

ARTICLES

ON CHARLOTTESVILLE

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I. ON CHARLOTTESVILLE..... 269
 II. DEHUMANIZATION..... 283
 III. SEGREGATION 291
 A. Blatant Dehumanization by Commission..... 301
 B. Subtle Dehumanization by Omission 307
 1. *Beyond Housing: Neighborhood Dehumanization* 314
 2. *Unequal Protection of the Laws*..... 319
 IV. OUTCOMES..... 323
 A. Racialized Health Outcomes..... 326
 B. Beyond Health: Structural Racial Inequity..... 333
 C. Racialized Violence Then and Now 337
 V. CONCLUSION 341

I. ON CHARLOTTESVILLE

This year marked the first anniversary of the white supremacist rally that terrorized Charlottesville, Virginia, and the 150th anniversary of the vote to ratify the 14th Amendment to the United States Constitution.¹ The

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¹ President Andrew Johnson, by William H. Seward, Secretary of State, “By the President of the United States of America: A Proclamation” (Jul. 27, 1868), retrieved from Library of Congress, “A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875,” <http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName=015/>

confluence of these two commemorations offers an opportunity to draw lessons from the national resurgence of racism and nationalism that has erupted in Charlottesville and throughout the country,² in light of the 14th Amendment's still unfulfilled promise of equality. Section 1 of the 14th Amendment forbids any State to "deny to any person within its jurisdiction the equal protection of the laws" in America.³ Known as the "Reconstruction Amendment," it granted citizenship to enslaved Americans and "[a]ll persons born or naturalized in the United States."⁴ It further forbid states from lawfully discriminating against "any person within its jurisdiction."⁵ Yet, by 1883, the United States Supreme Court had reversed congressional efforts to ensure that states would uphold equal rights for African Americans, and instead acquiesced to the segregationist interpretation that argued that constitutional equality did not mean social equality. In *The Civil Rights Cases*, the Supreme Court interpreted the 14th Amendment to allow racial segregation and discrimination by private actors.⁶ Then in 1896, the Supreme Court upheld the constitutionality of state laws that enforced racial segregation in public spaces, by declaring the Constitution of the United States powerless to put the "inferior" colored race on the same social plane as the white race.⁷ Thus, the Supreme Court gave legal grounding to gross inequities of the Jim Crow era and restored constitutional protection to the dehumanization of blacks.⁸ Indeed, the conviction that blacks are less than or a lesser form

llsl015.db&recNum=741 [https://perma.cc/F9EJ-8S9X]; Alexis Gravely, The Nation's Capital Gears up for "Unite the Right 2" on One-Year Anniversary of Charlottesville Rally, *The Cavalier Daily* (Aug. 10, 2018), <http://www.cavalierdaily.com/article/2018/08/the-nations-capital-gears-up-for-unite-the-right-2-on-one-year-anniversary-of-charlottesville-rally> [https://perma.cc/EVT3-KFX5]; see also Ashraf Khalil, Michael Kunzelman & Sarah Rankin, Vigil, Marches Mark 1-Year Anniversary of Deadly Far-Right Protest in Charlottesville, *Chi. Tribune* (Aug. 13, 2018), <https://www.chicagotribune.com/news/nationworld/ct-unite-the-right-rally-dc-20180812-story.html> [https://perma.cc/T6CZ-SLFC].

² Federal Bureau of Investigation: Criminal Justice Information Services Division, 2016 Hate Crime Statistics (Data for 1995-2017 available at <https://ucr.fbi.gov/hate-crime>) [https://perma.cc/Y8QK-AV9M].

³ U.S. Const. amend. XIV, § 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Civil Rights Cases*, 109 U.S. 3, 4, 18–19 (1883) (declaring the Civil Rights Act of 1875 unconstitutional).

⁷ *Plessy v. Ferguson*, 163 U.S. 537, 550–52 (1896) (upholding state and federal laws that deem separate accommodations as equal).

⁸ U.S. Const. art. I, § 2, cl. 3 ("Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons,

of human is the animating assumption that underlies and unites explicitly and implicitly racist American laws. Specifically, dehumanization undergirds explicit and implicit segregation.

Using Charlottesville as a case study, this Article explores the theory, mechanisms, and impact of legally constructed residential segregation—the crown jewel of systemic dehumanization, both historically and contemporarily—that isolates black and white Americans from one another, withholding from the former the rights, resources, and relationships that make equality possible in America, notwithstanding the plain language and intent of the 14th Amendment. By way of introduction, the Article begins with a summary of terminology important to the theory and argument presented here. None of these terms are new to the equality discourse, but they have reappeared amid the chaos and resurgence of racism that Charlottesville now epitomizes. Therefore, rather than trust the variety of meanings that may have emerged, I will first define the terms dehumanization, white supremacy, white nationalism, racism, segregation, and racial bias before setting forth the substance of my case against current misinterpretations of the 14th Amendment.

