson, supra note 17, at 126–130 (describing the New York race riot of 1900 and its aftermath).
31. Johnson, supra note 18, at 126.
32. Harris mortally wounded Thorpe during the course of a scuffle that began when Harris defended his wife from an unwarranted arrest by Thorpe. Id.
33. Id. at 126–27.
34. Id. at 127.
36. Id. at 24 tbl.2.2.
37. Id.
38. Id. at 30.
named Philip A. Payton founded the Afro-American Realty Company.³⁹ Payton, through his real estate business, sought to lease or purchase homes and apartment buildings that he could then rent to black families.⁴⁰ Harlem proved to be an ideal location for Payton to develop his business. The housing market in the neighborhood was flooded with empty homes, a product of overbuilding and speculation following the construction of an overhead railway in the late 1800s.⁴¹ Payton entered the Harlem market first as a broker, facilitating tenant leases in eastern Harlem with some measure of success.⁴² Payton eventually leased homes from white owners, which he then re-leased to black families at profit.⁴³ Through this business of leasing and re-leasing homes, Payton became a real-estate tycoon and precipitated Harlem’s evolution in the early 1900s into a black middle-class neighborhood.⁴⁴

The reaction of Harlem residents, during this era immigrants from Poland, Italy, and other areas of Eastern and Southern Europe,⁴⁵ was swift and fierce. Racial animus—fueled by race riots,⁴⁶ historical union antagonism toward African Americans derived from employer strike-breaking tactics,⁴⁷ and a heritage of racial prejudice⁴⁸—manifested itself in several invidious legal conduits. White homeowners formed the Harlem Property Owners’ Improvement Corporation (“HPOIC”) in 1910.⁴⁹ Superficially formed for the purpose of promoting and maintaining property values and neighborhood security, HPOIC’s primarily functioned as a legal vessel for blocking African American entry into the

³⁹. See Osofsky, supra note 17, at 96.
⁴⁰. See id. at 93–94.
⁴¹. See Jeremy Linden, At the Bus Depot: Can Administrative Complaints Help Stalled Environmental Justice Plaintiffs?, 16 N.Y.U. ENVTL. L.J. 170, 193–94 (2008) (describing briefly the history of Northern Manhattan, and noting that over-speculation in the Harlem housing market at the turn of the twentieth century provided an opportunity for Payton to enter the market to lease homes to middle-class black families); see also Johnson, supra note 18, at 148.
⁴². See Osofsky, supra note 17, at 93–94 (recounting Payton’s early successes in facilitating leases between white landlords and black tenants); see also Johnson, supra note 18, at 148 (describing white landlords’ willingness to allow Payton to facilitate leases to black tenants as based out of “[e]conomic necessity”).
⁴³. See Osofsky, supra note 17, at 93. Payton was able to extract profits from each lease transaction by charging rents at “ten per cent above the then deflated market price.” Id.
⁴⁴. See Massey & Denton, supra note 15, at 40; see also Ososky, supra note 17, at 95, 98–104 (noting Payton’s early real-estate fortunes and the Afro-American Realty Company’s influence in transforming Harlem into an African American neighborhood).
⁴⁵. See Linden, supra note 41, at 193.
⁴⁶. See Massey & Denton, supra note 15, at 30; Johnson, supra note 18, at 126–30 (giving an historical account of the Harlem race riot of 1900).
⁴⁷. See Ososky, supra note 17, at 42 (describing the development of union antagonism toward black strikebreakers over a twenty-year period in early twentieth century New York City).
⁴⁸. See id. at 40–43.
⁴⁹. See id. at 107.
Like other neighborhood “improvement associations” formed during this period, HPOIC used lobbying and boycotting tactics to restrict black encroachment into white-dominated areas of Harlem. The HPOIC formed racially restrictive covenants to keep black homeowners and renters out of Harlem, and, through public and private coercion of white landowners, drew on prejudices and racial animus to restrict black ownership in Harlem. These racially motivated legal maneuvers proved futile, however, as African Americans continued their migration into Harlem.

Unable to restrict African American movement into Harlem, white families left the neighborhood in increasing numbers. By the 1940s, most white families had moved out of Harlem, causing the black isolation index to spike to 86.8 percent in that decade. Upon moving out of Harlem, neighborhood improvement associations and local real estate boards continued to use restrictive covenants in other neighborhoods to greater effect, ensuring a higher degree of racial homogeneity among New York neighborhoods.

50. See Massey & Denton, supra note 15, at 35–36 (describing the racially discriminatory tactics of neighborhood “improvement associations” like HPOIC); see also Ososky, supra note 17, at 107–10 (describing HPOIC’s efforts to restrict African American encroachment deeper into Harlem through legal, financial and media channels).

51. Massey and Denton describe the legal and political tactics of neighborhood “improvement associations” as follows:

They [neighborhood improvement associations] lobbied city councils for zoning restrictions and for the closing of hotels and rooming houses that attracted blacks; they threatened boycotts of real estate agents who sold homes to blacks; they withdrew their patronage from white businesses that catered to black clients; they agitated for public investments in the neighborhood in order to increase property values and keep blacks out by economic means; they collected money to create funds to buy property from black settlers or to purchase homes that remained vacant for too long; they offered cash bonuses to black renters who agreed to leave the neighborhood.

52. See Ososky, supra note 17, at 107–10 (noting further that HPOIC was not able to obtain support for a neighborhood-wide restrictive covenant, and that judicial enforcement of such agreements was rare).

53. See id.

54. Id. at 123 (“By 1920 the section of Harlem bordered approximately by One Hundred and Thirtieth Street on the south, One Hundred and Forty-fifth Street on the north and west of Fifth to Eighth Avenue was predominately Negro—and inhabited by some 73,000 people. Two-thirds of Manhattan’s Negro population lived there in 1920. . . . Harlem had become ‘the Mecca of the colored people of New York City.’”).

55. Massey & Denton, supra note 15, at 47 tbl.2.3.

56. See id. at 35–39 (describing the process of white-flight to suburbs and the use of racially restrictive covenants in Northern United States cities during the early 1900s); see also Ososky, supra note 17, at 127–30 (citing the expansion of the Harlem ghetto in the 1920s and the rapid flight of white families during this period to New York’s suburbs).
character became an entrenched notion, and white neighborhoods developed in other areas of the city.

Racial segregation, at least for a time, did not lead to economic hardship or rough times for Harlem. The Harlem Renaissance signaled a period of economic and cultural flourish during the 1920s. African American artists flocked to the neighborhood, now known as the cultural and spiritual Mecca for black America, pouring their creative spirits into art, music and poetry. 57 Philip Payton and other affluent and middle-class African Americans bought and rented homes in the neighborhood. 58 Harlem became a center of black wealth and influence during this period, supported by an emerging parochial leadership base in economic and political arenas. 59

Harlem’s reemergence as a center of black affluence and wealth was short lived. The economic and political gains Harlem realized during the early decades of the twentieth century were virtually eliminated by the Great Depression. 60 Massey and Denton claim that the Depression was particularly devastating to Harlem’s socioeconomic development for a number of reasons. As consumer demand fell in the wake of the Depression, forcing companies to lay off workers, black workers were often the first to be dismissed. 61 Falling consumer demand also hurt black businesses in Harlem, many of which were forced to close. 62 Neither employment rates nor business ownership among Harlem’s residents saw much improvement in the decades that followed. Massey and Denton suggest that this is because middle-class and affluent African Americans eventually left the neighborhood for opportunities elsewhere, leaving a “truly disadvantaged” underclass unable to obtain jobs in a changing society. 63

The federal government also contributed to the creation and perpetuation of Harlem’s ghetto during this period. The Home Owners’ Loan Corporation (“HOLC”) was created during the 1930s to help refinance urban mortgages in danger of default and to provide low-interest mortgages for former urban homeowners who had recently lost homes to

57. See Johnson, supra note 18, at 260–280.
58. Id. at 153–55; see also Massey & Denton, supra note 15, at 40.
59. See Massey & Denton, supra note 15, at 40 (citing the emergence of a black middle-class and affluent community within Harlem’s borders by the 1920s). In describing the socioeconomic and political makeup of 1920s Harlem, Massey and Denton note that “[t]he interests of these new economic and political leaders were tied to the ghetto and its concerns rather than to issues growing out of an attempt to pursue an integrated life within the mainstream of American society.” Id.
60. Id. at 116.
61. Id.
62. Id.
63. Id. at 117.
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foreclosure.\textsuperscript{64} HOLC helped to provide legal traction for racial segregation in urban neighborhoods like Harlem through the institutionalization of mortgage "redlining" practices.\textsuperscript{65} Likewise, the Federal Housing Administration ("FHA") continued the practice of "redlining" in the 1940s and 1950s.\textsuperscript{66} Because private banks followed rating standards set by HOLC and FHA, African American neighborhoods like Harlem saw significant underinvestment compared to suburban and White neighborhoods.\textsuperscript{67}

A pattern of social decay in Harlem developed directly out of legal forces and government policy. For example, state and local officials in New York, in an effort to cut spending, closed several firehouses in predominately low-income and minority neighborhoods like Harlem in the 1970s.\textsuperscript{68} This policy led to an increase in neighborhood fires and destruction of buildings.\textsuperscript{69} Persons living in buildings destroyed by fire were forced to move in with friends and neighbors, further overcrowding Harlem's housing storages.\textsuperscript{70} When combined with the decrease in government and private spending on housing in Harlem beginning in the 1940s,\textsuperscript{71} this created an environment dominated by disease and environmental hazard.\textsuperscript{72} Further leading to the Harlem's social decay were poorly funded schools\textsuperscript{73} and the disproportionate placement of environmentally hazardous waste facilities and bus depots in the neighbor-

\textsuperscript{64} See id. at 51–52.