Dehumanization, like racism, can be blatant or covert. Blatant dehumanization is the perspicuous denial that another person or group is endowed with the basic attributes of being a human. The Constitution codified this psychological disposition towards blacks in the text of Article I, section 2, where the framers reduced the value of an African American human being to only three-fifths the value of all other persons.⁹ The impact of constitutionalizing this fractional status was to place blacks legally and morally outside normal human consideration, notwithstanding the egalitarian language of the 14th Amendment. Thus, in 1857 when Justice Taney infamously pronounced the “unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property,”¹⁰ he not only spoke to confirm the legal status of blacks as property, but also to make an essentialist declaration that blacks lacked the humanity of whites who, as a species, were neither happy nor redeemable. Unsurprisingly, early American lawmakers displayed numerous examples of their blatant dehumanization of blacks. These include a North Carolina state court judge’s

including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.”).

⁹ *Id.*

¹⁰ *Dred Scott v. Sandford*, 60 U.S. 393, 410 (1857).

pronouncement, “I cannot distinguish the case of negroes from that of other animals,”¹¹ and a Texas prosecutor’s argument asserting “This negro is a lustful animal [who]... lacts (sic.) the very fundamental elements of mankind.”¹² The blatant dehumanization that animated President Woodrow Wilson’s support for the Ku Klux Klan and re-segregation of federal agencies was laid bare when the 28th President wrote, “Reconstruction was nothing more than a host of dusky children untimely put out of school”¹³ and a period when “the dominance of an ignorant and *inferior* race was justly dreaded.”¹⁴ Similar expressions confirm that blatant dehumanization has persisted in legal institutions long beyond the turn of the twentieth century. Courts and officers of the court evince blatant dehumanization’s influence into the latter half of the twenty-first century.¹⁵ Blatant dehumanization was codified in the elaborate architecture of states’ “Black Code,”¹⁶ “Pig,”¹⁷ and “Jim Crow”¹⁸ laws. These laws were erected to separate whites from blacks and reflected the belief that blacks were a different life-form than whites, unworthy of sharing educational,¹⁹

¹¹ Tyson v. Simpson, 3 N.C. 147, 147 (N.C. 1801).

¹² Richardson v. State, 257 S.W.2d 308, 308–309 (Tex. Crim. App. 1953) (reversing a rape conviction where prosecutor argued, “This negro is a lustful animal, without anything to transform to any kind of valuable citizen, because he lacts [sic.] the very fundamental elements of mankind. You cannot gather dates from thorns nor can you get figs from thistles; you cannot get a nightingale from a goose egg, nor can you make a gentleman out of a jackass.”).

¹³ Kenneth O’Reilly, The Jim Crow Policies of Woodrow Wilson, J. Blacks Higher Educ., Autumn 1997, at 117, 117.

¹⁴ Michael Dennis, Looking Backward: Woodrow Wilson, the New South, and the Question of Race, Am. Nineteenth Century Hist., Spring 2002, at 77, 82 (discussing Wilson’s view that black voting was politically illegitimate, restoration of southern white control by “real citizens” was desirable, and Reconstruction was a “tragic era” during which “the dominance of an ignorant and *inferior* race was justly dreaded.”).

¹⁵ See, e.g., Wheeler v. State, 140 S.E.2d 258, 261 (Ga. 1965) (holding that Solicitor General’s argument referring to black defendant as “living in animal kingdom” did not tend to make jury believe that the Negro race was an inferior or evil race).

¹⁶ See generally, Theodore Brantner Wilson, The Black Codes of the South (1965) (explaining Colonial era laws passed to continue to deny blacks equal voting, education, and other civil rights, primarily for the purpose of compelling forced black labor).

¹⁷ Christopher R. Adamson, Punishment After Slavery: Southern State Penal Systems, 1865–1890, 30 Soc. Probs. 555, 562 (1983) (laws aimed at limiting blacks’ employment options).

¹⁸ Michael J. Klarman, From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality 8–60 (2004) (giving an overview of statutes enforcing segregation).

¹⁹ Griffin v. Cty. Sch. Bd. of Prince Edward Cty., 377 U.S. 218, 230–31 (1964) (reversing the Virginia Supreme Court’s approval of public funds to support private schools opened during massive resistance to desegregation of public schools).

recreation,²⁰ transportation,²¹ and public accommodation²² spaces, and unfit to mingle with whites in matrimony,²³ medicine,²⁴ or even after death.²⁵

In contrast, subtle dehumanization, also called infrahumanization, is an indirect or implicit psychological process. Subtle dehumanization can deny that a certain group shares traits that are uniquely human, such as concluding that blacks lack the cognitive aptitude that distinguishes all humans from animals.²⁶ This form is particularly relevant to the foundation of the culture and the jurisprudential climate in Charlottesville. Thomas Jefferson's one and only published, full-length book, *Notes on the State of Virginia*,²⁷ contains pristine examples of his dehumanizing views of blacks, including those he enslaved:

Comparing them by their faculties of memory, reason, and imagination, it appears to me that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous. . . . I advance it therefore . . . that the black . . . are inferior to the whites in the endowments both of body and mind.²⁸

Alternatively, subtle dehumanization can deny traits that are typically but not uniquely ascribed to humans such as warmth and affection.

²⁰ *Brown v. City of Richmond*, 132 S.E.2d 495, 495–96 (Va. 1963) (reversing Virginia Hustings Court upholding Virginia statutes segregating ball field and theater).

²¹ Va. Code Ann. § 4097(z)–4097(dd) (1942) *in* Va. Acts 343–44 (1930); see *Morgan v. Commonwealth*, 34 S.E.2d 491, 497 (Va. 1945) (upholding constitutionality of state statute segregating public motor carrier passengers by race), *rev'd* *Morgan v. Virginia*, 328 U.S. 373, 386 (1946).

²² *Randolph v. Commonwealth*, 119 S.E.2d 817, 817–18 (Va. 1961), vacated by *Randolph v. Virginia*, 374 U.S. 97, 97 (1963) (reversing Virginia Supreme Court holding that refusal to serve Negro in restaurant and subsequent arrest did not violate constitution).

²³ See *Loving v. Virginia*, 388 U.S. 1, 2 (1967).

²⁴ Charles E. Wynes, *The Evolution of Jim Crow Laws in Twentieth Century Virginia*, 28 *Phylon* 416, 420 (1967); see also, Edward H. Beardsley, *A History of Neglect: Health Care for Blacks and Mill Workers in the Twentieth-Century South* 245 (1987).

²⁵ Charlottesville, Va., Ordinances ch. 15, § 5 (1894) (“White Persons Only”).

²⁶ See Nour Kteily et al., *The Ascent of Man: Theoretical and Empirical Evidence for Blatant Dehumanization*, 109 *J. Personality & Soc. Psychol.* 901, 901–02 (2015).

²⁷ Thomas Jefferson, *Notes on the State of Virginia*, (London: Stockdale, 1787), available at <https://www.loc.gov/resource/lhbc.04902> [<https://perma.cc/35VQ-QLNW>] (Jefferson's personal copy of the 1787 edition is housed in the Albert and Shirley Small Special Collections Library at the University of Virginia).

²⁸ *Id.* at 146, 150.

Jefferson's book contains ample evidence of this type of dehumanization as well:

They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation. Their griefs are transient. Those numberless afflictions, which render it doubtful whether heaven has given life to us in mercy or in wrath, are less felt, and sooner forgotten with them. In general, their existence appears to participate more of sensation than reflection.²⁹

Importantly, Jefferson's writings also confirm that subtle and blatant dehumanization are not mutually exclusive. Jefferson's denial that black people experienced human love or sorrow was interlaced with his blatant animalization of blacks which was anything but subtle:

And is this difference of no importance? Is it not the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or less suffusions of colour in the one, preferable to that eternal monotony, which reigns in the countenances, that immovable veil of black which covers all the emotions of the other race? Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favour of the whites, declared by their preference of them, as uniformly as is the preference of the Oranootan [sic, orangutan] for the black women over those of his own species. The circumstance of superior beauty, is thought worthy attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man?³⁰

Subtle and blatant forms of dehumanization can operate covertly—informing one's view of another group without a conscious choice to be harmful or degrading.³¹ Notably, neither blatant nor subtle dehumanization need arise from dislike of another group. Instead dehumanizing assumptions are more functional than emotional. Both operationalize to separate and sort people into groups. Dehumanization occurs when one adopts descriptions that attribute fewer human traits to another group of people, known as the “out-group,” than are attributed to their own people,

²⁹ *Id.* at 145–46.

³⁰ *Id.* at 144–45.

³¹ Phillip Atiba Goff et al., Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences, 94 *J. Personality & Soc. Psychol.* 292, 292 (2008).

known as the “in-group.”³² The relationship between blatant and subtle dehumanization is still a matter of investigation among social scientists. However, this Article reviews evidence that suggests the practical differences between the two, and the most important consequences they beget, are slight.