\textsuperscript{65} Id. "Redlining" is defined as "[c]redit discrimination (usu. unlawful discrimination) by an institution that refuses to provide loans or insurance on properties in areas that are deemed to be poor financial risks or to people who live in those areas." \textsc{Black's Law Dictionary} 1305 (8th ed. 2004).

\textsuperscript{66} See \textsc{Massey & Denton}, supra note 15, at 52–54. The FHA during this period also promoted the use of restrictive covenants as a means of maintaining racial balance in communities, a stated administrative goal. Pursuant to this policy objective, in 1939 the FHA distributed a practice manual that stated "if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes." \textit{Id.} at 54 (citing \textsc{Kenneth T. Jackson}, \textsc{Crabgrass Frontier: The Suburbanization of the United States} 208 (1985)).

\textsuperscript{67} See \textsc{Massey & Denton}, supra note 15, at 55.

\textsuperscript{68} Id. at 158–59.

\textsuperscript{69} Id.

\textsuperscript{70} Id.

\textsuperscript{71} Private landlords owning buildings in Harlem began to discontinue maintenance on their buildings beginning in the 1940s as African Americans established their presence in the neighborhood. See Linden, supra note 41, at 194. As Harlem became more overcrowded, the New York City Housing Authority built high-rise public housing to address housing shortages. \textit{Id.} These buildings were often kept in terrible condition, and in the wake of judicial decrees banning the placement of public housing projects in predominately black communities officials discontinued building them altogether. See \textsc{Massey & Denton}, supra note 15, at 83–84.

\textsuperscript{72} See \textsc{Massey & Denton}, supra note 15, at 159.

\textsuperscript{73} See \textsc{Clark}, supra note 19, at 111–53.
hood. As a result of these intertwining legal forces Harlem’s ghetto was beset by a pattern of social decay, a pathology predominated by crime, drug use and welfare dependency.

By the 1990s, Harlem had reached its nadir. In 1994, Harlem was described as “another America,” a neighborhood dominated by drug-related crime, welfare and unemployment. The neighborhood, almost one hundred percent black, was isolated from the rest of Manhattan. However, a series of legal-related changes—increased policing, environmental justice efforts, and government investment in neighborhood revitalization programs—transformed Harlem over a ten-year period. Buildings were rehabilitated, new businesses moved into the neighborhood, and entire blocks were revitalized in the span of a decade. By turn of the twenty-first century, Harlem was quickly gentrifying. Unfortunately, many among Harlem’s underclass—long demoralized and isolated from mainstream society through decades of living in the ghetto—were unable to realize the benefits of neighborhood gentrification. For these truly underprivileged persons, gentrification’s empty benefits proved to be a cruel irony created through legal and social forces. Gentrification, like ghettoization before it, demoralized Harlem’s underclass.

III. LEGAL CONDUITS OF RACIAL SEGREGATION AND UNDERCLASS CONSTRUCTION

Lost in the debate over Harlem’s gentrification are the root causes of this socio-geographic phenomenon and its effects on the people most vulnerable to neighborhood transition. Individuals and groups favoring gentrification tend to view this process of urban renewal as a function of free market forces pushing land and property toward its most efficient and profitable use. Contrary to this mainstream, bourgeois belief, gentrification—like the racial segregation and ghettoization that preceded it—is the function of legal forces informed with racial and capitalist

75. See MASSEY & DENTON, supra note 15, at 159. Kenneth Clark also characterizes the pattern of social decay within the urban ghetto as a sort of “pathology.” See Clark, supra note 19, at 81 (“The dark ghetto is institutionalized pathology; it is chronic, self-perpetuating pathology; and it is the futile attempt by those with power to confine that pathology so as to prevent the spread of its contagion to the ‘larger community.’”).
76. Waldman, In Harlem’s Ravaged Heart, supra note 8.
77. See id.
78. See id.
79. See Waldman, Beneath New Surface, supra note 8.
80. See, e.g., Byrne, supra note 6, at 408–15 (analyzing the effects of gentrification primarily through an economic, as well as a social, lens); see also Waldman, Beneath New Surface, supra note 8 (discussing the free market principles underlying the attitudes of those in favor of gentrification).
undertones. Through an examination of several legal and socio-economic trends in the neighborhood, including the provision of government services, criminal procedure and policing, business and economic opportunities, and housing, in this section I will examine how the law has shaped Harlem’s gentrification and the perpetuation of an urban underclass.

A. The Affluent Urban Migrant: A Free Market Approach to Gentrification?

"[G]entrification is good on balance for poor and ethnic minorities."  
"I think [wanting to keep Harlem Black is] pretty strange, to tell you the truth."  

The above quotes capture the middle- and upper-class zeitgeist in regards to gentrification. For those educated and affluent persons seeking to enjoy urban living, gentrification is largely a social and economic phenomenon. Professor Byrne, himself a migrant to the city, noted the social and economic attraction of newly gentrified Capitol Hill, Washington, D.C. in the early 1980s. From a social standpoint, Byrne preferred living in an economically and racially mixed area, an attraction not available in the suburbs. Further, homes in Capitol Hill—a rapidly changing neighborhood previously in economic disrepair—were relatively cheap compared to homes in the suburbs. Gentrification, for

81. See, e.g., Powell & Spencer, supra note 6, at 436–42 (examining gentrification through a “racial [and] class lens”). Powell and Spencer cite a study by Professor John J. Betancur to reinforce their thesis that gentrification is not merely a function of free market capitalism. See id. at 436 (quoting John J. Betancur, The Politics of Gentrification: The Case of West Town in Chicago, 37 Urb. Aff. Rev. 780, 807 (2002)) (“[T]here is an aspect of gentrification that mainstream definitions ignore. Descriptions of gentrification as a market process allocating land to its best and most profitable use, or a process of replacing a lower for a higher income group, do not address the highly destructive processes of class, race, ethnicity, and alienation involved in gentrification. . . . [T]he right to community is a function of a group’s economic and political power. . . . [T]he hidden hand is not so hidden in the process of gentrification and that in fact, it has a face—a set of forces manipulating factors such as class and race to determine a market outcome. . . . The most traumatic aspect of this analysis is perhaps the destruction of the elaborate and complex community fabric that is crucial for low-income, immigrant, and minority communities—without any compensation.”).

82. Byrne, supra note 6, at 406 (arguing further that one of gentrification’s most negative consequences, a reduction in affordable housing, results not from gentrification itself but from the failure of the government to maintain affordable housing storages).

83. Waldman, Lines That Divide, supra note 8 (quoting Lars Westvind, a Swedish-born artist who owns three row houses on 129th Street that he rents out, mostly to European and American whites).

84. See Byrne, supra note 6, at 408.

85. Id.

86. Id.
Byrne, was spurred by social and economic rather than political or racial forces.

For Lars Westvind, a Swedish-born artist living in a gentrified part of Harlem on 129th Street, gentrification also is the product of free market forces. Westvind rents out housing units in his three 129th Street row houses for $450 for one room and $1500 for an apartment. Such rents often are out of financial reach for Harlem’s urban underclass, many of whom make below $20,000 a year and often must support themselves as well as children. This stark economic reality, and the fact that many black residents are pushed out of the neighborhood as a consequence, does not overly concern Westvind. According to Westvind, “I’m not looking at color . . . [j]ust at who can pay the rent.”