The assertion explored here is that in Charlottesville, both overt and covert dehumanization informed legal process historically, and produced devastating human consequences which persist today. In particular, the state and local laws that regulated where African Americans live their lives in Charlottesville link these two forms of dehumanization, just as Thomas Jefferson did in his book. While blatant dehumanization was employed as an overarching justification first for enslavement and later for segregation of blacks in Charlottesville, subtle and implicit infrahumanization convinced Charlottesville’s City government to disparately allocate services basic to human existence. This Article reviews an historical record to confirm that both forms of dehumanization motivated laws that limited black Charlottesville residents’ equal access to clean air, clean water, decent shelter, and adequate health care. Further, it summarizes evidence that blatant and subtle dehumanization converged to establish and maintain institutionalized systems of social ordering in Charlottesville to constrain housing, employment, and education opportunities historically available to blacks. Contemporary data shows that where dehumanizing legal systems initially established segregation, they have continually institutionalized inequality in Charlottesville. This Article argues that law has been used to institutionalize unjust and enduring differences between racial groups in Charlottesville. Further, it theorizes that to the extent these inequities were predicated upon laws that presumed the relative inferiority of blacks as compared to whites, the law codified dehumanization and institutionalized white supremacy. Legally-enabled dehumanization bred and reinforced the in-group favoritism and out-group hostilities that predictably fostered racial hatred and violence in Charlottesville, and elsewhere in the United States.³³ Thus, the impact on

³² Stéphanie Demoulin et al., *The Role of In-Group Identification in Infra-Humanization*, 44 *Int’l J. Psychol.* 4, 4 (2009); see also, Gordon W. Allport, *The Nature of Prejudice* 31, 41–43 (25th anniversary ed. 1954).

³³ See, e.g., Laurie A. Rudman & Kris Mescher, *Of Animals and Objects: Men’s Implicit Dehumanization of Women and Likelihood of Sexual Aggression*, 38 *Personality & Soc. Psychol. Bull.*, 734, 734 (2012) (providing an analogy, study shows that men’s dehumanization of women leads to sexual violence).

Charlottesville, this Article concludes, was as predictable as it was avoidable.

White supremacy appeared as a term and identifiable ideology sometime around 1892.³⁴ The more general ideology of white nationalism dates at least as far back in American History as the mid-1800s, when, for example, Senator Stephen Douglas defended the *Dred Scott* decision during a debate with Abraham Lincoln, saying “this Government was made by our fathers on the white basis. It was made by white men for the benefit of white men and their posterity forever, and was intended to be administered by white men in all time to come.”³⁵ White supremacy and white nationalism rest on the dehumanizing assumptions of racial hierarchy that were popularized in the “scientific racism” and eugenics movements that followed the 1859 publication of Charles Darwin’s *On the Origin of Species*.³⁶ The Unite the Right marchers that terrorized Charlottesville in August 2017 are both white supremacists and white nationalists. However, an aim of this Article is to reveal that black dehumanization and white supremacy prevailed in Charlottesville long before August 11th and 12th. Moreover, I argue that these hateful ideologies progressively institutionalized the structural racism that continues to affect Charlottesville today. Therefore, it is important to explicate the relationship between dehumanization and racism.

Dehumanization operates as a psychological process—a set of attitudes, informed by beliefs that orient one’s thinking about others. In contrast, racism is not individually maintained. Rather, racism, as Eduardo Bonilla-Silva has explained, is the ideological “apparatus” of a “social

³⁴ Merrill Perlman, The Key Difference Between “Nationalists” and “Supremacists,” *Colum. Journalism Rev.* (Aug. 14, 2017) (reporting that Merriam-Webster cites “white supremacy” as first appearing in an 1882 election report); Which was the True Democratic Convention at Baton Rouge?, *The Clarion* (Opelousas, LA), Apr. 2, 1982, https://www.cjr.org/language_corner/nationalist-supremacist.php [<https://perma.cc/JB49-Q839>].

³⁵ Speech of Stephen Douglas, Fifth Joint Debate, at Galesburg (Oct. 7, 1858), in *Political Speeches and Debates of Abraham Lincoln and Stephen A. Douglas, 1854–1861* 337, 346–47 (Scott, Foresman & Co. 1896); Jared A. Goldstein, Unfit for the Constitution: Nativism and the Constitution, From the Founding Fathers to Donald Trump, 20 *U. Pa. J. Const. L.* 489, 504 (2018); see also, Speech of Stephen Douglas, Third Joint Debate, at Jonesboro (Sept. 15, 1858), in *Political Speeches and Debates of Abraham Lincoln and Stephen A. Douglas, 1854–1861* 239, 250 (Scott, Foresman & Co. 1896) (“I hold that a negro is not and never ought to be a citizen of the United States. . . . I do not believe that the Almighty made the negro capable of self-government.”).

³⁶ David Sowell, Nativism, Eugenics, and White Nationalism: A Casual or Causal Relationship?, *Juniata Voices*, Apr. 26, 2017, at 175, 177–82.

*system.*³⁷ Racism operates structurally, wherever dehumanizing ideologies gain sufficient collective acceptance to support the construction of cultural norms that produce unjustly racialized outcomes. Residential segregation is an example of an unjustly racialized outcome that racism produced through legal institutions that permitted and protected hierarchical ordering of people, resources, and opportunities by race, based primarily on the assumed relative superiority and inferiority of people groups. Racism must be understood as more than individual prejudice, bigotry, bias, or discrimination. It is a system of assigning value to people groups, and then structuring their access to opportunity based on the interpretation of their hierarchical status according to social constructions of race.³⁸ This Article posits that residential segregation in Charlottesville, Virginia, as in the rest of the nation, is the cornerstone of legally enabled, institutionalized racism past and present.

Residential segregation has been called “the principal organizational feature of American society that is responsible for the creation of the urban underclass.”³⁹ The evidence is that this applies in suburban America as well.⁴⁰ At its inception, segregation was invented and organized by law. Yet, in its operation, segregation permeates culture more broadly. To capture this intersectionality requires a transdisciplinary lens. Legal jurists⁴¹ and scholars⁴² have wrestled with the contradictory prevalence of segregationist policies and the constitutional guarantee of equality for

³⁷ Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 *Amer. Soc. Rev.* 465, 465–67 (1996) (emphasis added).

³⁸ Camara Phyllis Jones, *Confronting Institutionalized Racism*, 50 *Phylon* 7, 9–11 (2002).

³⁹ Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* 9 (1993); see also Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 96 *Amer. J. Soc.* 329, 330 (1990).

⁴⁰ See Massey & Denton, *supra* note 39, at 10.

⁴¹ See, e.g., *Buchanan v. Warley*, 245 U.S. 60, 79–81 (1917) (striking down a property sale ordinance furthering residential segregation because the 14th Amendment “entitle[d] a colored man to acquire property without state legislation discriminating against him solely because of color” but citing favorably cases approving segregated transportation and education); cf. *Hurd v. Hodge*, 334 U.S. 24, 29–30 (1948) (striking down racially restrictive covenants on houses in Washington, D.C.).

⁴² See e.g., Michael Klarman, *An Interpretive History of Modern Equal Protection*, 90 *Mich. L. Rev.* 213 (1991) (surveying changing interpretations of the 14th Amendment’s Equal Protection Clause); Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* 18–20, 59–66 (2017) (surveying federal laws applied to enforce residential segregation).

decades.⁴³ Moreover, legal scholars have addressed many intractable social harms associated with segregation including segregated schooling,⁴⁴ economic hierarchies,⁴⁵ and constrained social networks.⁴⁶ However, the legal academy has largely failed to comprehend the psychological motivation for the racial inequities embedded in the American legal system.⁴⁷ Therefore, as I have argued elsewhere,⁴⁸ the legal remedies aimed at enforcing racial equality upon a reluctant society have been poorly aligned with the problems they seek to solve. Tepid laws and lukewarm commitment to them have therefore proved no match for the recurring resurgence of white supremacist animosity that erupted in Charlottesville. However, this misalignment should not be seen as different than the ineffectively dehumanizing laws that helped to impose adverse life and death consequences on the victims of residential segregation. This Article demonstrates this connection by examining disparities in population health and social outcomes that quantifiably reflect the impact of inhumane legal systems that produced decades of residential and social segregation to make Charlottesville a hospitable environment for white nationalists.

This Article builds on an emergent literature in legal epidemiology that studies the etiology and deployment of law to mediate the distribution of disease and injury. It also recognizes the psychological process of dehumanization as the underlying ethic that justifies both virulently overt racism, and racism that sustains present forms of institutionalized

⁴³ See, e.g., Brad Snyder, How the Conservatives Canonized *Brown v. Board of Education*, 52 Rutgers L. Rev. 383, 384–87 (2000) (exploring the development of the reverence for the *Brown* opinion).

⁴⁴ Paul M. Ong & Jordan Rickles, The Continued Nexus Between School and Residential Segregation, 11 Asian Amer. L. J. 260, 261 (2004).

⁴⁵ Justin P. Steil, Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity, 1 Colum. J. Race & L. 63, 65 (2011); see also Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1707, 1714 (1993) (examining the effects of segregation on race as an economic property).

⁴⁶ See, e.g., Adam Douglas Henry et al., Emergence of Segregation in Evolving Social Networks, 108 Proc. Nat'l. Acad. Sci. 8605, 8605 (2011) (evaluating how segregation has permeated our social networks).

⁴⁷ But cf. Chandra L. Ford & Collins O. Airhihenbuwa, Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis, 100 Am. J. Pub. Health, Supplement 1 at S30, S30 (2010) (urging that jurisprudential critical race theory inform public health scholarship). See also Arline T. Geronimus, Jedi Public Health: Leveraging Contingencies of Social Identity to Grasp and Eliminate Racial Health Inequality, in *Mapping Race: Critical Approaches to Health Disparities Research* 163 (Laura Gómez and Nancy López eds., 2013).