Professor Audrey McFarlane also notes the attraction of the city to affluent and middle-class professionals. Underscoring the sentiment and feelings engendered by Byrne and Westvind, McFarlane notes that affluent professional migration to the city is driven in part by “social and economic factors.” The rise of the “creative class,” educated, affluent professionals employed in knowledge-based and creative industries such as science, design, business and law, has produced a large group of persons seeking to live in the city for work and social reasons. Consequently, a demand for housing in the city has risen. Low housing prices in formerly economically depressed areas, such as Harlem, are attractive for economic and social reasons. While this is only part of what is driving gentrification, for many, it may fully explain this demographic phenomenon.

The second myth perpetuated by some in favor of gentrification is that the benefits of gentrification outweigh its costs. As seen by the

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89. Waldman, In Harlem’s Ravaged Heart, supra note 8.
90. See id. at 13 & n.43 (citing Richard Florida’s The Rise of the Creative Class for this proposition and noting the social and economic draw to the city for many educated, affluent professionals working in today’s knowledge-based economy). For a more in-depth discussion on the “creative class” and the demographic changes brought about by this group of individuals, see RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS: AND HOW IT’S TRANSFORMING WORK, LEISURE, COMMUNITY AND EVERYDAY LIFE (2002).
91. See McFarlane, supra note 6, at 12–15.
92. See McFarlane, supra note 6, at 12–15.
quote at the beginning of this section, Professor Byrne is among those who argue gentrification is good on balance for the poor. Byrne argues that gentrification "ameliorates social isolation of the poor" and creates the possibility for social mobility through interaction with successful, affluent professionals at work and at school. He further posits that gentrification provides more employment opportunities for low-income residents through the increase of demand for local goods and services by incoming affluent professionals. Higher tax revenues created through the influx of professionals and new businesses may be used to further revitalize the neighborhood. Byrne even challenges the displacement of the urban poor, citing the Freeman and Braconi study for the proposition that only 5.47 percent of low-income people in Harlem have been displaced by higher rents. Byrne claims that the main drawback to gentrification—displacement of low-income persons—can be rectified through a deeper government commitment to affordable housing or rent control.

The hypothesis set forth by Byrne and others favoring gentrification—that gentrification is (1) largely the product of social and economic forces and (2) good on balance for the low-income residents historically inhabiting gentrified neighborhoods—ignores the effect of legal forces shaping gentrification and simplifies the problems underlying low-income resident adjustment to this neighborhood transition. As discussed in part II of this essay, Harlem has suffered through a history of racial segregation driven by laws and political decisions. The neighborhood has historically suffered from an under funded education system, environmental discrimination and inadequate government and social services. Each of these developments served to perpetuate Harlem's underclass. Likewise, the legal developments precipitating gentrification—Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") tax and liability incentives, other tax incentives and government funding for urban development, the transfer of city-owned buildings to private ownership, and more stringent policing—serve to further the problems of the urban underclass. The fol-

93. See Byrne, supra note 6, at 408.
94. Id. at 422–23.
95. Id. at 419–20.
96. Id.
97. See Freeman & Braconi, supra note 3.
98. See Byrne, supra note 6 at 413–14 & nn.38–39.
100. See Powell & Spencer, supra note 6, at 450 ("[T] state, at various levels, is fueling the process of gentrification more directly than in the past, largely due to increased devolution. It sets the rules for development and is, with a few notable exceptions, more a part of the urban problem than of the solution. And despite claims to the contrary . . . the private sector could not possibly
lowing sections will highlight in more detail the legal forces shaping gentrification.

B. Housing and Economic Development: The Paradox of Gentrification

In terms of its effects on the development of Harlem from a largely African American ghetto into a relatively more racially- and socioeconomically-diverse neighborhood, the law has had its greatest impact through the shaping of housing and economic policy. In many ways, the law has had both a direct and indirect influence on the transformation of the neighborhood. Through the implementation of tax credits designed to promote the development and revitalization of housing storages in the neighborhood, the sale of city-owned housing to private developers, and evictions of some residents from newly-private housing, government housing policy set the stage for gentrification and the entry into the neighborhood of upper-class professionals. At the same time, Harlem’s long-time residents were left unable to adjust to the neighborhood’s transformation and the rise of home and business property values. They were victims of a century of government policy that gave rise to the Harlem ghetto and its underclass. Further exacerbating the fate of Harlem’s urban underclass, a series of legal decisions at the state and federal level “blessed” the process of gentrification, leaving Harlem’s underclass with little recourse regarding their residential fate.

succeed in gentrifying without government support for major infrastructural improvements and public intervention in the form of historical designation, code enforcement, zoning changes and conversions.”

In further support of the proposition that the state has served as a catalyst for gentrification, Powell and Spencer cite John J. Betancur’s study of West Town in Chicago. See id. (citing Betancur, supra note 81, at 806) (“[Gentrification] reveals extreme forms of manipulation of the real estate market through racism, abuse of public office, and utilization of criminal and other ‘nonmarket’ intimidation strategies.”).

101. It is important to note here that gentrification has not driven out Harlem’s African American and Hispanic population, but rather has introduced more white persons to the neighborhood. In 2006, Central Harlem had a 67 percent black population, compared to 8 percent white neighborhood population and 19 percent Hispanic neighborhood population. Overall, New York City had a 24 percent black population, with a 35 percent white city-wide population and a 27 percent Hispanic city-wide population. City of New York, Take Care Central Harlem, supra note 88, at 2.

102. See Anthony Depalma, Tax Credits Produce Housing for Poor, N.Y. TIMES, Jan. 17, 1988, at 81 (describing a federal tax-credit program designed to incentivize the redevelopment of Harlem home storages); Thomas J. Lueck, Retail Center Proposed in East Harlem, N.Y. TIMES, Mar. 29, 1998, at 133 (describing a plan by state and local officials to fund construction of a commercial retail center to attract business and lure jobs to East Harlem); Tracie Rozhon, Reviving the Harlem Brownstone, N.Y. TIMES, Apr. 27, 1997, at 91 (describing the effect of the Giuliani administration’s HomeWorks program in revitalizing Harlem brownstones).

103. See Waldman, Beneath New Surface, supra note 8.

104. See id.
This section details the effect of the law on housing and economic policy, and demonstrates that, contrary to the views of Professor Byrne and others, law has had a tremendous effect on housing stocks and, therefore, gentrification.

At the forefront of Harlem's redevelopment is a series of tax incentives and urban restructuring programs designed to create affordable housing and attract jobs and businesses to the neighborhood. Professor McFarlane notes the value of tax-credits and urban empowerment zones in restructuring neighborhoods, stating that such programs "have often unwittingly contributed to the class transformation process by fixing up lower income neighborhoods only to be surprised by their unexpected success in creating a neighborhood desirable to people who threaten to price out lower-income residents." And in Harlem, these programs have worked no differently. In 1987, $2.8 million was raised through the use of low-income housing tax credits to fund projects redeveloping housing in Harlem and other New York City neighborhoods. In 1996, Congress created an economic Empowerment Zone in parts of Harlem, Washington Heights and the South Bronx that is administered by city, state and federal officials. And the Upper Manhattan Empowerment Zone, created by Congress in 1993, received $300 million in loans and grants along with another $250 million in tax credits to be used from the late 1990s until 2007. Government poured funding into Harlem in the hopes of reviving the neighborhood.

At the same time as federal, state and city officials offered tax and other financial incentives to create affordable housing and businesses in Harlem, New York City officials began programs transferring city-owned properties to private owners. In 1994, New York City owned 1381 buildings in Harlem, of which 615 were vacant. By 2001, dozens of buildings in and around 129th Street in central Harlem had been renovated either by the city or private individuals and transferred to private ownership. As part of the program to build and rehabilitate buildings in the neighborhood, the city reserved sixty percent of housing built and renovated by the government for low-income persons. The other forty percent could be rented or sold on the free market, but through this
revitalization program the city maintained its dual commitment to urban redevelopment and sustaining affordable housing storages.

As New York has expanded affordable housing in Harlem and opened the neighborhood to more affluent migrants to the city, private individuals and organizations have worked within the bounds of the law to expand middle-class presence in Harlem. The Abyssinian Development Corporation, a non-profit organization founded in 1989 by the Abyssinian Baptist Church, owns dozens of buildings in Harlem and is committed to revitalizing the neighborhood in part through increasing its number of middle-class residents.\(^\text{114}\) Gregory Pascal owns twenty-four buildings through a city program giving minority entrepreneurs formerly government-owned buildings to renovate, manage and own.\(^\text{115}\) The city sets program requirements designed to preserve affordable housing for longtime residents of Harlem, but Pascal is otherwise free to pick and choose his residents.\(^\text{116}\) Pascal does so with an eye toward the free market and diversification of the neighborhood—and his buildings—racially and economically.\(^\text{117}\) Others, like Lars Westvind, own their buildings free of any government restrictions and rent housing units at market prices, often beyond the financial means of Harlem’s underclass.\(^\text{118}\)

The cumulative effect of these changes—federal, state and city revitalization programs, tax credits, and the transfer of government-owned housing to private hands—have meant higher housing prices and the transfer of some residents out of the gentrified areas of Harlem. Obviously, social and economic factors have played a role in this transformation as well; gentrification could not have occurred without an increase in demand among affluent and middle-class professionals for inexpensive urban housing in transitioning neighborhoods.\(^\text{119}\) Likewise, reforms in government entitlement programs and a historic disconnect from the mainstream economy left Harlem’s underclass ill-equipped to adjust to gentrification.\(^\text{120}\) On the whole, however, the increase in housing prices, and the shift this caused in the economic fate among many of

\(^{114}\) See id.

\(^{115}\) See id.

\(^{116}\) See id.

\(^{117}\) See id.

\(^{118}\) See Waldman, Lines That Divide, supra note 8.

\(^{119}\) See, e.g., McFarlane, supra note 6, at 12–15 (noting professional attraction to the city as one of the bases for gentrification).

\(^{120}\) See Waldman, Beneath the Surface, supra note 8 (noting the difficulty that many of Harlem’s older residents experience in adjusting to Harlem’s gentrification). Waldman cites the experience of Mary Powell as indicative of the struggles Harlem’s older residents face in reintegrating into the neighborhood’s new economy. Of Powell, Waldman writes that “[a]t 38 and single with five children and no high school diploma, [Powell] has concluded, ‘You ain’t going to make it nowhere.’” Id.
Harlem’s longtime residents, is the result of legal policies and private and government actors acting within the law.

Other, outside legal decisions had further effects—both direct and indirect—on gentrification in Harlem. United States Supreme Court decisions in *Berman v. Parker* and *Kelo v. City of New London* upheld the use of the state police power to effectuate urban renewal and gentrification. One scholar has described Supreme Court jurisprudence in this field as “a perverted variation of the ‘manifest destiny’ concept of the nineteenth century, [where] inner cities are the new frontier and urban minorities are the new Indians.” The Supreme Court has also been remiss in addressing systemic inner-city problems like the lack of affordable housing stocks, under funded neighborhood schools, and little opportunity for economic advancement among the urban underclass. Each of these outside factors has contributed to the furtherance of Harlem’s underclass, creating a paradoxical situation in which economic improvement has led to more problems and despair for the underprivileged.

C. Environmental Justice, But For Whom?

Over the last forty years, the law has had a tremendous effect on environmental policy. Indeed, with the advent of the National Environmental Policy Act (“NEPA”) in 1970, significant advances have been made in New York and throughout the United States with respect to environmental protection. And just as law has served to gentrify Harlem through the shaping of housing policy and economic development, legal forces are inextricably intertwined with environmental policy and gentrification. Harlem has been the beneficiary of the environmental justice movement and Brownfields legislation, two legal mechanisms effec-

121. 348 U.S. 26 (1954) (upholding dismissal of an action to enjoin the condemnation of property housing a department store pursuant to the District of Columbia Redevelopment Act of 1945).

122. 545 U.S. 469 (2005) (finding that a city’s decision to condemn property under an economic development plan may satisfy the “public use” requirement of the Fifth Amendment’s Takings Clause).


tuating widespread change and cleanup in the neighborhood. Unfortunately, and in a paradoxical turn of events, these changes have not benefited Harlem’s underclass, many of whom have been forced out of the neighborhood through higher rents and coerced evictions.

In past times, Harlem had been the site of unsightly, noxious and even environmentally dangerous public works projects like diesel bus depots, sewage treatment plants and hazardous waste facilities.126 Jeremy Linden studied the locations of New York City’s Metropolitan Transit Authority’s (“MTA”) bus depots and found that six of the seven Manhattan depots were located in Northern Manhattan, including Harlem.127 These depots are often overcrowded, and the MTA is forced to park buses on the streets surrounding depots, causing traffic congestion and impeding commercial development.128 The constant, heavy traffic of diesel buses in the neighborhood contributes to health risks, including higher cancer rates and pulmonary diseases.129

Government officials at the state and local level further contributed to environmental injustice in Harlem by placing hazardous waste facilities and sewage treatment plants in the neighborhood.130 Often, these facilities were placed in Harlem because it was politically palatable to do so; politically connected and powerful groups in more affluent neighborhoods often steered such facilities into poorer neighborhoods such as Harlem.131 Notably, the North River Sewage Treatment Plant located in Harlem caused horribly noxious odors and less than ideal living conditions for West Harlem residents living near the site.132 Given the presence of this and other waste facilities, it is perhaps not surprising that Harlem has a morbidity rate significantly higher than that of other New York City neighborhoods.133

126. See Linden, supra note 41, at 171–75 (discussing the placement of environmentally hazardous waste facilities and diesel bus depots in Harlem).
127. See id. at 195.
128. See id. at 197–98.
129. Id. at 199–201.
130. See WE ACT for Environmental Justice, supra note 74.
131. See MASSEY & DENTON, supra note 15, at 158 (noting that the spatial and political isolation of Black communities like Harlem has led to economic and environmental disinvestment in these neighborhoods).
132. See Richard Severo, Odors From Plant Anger Many in Harlem, N.Y. TIMES, Nov. 30, 1989, at B1 (discussing WE ACT for Environmental Justice’s early legal maneuvers in seeking to force officials to mitigate the harmful odors at the North River Water Treatment Plant in Harlem).
133. See CITY OF NEW YORK, TAKE CARE CENTRAL HARLEM, supra note 88, at 4. During the 2003-2004 year, the average annual death rate in Harlem was forty percent higher than the rates in Manhattan and New York City overall. This placed Harlem 39th out of forty-two neighborhoods measured in terms of death before age seventy-five. Id. The death rate due to cancer in Harlem during this period was thirty percent higher than the overall Manhattan rate and forty percent higher than the overall New York City rate. Id. at 11.
City and state officials also cut basic government services in minority neighborhoods like Harlem in the 1970s, further contributing to environmental hazards and decay. The decrease in fire fighting services in densely populated and high fire-risk areas of Harlem (as well as other minority-dominated neighborhoods) led to “an epidemic of building fires” between 1970 and 1980. This contributed to what Massey and Denton describe as a “social and economic collapse” in the neighborhood in the decades that followed. As housing, businesses, churches and other institutions were destroyed by fires, displaced residents moved in with friends and relatives, causing further overcrowding and increased fire hazards. Displacement and overcrowding led to higher morbidity and disease rates, and crime rates rose as well. By 1990, these combined environmental hazards—diesel bus depot concentration within the neighborhood, exposure to hazardous waste material and sewage plants, and a reduction in basic government services such as fire fighting—created what some described as an “urban desert” in Harlem, a metropolitan wasteland of social and economic despair.

It was against this backdrop of concentrated waste and pollution levels and increased neighborhood health risk that Harlem’s environmental justice movement founded. In 1988, WE ACT for Environmental Justice, a legal advocacy and environmental watchdog group, was founded. Over the past twenty years, WE ACT has successfully advocated and lobbied for environmental justice in Harlem and Northern Manhattan on several fronts. In 1992, WE ACT confronted state and local officials over the North River Sewage Treatment Plant on behalf of West Harlem residents living near the facility. WE ACT eventually filed suit alleging public and private nuisance in New York State Supreme Court on behalf of homeowners and residents of West Harlem suffering from the facility’s noxious odors. The suit settled in 1993, with city and state officials agreeing to pay a $1.1 million settlement and $55 million in clean-up costs.

More recently, WE ACT confronted city and state officials over the placement and maintenance of the six bus depots located in Harlem and Northern Manhattan. Unable to bring a claim in Article III courts on the...
basis of violation of federal environmental law, WE ACT chose to bring an administrative complaint with the United States Department of Transportation’s (“USDOT”) Federal Transit Administration (“FTA”) against MTA and New York City Transit (“NYCT”) in 2000. In its complaint WE ACT alleged that the MTA’s placement and maintenance of bus depots and outdoor bus parking lots in Harlem and Northern Manhattan were racially discriminatory in nature, in violation of Title VI of the Civil Rights Act of 1964 and USDOT regulations. The FTA Office of Civil Rights began a Title VI Compliance Review in 2003, and in 2005 submitted a final Letter of Finding concluding that the MTA’s policy did not violate Title VI’s discriminatory intent or disparate impact standards. The FTA did, however, recognize a responsibility to reduce the negative impact of future depot decisions on minority and low-income communities such as Harlem, and stressed that the MTA needed to comply with NEPA requirements mandating assessments of environmental risk with respect to given projects. The FTA also expressed a commitment to monitor the MTA and NYCT in their efforts to minimize environmental risk related to bus idling and pollution. WE ACT’s efforts demonstrate the utility of political activism, litigation and administrative complaints in furthering the environmental justice movement.