⁴⁸ Dayna Bowen Matthew, Just Medicine: A Cure for Racial Inequality in American Health Care 9–10, 195–208 (2015).

discrimination. This Article also joins the emerging literature that suggests the differences between explicit and implicit racial bias are largely immaterial at an aggregated, societal level.⁴⁹ Both are attitudes about people who belong to a racial group, that develop over time, and that are based on information collected from experiences and the environment.⁵⁰ Both have been shown empirically to visit adverse consequences on the lives of people who are racial and ethnic minorities. Despite evidence that implicit and explicit biases are only loosely correlated⁵¹ and that implicit bias may be an unreliable predictor of discriminatory conduct for individuals,⁵² studies confirm that explicit and implicit racial prejudices are much more closely related at a community level,⁵³ and both are associated with disastrous outcomes for the minorities who live in those communities. Bigotry's historic impact on population health, wealth, and well-being during the Colonial era is familiar. However, the link between historic and contemporary segregation is less well understood. This Article seeks to draw a connection that runs through legal mechanisms.

According to historian Nicholas Guyatt, residential segregation had to be “invented” after the black colonization effort to return formerly enslaved blacks to the continent of Africa proved less successful than the brutal work of “removing” Native Americans from lands the Europeans wanted to claim.⁵⁴ Therefore, during the first⁵⁵ Reconstruction, following the Civil War, white colonists largely settled for living side-by-side with

⁴⁹ Irene V. Blair & Elizabeth Brondolo, *Moving Beyond the Individual: Community-Level Prejudice and Health*, 183 *Soc. Sci. & Med.* 169, 170 (2017); B. Keith Payne et al., *Why Do Implicit and Explicit Attitude Tests Diverge? The Role of Structural Fit*, 94 *J. Personality & Soc. Psychol.* 16, 29 (2008).

⁵⁰ See Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 *Calif. L. Rev.* 945, 946 (2006).

⁵¹ Blair & Brondolo, *supra* note 49, at 170.

⁵² Gregory Mitchell, *An Implicit Bias Primer*, 25 *Va. J. Soc. Pol'y & L.* 27, 52 (2018).

⁵³ Jacob Orchard & Joseph Price, *County-Level Racial Prejudice and the Black-White Gap in Infant Health Outcomes*, 181 *Soc. Sci. & Med.* 191, 194–95 (2017) (comparing models containing implicit versus explicit prejudice measures, which both resulted in significant impact on black but not white births, though when both measures were included, explicit prejudice had a larger effect than implicit measures).

⁵⁴ Nicholas Guyatt, *Bind Us Apart: How Enlightened Americans Invented Racial Segregation* 6–7, 328–30 (2016).

⁵⁵ William J. Barber II, *Rev. Barber: We are Witnessing the Birth Pangs of a Third Reconstruction*, ThinkProgress (Dec. 15, 2016), <https://thinkprogress.org/rev-barber-moral-change-1ad2776df7c/> [<https://perma.cc/52XX-NECD>] (describing contemporary view that the post-Civil War period represented the “first” of three Reconstruction eras in America. The second Reconstruction was the Civil Rights era that followed Jim Crow, and the third Reconstruction will follow backlash to the Obama presidency.).

blacks even in the south where early measures reveal lower levels of segregation prior to the 1880.⁵⁶ But the Post-War period of voluntary integration would not last. Across the nation, by all measures, segregation surged as Reconstruction ended. Between 1880 and 1940, all regions of the country showed substantial increases in residential segregation.⁵⁷ Certainly, economic factors contributed somewhat to the country's great period of segregation, as the Industrial Age in America began. However, the best scholarship dissects segregation household by household and shows that neither economic growth nor changes in the racial composition of the population were the principle drivers in the Post-Reconstruction rise in segregation. Whether counties across the country experienced a growth or decline in the size of the black population, all experienced substantial expansion of residential patterns that separated people by race. Whether counties and districts were rural or urban, segregation surged from 1880 to 1940. Rural segregation increased by nearly 50% during this period, and urban segregation increased by 86%.⁵⁸ Industrialization alone cannot explain the rise of segregation. Counties with higher levels of agricultural cotton production were no more or less segregated than other counties; counties with more manufacturing were only slightly more segregated than counties with less manufacturing.⁵⁹ These data leave the fact that the large, statistically significant increases in American segregation must be explained by a more general and powerful explanator.