The brownfields revitalization movement has further bolstered environmental justice in urban areas like Harlem. The passage of CERCLA in 1987 gave private landowners incentives to redevelop blighted, polluted urban properties. CERCLA provides purchasers of brownfields a defense to liability and tax incentives to encourage private cleanup of these abandoned and polluted urban sites. New York has been the recipient of Environmental Protection Agency (“EPA”)...

144. See Linden, supra note 41, at 204–18.
145. See id. at 204–05.
146. See id. at 205–06, 216–17 (noting that the FTA based its conclusions on the following: (1) that bus depots were not disproportionally located in predominately minority communities; (2) there was no evidence that air pollution caused by bus traffic in predominately minority communities was higher relative to other communities; and (3) the MTA exercised mitigation efforts to reduce neighborhood pollution levels).
147. See id. at 217–18.
148. See id.
149. According to two scholars, a “brownfield” is defined as “abandoned or underutilized urban property which private sources will not redevelop due to the reality or just the perception of hazardous waste (including asbestos containing materials) and fear of attendant liability for environmental remediation or cleanup.” John W. Lee & W. Eugene Seago, Policy Entrepreneurship, Public Choice, and Symbolic Reform Analysis of Section 198, The Brownfields Tax Incentive: Carrot Stick or Just Never Mind?, 26 WM. & MARY ENVTL. L. & POL’Y REV. 613, 613 (2002).
151. See id. at 721.
Brownfields Grants to facilitate cleanup efforts as well, including $400,000 in 2007. By encouraging private actors to invest in environmental cleanup efforts, government has used the law to directly and indirectly effectuate environmental justice.

Though aimed to rectify decades of environmental injustice borne by the older citizens of Harlem, the benefits of litigation, administrative complaints and CERCLA have not been fully realized by Harlem’s underclass. In many respects, the effects of the environmental justice movement on Harlem’s gentrification have been similar to those seen through housing and urban development. Environmental protection efforts, like the development of housing, increase property values in Harlem, thus pricing underprivileged persons out of the neighborhood. Professor Richard Lazarus makes this point, stating that

[a] cleaner physical environment may increase property values to such an extent that members of a racial minority with fewer resources can no longer afford to live in that community. Indeed, the exclusionary impact of environmental protection can be more than just an incidental effect; it can be the *raison d’etre*, with environmental quality acting as a socially acceptable façade for attitudes that cannot be broadcast.

Lazarus thus notes a more sinister aspect to environmental protection—the use of environmental cleanup as a proxy for the perpetuation of racial segregation and the maintenance of an underclass. This paradox has played out in Harlem over the last several years. As neighborhood blocks were revitalized and public and private monies spent on environmental protection efforts, Harlem’s older, more underprivileged residents have been priced out of old buildings and, in some cases, out of the neighborhood altogether. Environmental protection efforts in Harlem have not come about without adverse consequences. At least in a socioeconomic sense, many of these adverse consequences have been borne by the underprivileged.

D. Criminal Procedure: The Ancillary Costs of Aggressive Police Tactics

The effects of the law with respect to policing and criminal procedure are at least as influential in precipitating Harlem’s gentrification as housing and environmental policy. State action in the form of greater

and more aggressive policing has led to a decreased rate in crime in Harlem over the last twenty years and, in part, played a role in the attractiveness of the neighborhood for potential residents. Starting in 1994, the Giuliani administration employed more aggressive and targeted policing to reduce crime in New York.\(^{155}\) Individuals and families moving to Harlem have no doubt benefited, as have all residents, from this decrease in crime.

The ancillary costs of this more aggressive law enforcement policy, however, have been borne by the low-income minorities of Harlem’s underclass.\(^{156}\) For those unfortunate persons subjected to the aggressive and unnerving police encounters, the event serves to further their belief that the State works to advance the will of more privileged classes, racism be damned.\(^{157}\) Further, when combined with the seemingly race-neutral forces at play in parts III.A and III.B, a new perspective develops, one that acknowledges the implicit racial forces at play in social, political and market activity.

As discussed earlier, by the early 1990s Harlem had reached its socioeconomic nadir. Drug-related criminal activity was rampant, death rates were high and welfare dependency and family instability bred systemic social decay.\(^{158}\) Sociologists, legal scholars and government officials agreed that something drastic needed to be done to address this socioeconomic quandary.\(^{159}\) Against this backdrop, Rudy Giuliani was elected as New York City’s mayor in 1993. Giuliani and his police chief, Bill Bratton, began an intensive law enforcement campaign that, among other things, sought to reduce drug-related crime activity.

Perhaps not surprisingly, increased and more aggressive policing had adverse effects on many in Harlem’s underclass. An increase in policing and criminal law enforcement in Harlem should, other things equal, lead to a decrease in the neighborhood crime rate, thus making

\(^{155}\) See Waldman, In Harlem’s Ravaged Heart, supra note 8 (discussing the effect of more aggressive policing on Harlem’s gentrification).

\(^{156}\) See Waldman, Beneath New Surface, supra note 8 (noting that ten times as many adults were on probation in Harlem compared to the Upper West Side, and concluding that for many men and women in Harlem criminal histories have closed off avenues of employment); see also Randall L. Kennedy, Suspicious Minds, THE NEW DEMOCRAT, July/August 1996, at 24 (citing the stigmatic effects of race-conscious policing tactics on minorities).


\(^{158}\) See Waldman, In Harlem’s Ravaged Heart, supra note 8.

\(^{159}\) See MASSEY & DENTON, supra note 15, at 217–36 (advocating policies to end racial segregation and the perpetuation of underclass communities); see also Donald P. Judges, Bayonets for the Wounded: Constitutional Paradigms and Disadvantaged Neighborhoods, 19 HASTINGS CONST. L.Q. 599 (1992) (citing a constitutional imperative to address the socioeconomic maladies of disadvantaged neighborhoods and under-funded education systems).
Harlem safer. Neighborhood safety would logically benefit all residents of Harlem. Such an accounting, however, fails to note the costs borne by low-income minorities and the underclass. It is these persons who have shouldered, and continue to shoulder, the brunt of more aggressive police tactics. These incidental costs deserve more careful consideration.

Young, black males often experience Terry stops and other encounters with the police, whether they have a legitimate cause to be suspected of criminal activity or not. Indeed, these stops and subsequent searches may be the only experiences of consequence that these young men ever have with the State. The United States Supreme Court concluded that such police activity does not implicate the Fourth Amendment, even when it involves racial profiling. Some academics have justified the existence of such policies. For the unfortunate members of the underclass subjected to the brunt of police encounters, however, these events serve to further their belief that the State works to advance the will of privileged, white majority.

One must also note the social forces at play in the context of criminal law enforcement. Racism is still very much alive in the New York City Police Department ("NYPD"). In the summer of 2008 an NYPD

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160. See Kennedy, supra note 156, at 24–25 (noting the pervasiveness of race-conscious policing); see also see Ronald Jay Allen et al., Criminal Procedure: Investigation and Right to Counsel 569 (2005) (citing a New York State Attorney General report that found black males experienced 51 percent of all Terry stops, despite only comprising 26 percent of New York City's population).

161. Terry v. Ohio, 392 U.S. 1, 30–31 (1968) (upholding the use of “stop and frisk” searches in the context of an officer's observance and subsequent pat-down of a citizen suspected of criminal activity) (“We merely hold today that where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken.”).

162. See Allen et al., supra note 160, at 590 (2005) (citing a New York State Attorney General report that found that only one of every nine Terry stops resulted in an arrest).

163. See Whren v. United States, 517 U.S. 806, 813 (1996) ("[T]hese cases foreclose any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved. We of course agree . . . that the Constitution prohibits selective enforcement of the law based on considerations such as race. But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment. Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.").

164. See Kennedy, supra note 156, at 24 (noting the opinion of some scholars, including Cornell West, that “race does matter” in the police context).
police car was spotted traveling through Harlem with a black doll’s head attached to its antennae, reigniting racial tensions in a neighborhood cognizant of past police brutality directed at minorities.\textsuperscript{165} Indeed, many of New York’s race riots were fueled in part by problems with the NYPD.\textsuperscript{166} Further, those in Harlem with criminal histories—many black men and women in the neighborhood—are severely restricted in terms of employment opportunities.\textsuperscript{167} These grim facts merely underscore the scope of the disadvantage placed on Harlem’s underclass as a result of more aggressive policing.

The social implications and effects of criminal law enforcement on Harlem’s underclass cannot be understated. Harlem, like many impoverished inner city communities, suffered historically from inadequate policing.\textsuperscript{168} Over time, this basic denial of government services, when combined with the trends described in part II above, served to precipitate the higher rates of crime and violence within the inner city.\textsuperscript{169} This “tangle of pathology”\textsuperscript{170} helped to fuel an “acceptance [by mainstream society] of crime and violence” within the inner city.\textsuperscript{171} Instead of tackling the multi-faceted problem of crime and violence in the inner city holistically, efforts seemed to focus more on fighting crime, as the Giuliani episode bears out. This crime-centered approach fits with the thesis offered by Powell and Spencer that the state used crime management as a catalyst for gentrification.\textsuperscript{172} Whatever the motive, the effects are

\begin{itemize}
  \item[165.] See Timothy Williams, \textit{In a Doll’s Head on a Police Car, Blacks in Harlem See a Setback in Relations}, N.Y. Times, July 26, 2008, at B3.
  \item[166.] See id.
  \item[167.] See Waldman, \textit{Beneath New Surface}, supra note 8 (“Dozens of [129th Street’s] young men are cycling through the criminal justice system. Many leave school, although some emerge from prison with high school equivalency degrees. Many leave sons and daughters behind, fraying already weak family ties. All emerge with criminal records that may shadow them for years. . . . [A] criminal record becomes one more plank in the mental box convincing [these young men] there is nothing but the streets.”).
  \item[168.] See \textit{Clark}, supra note 19, at 86 (“The unstated and sometimes stated acceptance of crime and violence as normal for the ghetto community is associated with a lowering of police vigilance and efficiency when victims are also lower-class people.”); see also Waldman, \textit{In Harlem’s Ravaged Heart}, supra note 8 (describing “erratic” law enforcement vigilance on Harlem’s 129th Street prior to the onset of gentrification).
  \item[169.] See \textit{Clark}, supra note 19, at 86 (“In a disturbing sense, there remains the possibility that homicide in the ghetto is consistently high because it is not controlled, if not encouraged, as an aspect of the total network of human exploitation of the ghetto.”); Waldman, \textit{In Harlem’s Ravaged Heart}, supra note 8 (implicitly linking violence on Harlem’s 129th Street to less vigilant policing).
  \item[171.] \textit{Clark}, supra note 19, at 86.
  \item[172.] See Powell & Spencer, supra note 6, at 450 (quoting Betancur, supra note 81, at 806) (”[Gentrification] reveals extreme forms of manipulation of the real estate market through
clear: Those within Harlem’s underclass bore the brunt of state-led efforts to revitalize the city.

IV. LAW AND BEHAVIOR: THE UNDERCLASS AND PATHOLOGIES OF DESPAIR

Today’s Harlem is shaped by a century of underinvestment and racial segregation. It is the product of a racist past, of political and social policy designed to keep the neighborhood racially segregated. As a function of this political, economic and social policy, generations of Harlem’s inhabitants have been left with poor education and bleak employment prospects, destined to remain among New York’s most underprivileged. Patterns of social decay emerged in Harlem, and a vicious cycle of welfare, drugs and crime destroyed the neighborhood’s social fabric. As gentrification brought urban development and greater economic and social prospects to Harlem, this underclass remained mired in poverty. Many can no longer afford to live in the neighborhood’s newly gentrified areas, and those that remain still have poor job prospects and little opportunity for advancement. Perhaps the one of the few constants in these persons’ lives, the neighborhood, has now become a “yuppie playground.” It should not be surprising, then, that gentrification is seen in such a negative light.

This section will explore how legal forces have shaped Harlem’s zeitgeist. As discussed at the outset of this paper, legal anthropologists studying the American legal system question whether a single, unified American legal culture exists. Studies of varied regions and towns in the United States suggest that legal consciousness may be more a function of place and individual experience rather than a universal notion adopted uniformly by all citizens. My hypothesis is that the legal consciousness of individuals in Harlem is one that is distinct from the rest of Manhattan, but also one that is shared by many historically disadvantaged African American neighborhoods throughout the United States. I believe that the residents of Harlem, long neglected by government and business, may view the law more as a tool to advance the interests of the affluent, white majority and, as an ancillary consequence, to exploit and hinder minority advancement. I will test and further develop this hypothesis in the following sections, detailing the effects of law on the ghettoization and gentrification of Harlem.

racism, abuse of public office, and utilization of criminal and other 'nonmarket' intimidation strategies.'

173. See CONLEY & O'BARR, supra note 14, at 56–64.
174. See id.
A. Harlem’s Ghetto 1940–1990: A Pattern of Social Decay

“A lot of times, when I’m working, I become as despondent as hell and I feel like crying. I’m not a man, none of us are men! I don’t own anything. I’m not man enough to own a store. None of us are.”175

Arguably the darkest period of twentieth century Harlem was at the height of the neighborhood’s racial segregation. As discussed earlier, in 1940 New York City had a black isolation index of 86.8 percent,176 and by the early 1990s Harlem was virtually 100 percent African American.177 The Great Depression destroyed a significant portion of Harlem’s black economy,178 and in the years ensuing the Great Depression landholders and the State neglected to invest in neighborhood development.179 This, in turn, led to social decay and a myriad of socioeconomic and psychological problems among Harlem’s underclass.180

Kenneth Clark describes the destruction of Harlem’s social fabric in his seminal work Dark Ghetto. Clark explored the psychology and social fabric of the Harlem ghetto during the 1950s and 1960s. Within the Harlem ghetto during this period, a lack of economic opportunity and underemployment was pervasive.181 Clark states that Harlem’s social pathology during this period lay in “the menial, low-income jobs held by most ghetto residents.”182 Disease, drug dependency and crime evolved out of the menial socioeconomic existence of the ghetto.183 Clark cites Harlem’s high unemployment rate—around fifteen percent in the 1960s—and the income disparity between the neighborhood’s residents and to the rest of Manhattan as indicative of a “permanent economic proletariat” in Harlem’s ghetto.184 In short, the socioeconomic situation in Harlem during this period was dire.

While socioeconomic forces played a large part in the pathology of Harlem’s ghetto, one cannot discount the role of legal forces in the neighborhood’s social decay. Government and private actors created Harlem’s ghetto through the use of legal mechanisms—institutionalized practices of mortgage “redlining” and restrictive covenants, construction of public housing, and underinvestment in social services in the neigh-

175. Clark, supra note 19, at 1 (quoting an unidentified man, aged about 30, living in the Harlem ghetto in 1964).
176. See Massey & Denton, supra note 15, at 47 tbl.2.3.
177. See Waldman, In Harlem’s Ravaged Heart, supra note 8.
179. See id. at 158–59.
180. See id.
182. Id. at 34.
183. Id.
184. Id. at 34–35.
borhood to name but a few. The psychological effect of poor housing was not clearly established during the time of Clark’s studies. Nevertheless, Clark noted that

[h]ousing is no abstract social and political problem, but an extension of a man’s personality. If the Negro has to identify with a rat-infested tenement, his sense of personal inadequacy and inferiority, already aggravated by job discrimination and other forms of humiliation, is reinforced by the physical reality around him. . . . A house is a con-
crete symbol of what the person is worth.

Clark also noted in his studies a correlation between housing decay and social apathy in Harlem. Without question, the role of law in creating the ghetto had a negative effect on the social psychology of Harlem’s residents.

Other scholars also note the effect of public and private disinvestment in housing and the reduction in government services in Harlem on the neighborhood’s social patterns. Massey and Denton cite a study from the 1970s on the reduction of public services to Harlem and other low-income, minority neighborhoods. This politically charged decision ultimately led to overcrowded housing, shattered institutions and the destruction of neighborhood support networks. Disease and morbidity rates rose dramatically, as did the rate of drug use among adults and youth. This led to a destruction of the social fabric of the neighborhood, and in turn provided an environment conducive to increased crime rates and violent deaths. As Massey and Denton state, the pattern of community decay caused by decreased housing stocks and government services was a “chain reaction of social and economic collapse” that turned Harlem into an “urban desert.”