Some argue it was not blatant racism that compelled nineteenth and twentieth century European Americans to isolate themselves from blacks, but rather a sincerely held benevolent belief that all racial groups would be better off if they lived apart.⁶⁰ In contrast, no such claim is in any way tenable with respect to the people who marched through Charlottesville

⁵⁶ See, e.g., Kevin Fox Gotham, *Urban Space, Restrictive Covenants and the Origins of Residential Segregation in a U.S. City, 1900-50*, 24 *Int'l J. Urb. & Regional Res.* 616, 618 (2000) (residents of Kansas City not segregated before twentieth century); see also Trevor D. Logan & John M. Parman, *The National Rise in Residential Segregation*, 77 *J. Econ. Hist.* 127, 153–55 (2017) (comparing initially low levels of segregation nationally in 1880 to the rise in segregation through 1940). However, Logan and Parman argue their neighbor-based segregation measure shows greater early segregation than the traditional dissimilarity and isolation indices. *Id.* at 150.

⁵⁷ Logan & Parman, *supra* note 56, at 154–58.

⁵⁸ *Id.* at 164.

⁵⁹ *Id.* at 164–65.

⁶⁰ Guyatt, *supra* note 54, at 9–10.

in August 2017. The white supremacist and white nationalist groups⁶¹ shouted “blood and soil,” pressed for “white civil rights,” and advocated resorting to violence in order to transform this country into an exclusively white nation.⁶² They returned in the months that followed to litter Charlottesville with flyers quoting Stonewall Jackson’s admonition to be ready to “draw the sword” when the “time for war” comes and letting residents know “It’s Okay to be White.”⁶³ However different their methods, Colonial whites and “Unite the Right” organizers share essentially the same objective: they want to isolate and live apart from blacks, Jews, and other people groups who they perceive are unlike them. Moreover, their reasons for the longed-for separation stem from convictions that have dehumanized the minority groups they eschew. Though their attitudes operate along a continuum from subtle to blatant, the structural outcomes that result are much less malleable. Racial segregation in Charlottesville,⁶⁴ as in most American cities⁶⁵ remains nearly as immutably fixed today as in the 1800s.

The Article proceeds in four parts. Part I offers a summary of dehumanization theory to explain what explicit and implicit racial animus have in common. It connects expressly racist laws throughout Charlottesville’s

⁶¹ James Laporta, *Charlottesville: Alt-Right and White Supremacists Recruiting U.S. Military Veterans and Service Members*, *Newsweek* (Aug. 11, 2018), <https://www.newsweek.com/military-charlottesville-white-nationalist-neo-nazi-1069459> [<https://perma.cc/R7-5A-ZLWF>].

⁶² Farah Peterson, *Foreword*, 104 *Va. L. Rev. Online* 1, 4 (2018) http://www.virginialawreview.org/sites/virginialawreview.org/files/Peterson_PostMacro%201.24.pdf [<https://perma.cc/9GCN-LZKL>]; Oren Segal, *Welcome to the ‘White Civil Rights’ Movement*, *The Hill* (Aug. 15, 2017), <https://thehill.com/blogs/pundits-blog/civil-rights/346590-welcome-to-the-white-civil-rights-movement> [<https://perma.cc/ZFJ6-7CHG>].

⁶³ Chris Suarez, *Charlottesville Residents Say Racist Messages Littered Throughout City*, *The Daily Progress* (Apr. 18, 2018), https://www.dailyprogress.com/news/local/city/charlottesville-residents-say-racist-messages-littered-throughout-city/article_19dd2a9e-4381-11-e8-8c6a-6b197dc576b0.html [<https://perma.cc/42L6-FV55>].

⁶⁴ Michele P. Claibourn, *Blacks in Virginia: Demographic Trends in Historical Context*, *Weldon Cooper Center*, (Apr. 2012), https://libraopen.lib.virginia.edu/public_view/8g84-mm330 [<https://perma.cc/5K7Q-LHL4>]; see also Michele Claibourn, *Residential Segregation in Virginia’s Counties and Cities*, *StatChat* (Apr. 30, 2012), <http://statchatva.org/2012/04/30/residential-segregation-in-virginias-counties-and-cities/> [<https://perma.cc/6EBC-YTGJ>] (describing Charlottesville residential segregation as “moderate”).

⁶⁵ The Data Team, *Segregation in America*, *The Economist* (Apr. 4, 2018), <https://www.economist.com/graphic-detail/2018/04/04/segregation-in-america> [<https://perma.cc/S4GB-3UG7>]. Segregation declined significantly in America between 1970 and 1980. However, since then racial integration has declined more slowly and remains high in absolute terms with segregation in metropolitan areas such as Los Angeles, New York, and Chicago showing the least improvement over time. *Id.*

history to the subtler, structural racism that arguably gives place to the white supremacist movement today. The intensity of Charlottesville's brand of blatant and subtle dehumanization explains how this small town has been chosen to be the "center of the universe" for waging war against Jews, blacks, and other minorities. This section rejects individually mediated explanations for the impact that explicit and implicit biases impose on minority communities, in favor of an explanation that appreciates the structural influences perpetuated by racial bias whether implicitly or explicitly expressed. Part I concludes that both implicit and explicit assumptions of dehumanization combine to form the structural and systemic manifestations of prejudice that constitute institutionalized racism.