Oscar Lewis, an anthropologist and scholar of the urban underclass, claimed that ghetto communities like Harlem were beset by a “culture of poverty” characterized by chronic underemployment and lack of social mobility. This “culture of poverty” fed into sense of hopelessness and social decay. Former Assistant Secretary of Labor Daniel Patrick Moynihan studied the interplay between male unemployment, family

185. See supra part II.
186. CLARK, supra note 19, at 32–33.
187. See id. at 33–34.
189. Id. at 159.
190. See id.
191. See id.
192. Id.
193. See id. at 5 (citing OSCAR LEWIS, LA VIDA: A PUERTO RICAN FAMILY IN THE CULTURE OF POVERTY—SAN JUAN AND NEW YORK (1965)).
194. See id.
instability and chronic poverty in ghetto neighborhoods like Harlem in the 1960s, a process he identified as a “tangle of pathology.” This pattern of social decay was even characterized in the arts. Perhaps most poignant, however, were the words of Clark in describing Harlem’s ghetto: “The pathologies of the ghetto community perpetuate themselves through cumulative ugliness, deterioration, and isolation and strengthen the Negro’s sense of worthlessness.” Clark’s words cognize the reality of the ghetto, and make clear the effects of legal, political and social forces on community psychology.

B. Harlem’s Gentrification: Perpetuating an Urban Underclass

“It’s like the more money we come across/The more problems we see.”

The above quote by the rapper Notorious B.I.G. in a sense captures the spirit of Harlem during the 1990s and today. As seen in part III, a variety of legal forces have dramatically re-shaped Harlem’s demographic and economic composition. Harlem has experienced an influx of middle-class and affluent residents, new businesses have moved into the neighborhood, and government services and investment have returned to the neighborhood. But Harlem’s economic and social revival has not come without adverse consequences. For Harlem’s underclass, gentrification has meant the fear of displacement and the destruction of neighborhood composition, a loss of identity and continued poverty.

Amy Waldman captured the feelings of Harlem’s older residents toward gentrification at the turn of the twenty-first century. As she notes, Harlem’s older residents were beset by a number of problems—lack of education, drug dependency, family instability and criminal histories—which hampered their ability to transition into Harlem’s new economic and social fabric. Unable to obtain adequate paying jobs to ensure proper health care, child care, and—most importantly—housing, these members of Harlem’s underclass were not able to realize the social and economic benefits of gentrification. These persons were displaced to the fringes of the neighborhood and, in some cases, out of the neighborhood altogether.

195. See id. (citing Rainwater & Yancey, supra note 170, at 39–125).
196. See, e.g., Ntozake Shange, For Colored Girls Who Have Considered Suicide When the Rainbow is Enuf (1977).
197. Clark, supra note 19, at 12.
199. See Waldman, Beneath the Surface, supra note 8.
200. See id.
201. See id.
Timothy Williams captured the spirit of Harlem's older residents more recently. He notes the "odd psychological effects" of gentrification on Harlem's underclass. The loss of familiar faces and foods, and the fear of displacement out of the neighborhood, has engendered feelings of "root shock" among the older residents of Harlem. Social service organizations have noted an increase in insomnia and hypertension as a result of increasing fears about displacement and maladjustment to gentrification. Rallies and marches have been organized, and town hall meetings have been held over the "State of Harlem."

Ultimately, the lesson one gathers from reading these accounts is that gentrification has had a profound psychological and social effect on the older residents of Harlem. For many of these people, low-income minorities caught in a pattern of social and familial decay, adjusting to gentrification has proved extremely challenging. Legal, social and economic forces have contributed to notable changes in the neighborhood. As Williams notes, however, many of Harlem's older residents do not believe these changes were intended for them. Instead, the law seems to advance the needs and the will of the affluent, white and middle-class majority. And thus is shaped a legal (and social) consciousness, one rooted in despair and hopelessness.

V. SOLUTIONS FOR CHANGE: LAW AS A HEALING TOOL

As seen in parts II-IV, the law has played an integral role in creating and perpetuating an urban underclass. While free enterprisers may argue that this is simply Adam Smith's invisible hand at work, and while "the Constitution does not provide judicial remedies for every social and economic ill," the law should not create social and economic ills either. To this end, I propose several normative solutions—including a greater commitment to affordable housing and adequate schooling, neighborhood covenants and community benefit agreements, creating stakeholder positions for future generations of Harlem, and community activism and integrative lawyering—that can lead to socially responsible urban revitalization.

202. See Williams, Mixed Feelings, supra note 13.
203. Id.
204. Id.
205. Id.
206. See id.
A. Why Should We Care About the Role of Law in Gentrification?

Assuming one accepts the premise of my argument in part IV above, why should we care about gentrification and its effects on Harlem's underprivileged and low-income classes? The relative outcomes of free market participants, wealth disparity and other socioeconomic phenomena receive little attention in the courts. When the issue of wealth disparity or socioeconomic justice does come up before the United States Supreme Court, it is often disregarded as outside the purview of judicial remedy. Perhaps this should not be a surprise. Legal academics have justified Supreme Court jurisprudence regarding income disparity and socioeconomic rights in the past, and some have gone further by praising this conservative logic. Some, like Byrne, extol the virtues of gentrification. And the Supreme Court reminds us that there is no constitutional right to housing.

Increasingly, however, scholars have come to recognize that the law has an integral role in rectifying socioeconomic ills. Frank Michelman identifies a moral and constitutional obligation to ensure citizen welfare rights. Donald Judges also notes a constitutional obligation to rectify wealth disparity and other socioeconomic ills. And Akhil Amar identifies in the Thirteenth, Fourteenth and Fifteenth Amendments a "caste-abolition" principle, thus constitutionalizing a political commitment to certain minimum entitlements required for the realization of national citizenship and welfare. Among scholars, at

208. See Barnes & Chemerinsky, supra note 124; see also Goodwin Liu, Rehtinking Constitutional Welfare Rights, 61 STAN. L. REV. 203, 204-05 ("As a doctrinal matter, the prevailing view is that issues of poverty and distributive justice should be resolved through legislative policymaking rather than constitutional adjudication. . . . [F]or a generation, our courts have steered clear of social or economic rights, even as severe deprivation and inequality continue to pose serious challenges to our commitment to human dignity and equal citizenship.") (internal footnotes omitted).

209. See, e.g., Lindsey, 405 U.S. at 74; see also Barnes & Chemerinsky, supra note 124; Liu, supra note 208, at 205 n.2.


211. See Byrne, supra note 6.

212. See Lindsey, 405 U.S. at 74 ("Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships are legislative, not judicial, functions.")


214. See Judges, supra note 159.

215. See Akhil Reed Amar, Forty Acres and a Mule: A Republican Theory of Minimum Entitlements, 13 HARV. J.L. & PUB. POL'Y 37, 40 (1990) ("Precisely because the Fifteenth Amendment gave former slaves the right to vote, and the Fourteenth Amendment made them citizens by dint of their birth, we should interpret the Thirteenth Amendment to guarantee each American a certain minimum stake in society."); see also Kadrmas v. Dickinson Pub. Schs., 487 U.S. 450, 468 (Marshall, J., dissenting) ("The intent of the Fourteenth Amendment was to abolish caste legislation."); Judges, supra note 159, at 659-82 (articulating a "caste-abolition" principle to
least, an emerging norm has developed toward a commitment to eliminate wealth disparity and socioeconomic injustice.

Recognizing this academic background, one cannot argue that gentrification has brought many benefits to previously blighted and economically depressed neighborhoods. Unfortunately, for many individuals—the traditional inhabitants of these underprivileged neighborhoods—market forces driving gentrification serve to push them out of the neighborhood and farther to the fringes of the city and to other, newer underserved and economically depressed areas. To these persons, such a result is perhaps the cruelest of ironies and only further cements their negative outlook on the American legal system. But gentrification does not have to create such inequitable socioeconomic results. The law can provide solutions to the negative consequences of gentrification. It can be a tool in assisting minority and disadvantaged individuals realize the gains of gentrification. I will develop healing tools and legal solutions to gentrification in the proceeding section.

B. Solutions For Change

Several legal mechanisms are available to mitigate the adverse effects of gentrification on Harlem’s underclass. Integrative lawyering can be a force for legal change as well as a therapeutic sounding board for voicing community opinion. Already in practice in New York, integrative lawyering involves the synthesis of a broad range of legal practices and skill sets with an overall community organization strategy. In the case of Harlem, lawyers employing an integrative legal strategy have several options. Like WE ACT, lawyers could organize rallies and try to lobby political and business leaders in the community to provide more adequate-paying jobs and affordable housing to Harlem’s underprivileged. Emulating the work of the University of Miami School of Law’s Community Economic Development and Design (“CEDAD”) Clinic, lawyers may work with the community to develop a holistic community economic development strategy. This initiative

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217. See id. at 2006; see also Anthony V. Alfieri, Faith in Community: Representing “Colored Town,” 95 CAL. L. REV. 1829, 1844–57 (2007) (providing an academic approach to integrative lawyering in the context of the work done by the Community Economic Development and Design (“CEDAD”) Clinic at the University of Miami School of Law).

218. See Alfieri, supra note 217, at 1835–44.
could center on both "legal and non-legal interventions," including "outreach education . . . and law reform advocacy" as well as "draft[ing] community land trust instruments and zoning regulations." Lawyers may also seek to block, through litigation, building projects that do not employ local workers and have the effect of displacing many lower-income persons.

Integrative lawyering should also function as a therapeutic legal mechanism, a platform for those adversely impacted by gentrification to voice their frustrations and to receive counsel and assurance from a zealous advocate. Integrative lawyering should serve as a means to connect Harlem’s underclass to the legal and political processes shaping their community. True to its name, integrative lawyering should seek to integrate Harlem's underclass into the newly gentrified community. By incorporating advocacy and counsel into practice, integrative lawyering can thus be seen as a more holistic means of obtaining justice for underprivileged communities such as Harlem.

The use of community benefit agreements, covenants and real estate trusts may also serve to mitigate the harmful effects of gentrification. Community benefit agreements can be used at the outset of building projects to bind multiple actors—developers, municipalities and community representatives—in a commitment to sustainable development. Community benefit agreements can be negotiated to ensure greater access to job opportunities arising out of the construction project and, in the case of residential developments, ensure access to affordable housing. In the case of Harlem, such an agreement might seek access to adequate-paying construction jobs for the neighborhood’s older

219. Id. at 1844.
220. Id. at 1835.
221. See id. at 1835, 1837–44 (noting the use of litigation by CEDAD and Florida Legal Services to counter gentrification in Miami’s Overtown and Liberty City neighborhoods).
222. I draw here on the teachings of Professor Bruce Winick, the co-founder (with Professor David Wexler) of the legal theory known as therapeutic jurisprudence. See, e.g., Bruce J. Winick, A Legal Autopsy of the Lawyering in Schiavo: A Therapeutic Jurisprudence/Preventive Law Rewind Exercise, 61 U. MIAMI L. REV. 595, 598 (2007) (providing an overview of the therapeutic jurisprudence movement in the context of the Schiavo litigation) (“Therapeutic jurisprudence brings a more theoretical and interdisciplinary perspective to lawyering . . . . Therapeutic jurisprudence explicitly values clients’ psychological well-being and recognizes that their legal involvement, including their interaction with their lawyer, will produce inevitable psychological consequences for them. Consequently, lawyers functioning within this model are inevitably therapeutic agents in the manner in which they deal with their clients. Once this insight is absorbed, it is transformative for both lawyer and client alike.”); see also BruceWinick.com, Therapeutic Jurisprudence, http://www.brucewinick.com/therapeutic-jurisprudence (last visited Sept. 30, 2009).
residents and more low- and middle-income housing. This would solve two of the biggest problems among Harlem’s underclass.\textsuperscript{224} One might also—through the use of integrative lawyering—lobby city officials to ensure that such agreements become a condition-precedent to the granting of a building contract.

Covenants and real estate trusts can similarly be used to ensure adequate housing stocks for poor and low-income persons. Such instruments have the added benefit of “running with the land” so that any condition set forth in the covenant will remain in effect as property is alienated through subsequent transactions.\textsuperscript{225} Covenants and real estate trusts could be used in Harlem to guarantee affordable housing for the neighborhood’s longtime residents—arguably the most pressing issue concerning the ills of gentrification. Additionally, such covenants might be drafted to ensure employment positions within buildings for local residents.

Finally, the creation of community stakeholder positions among Harlem’s longtime residents could serve to mitigate some of the adverse consequences of gentrification. Such stakeholder positions might take the form of greater entitlements—perhaps a guarantee to housing and living-wage jobs, or a renewed commitment to social welfare.\textsuperscript{226} The creation of community stakeholder positions and more robust welfare entitlements may be grounded in a theory of civic republicanism;\textsuperscript{227} alternatively, such commitments may be founded upon a moral imperative to reduce poverty and wealth disparity.\textsuperscript{228} To the extent that there is a moral and legal commitment toward alleviating socioeconomic ills, legal mechanisms should be used to combat the deleterious social and economic consequences of gentrification.

My ultimate goal is for the use of these legal instruments to serve and positively reshape minority legal consciousness. If individuals can work with State and business actors to find legal and market solutions to the negative effects of gentrification and if the legal system can be used to advance minority interests, then it is possible to change prevailing attitudes about the American legal system in the eyes of traditionally disadvantaged persons. In this way, my anthropological approach might

\textsuperscript{224} See Waldman, \textit{Beneath New Surface}, supra note 8 (citing the lack of construction jobs and affordable housing as systemic problems facing Harlem’s underclass).


\textsuperscript{227} See Michaels, supra note 226, at 1478–95.

reshape American legal consciousness from a normative perspective
and, in the process, reformulate my own hypothesis about minority atti-
attitudes toward the legal system.

VI. CONCLUSION AND EPILOGUE: NOT QUITE A PARK SLOPE

Gentrification has become entrenched in the consciousness of Har-
lem’s residents, and is likely to impact the neighborhood for the foresee-
able future. New York City has long been a global center of media,
finance, marketing and legal services, and as such the city attracted an
influx of middle-income and affluent persons from the “creative class.”
It was only a matter of time before these persons rediscovered Harlem,
especially given its close proximity to Midtown Manhattan. Nonethe-
less, the legal forces that precipitated the gentrification of Harlem—pub-
lic investment and tax abatements for urban redevelopment projects,
environmental justice efforts and government commitment to urban
environmental cleanup, and a decrease in crime through more aggressive
policing—arguably played the most significant role in the neighbor-
hood’s sweeping demographic changes. The gentrification of Harlem is
a Edelmanian phenomenon, one in which the State played an active role
in the forces that effectuated wealth and economic disparity.229

Recent developments in the financial market, however, suggest that
some of the forces that drove gentrification—in particular public and
private investment toward neighborhood redevelopment—may decline
in influence and, in some cases, disappear altogether.230 Harlem began
to gentrify in part through government and Wall Street largess. The col-
lapse of Wall Street institutions, in addition to a reduction in govern-
ment funds available due to the downturn in the economy, will likely
mean a decrease in further investment toward Harlem’s renewal. For
those opposed to gentrification, this may be a welcome sign, as Harlem
might retain what is left of its heritage and identity. For students of Har-
lem’s gentrification, it seems sardonic that some of the forces driving
gentrification on the demand- and supply-side could perhaps lead to a
sudden social and economic reversal in the neighborhood.

Harlem is not yet a Park Slope.231 The neighborhood continues to
lag behind the rest of Manhattan and New York on a host of economic

229. See Edelman, supra note 228, at 5 (asserting that government is complicit in economic
dealings that have resulted in wealth disparity).
230. See Timothy Williams, Wall Street's Tremors Leave Harlem Shaken, N.Y. TIMES, Oct. 8,
2008, at A24 (discussing the effect of the financial crisis on private investment in Harlem).
231. Park Slope is a neighborhood in Brooklyn, New York. According to Professor Maurrasse,
Park Slope is somewhere between stages six and seven on a seven-stage scale measuring
gentrification. The neighborhood is characterized by displacement of longtime residents. Further,
the neighborhood is becoming largely unrecognizable from its former identity. The culture of
and social indicators. But Harlem may yet develop into a fully gentri-
fied neighborhood.

Harlem is uniquely positioned at an economic and demographic crossroads. While the neighborhood is not yet fully gentrified, the legal and economic forces have been put in place for such a demographic transition, perhaps within one generation. If Harlem is to escape the fate that beset Park Slope, if low-income minorities are to truly experience the benefits of Harlem’s social and economic revival, then it will be up to the law to put in place the mechanisms for equitable, sustainable development. It is here that tools such as integrative lawyering, community benefit agreements, covenants, and the creation of community stakeholder positions play a role. Through the use of these instruments, the law can become a healing force and, in turn, reshape the legal and economic consciousness of Harlem’s urban underclass.

newer residents pervades, and businesses almost exclusively cater to an affluent, middle-class clientele. See Maurrasse, supra note 3.

232. See CITY OF NEW YORK, TAKE CARE CENTRAL HARLEM, supra note 88.