Part II is the core contribution of this Article. This section traces the legal origins of residential segregation in Charlottesville, Virginia from 1903 to 1968 to confirm the historicity of legalized dehumanization. It identifies residential segregation as the principal organizing structure that dehumanization produced in Charlottesville, and identifies unequal protection of the laws as the key operative mechanism that enables structural racism. It accesses historical records and maps that record state, city, and local administrative decisions to inequitably distribute access to clean, treated water, sewage and sanitation services, safely constructed housing, health care, and transportation. Part II theorizes that racism, borne of dehumanization, is the fundamental cause of legal processes that constructed detrimental, racialized spatial forms. The evidence presented in Part II provides a basis to conclude that segregation and its adverse social impacts expand during periods when courts and legislators weakly interpreted the 14th Amendment, but retreat when the 14th Amendment is properly interpreted to oppose structural subordination of black Americans. Part III provides quantifiable evidence of the harm that laws informed by dehumanization impose. The evidence is taken from historic and contemporary health, education, and employment records to evince disparities that racism continues to cause in Charlottesville. In the way that Virginia state and local governments failed to protect against the overt and covert violence that established and enforced segregation in the nineteenth and twentieth centuries, the City and state governments have failed to protect against continued political violence to the detriment and death of minority populations in the twenty-first century. Part III concludes with a suggestion for how the 14th Amendment might more properly fulfill its intended purpose: to protect against both implicit and explicit forms of state-sanctioned dehumanization.

This Article makes two claims. First, the racialization of space that characterizes segregation in Charlottesville and throughout the United States could not happen without state and local governments interpreting the plain language and original intent of the 14th Amendment's Equal Protection Clause to regard blacks as less than full human persons. Second, in addition to flouting the constitutional guarantee of equal protection, the historic and contemporary consequences of dehumanization that justify residential segregation construct physical and social conditions that inevitably invite the resurgence of racial violence seen in Charlottesville today. The take-away message this Article delivers is that the racial violence seen in Charlottesville is merely a visible manifestation of the multiple structural injuries that arise when laws embrace and give expression to the fallacy of racial dehumanization.

II. DEHUMANIZATION

Social scientists have studied and debated the cognitive functions that produce discriminatory actions for over a half century. In his seminal book titled *The Nature of Prejudice*, Gordon Allport organized the sociologic, psychological, and anthropologic knowledge of explicit racial attitudes to explain that under the right conditions, hostile attitudes can escalate from offensive speech, to institutionalized racism, violence against people and property, and ultimately violent hatred and aggression including genocide.⁶⁶ Allport's work linked prejudices expressed by individuals such as antilocution (harsh words) and avoidance to systemic forms of prejudice that escalated from legalized racism to violence to genocidal attempts to destroy an entire people group. Therefore, early on, social scientists have been able to explain the clear relationship between horribly objectionable individualized bigotry and collectively racist political as well as literal violence. Although Allport's landmark contributions have fostered a vibrant discourse, the detrimental propensities of explicit racial prejudice, and their connection to the overtly racist institutions of slavery, segregation, and white supremacist violence is largely uncontroversial. However, following the Civil Rights era, as explicit forms of racial hostility became less prevalent, more subtle forms of racial prejudice arose and lulled some into falsely believing the threat of overt racial violence in America had receded.

⁶⁶ Gordon W. Allport, *The Nature of Prejudice* 57–65 (1954).

In 1995, cognitive psychologists introduced the concept of implicit racial bias, which revolutionized the way that we think of prejudice and discrimination.⁶⁷ They showed that expressions of racial discrimination are not always blatant and overt, but can also operate covertly and even unintentionally.⁶⁸ Further, they suggested the extent of discriminatory bias could be measured and quantified using the Implicit Association Test (“IAT”).⁶⁹ Implicit bias became a standard feature of the race lexicon, with theorists and activists uniting to fix the problem of implicit bias in law enforcement, education, medicine, governance, and virtually every aspect of life. More recently, psychologists are debating the validity of the implicit association test, with ardent supporters now turning to aggregating measures of implicit bias to quantify community-level prejudice,⁷⁰ and critics insisting the IAT is unstable, is not useful to measure anything more than associations rather than prejudices, and is definitively useless to predict discriminatory behavior.⁷¹ This debate cannot obscure two important points about implicit bias. First, implicit racial bias is a real phenomenon.⁷² Second, people who claim not to hold implicit biases nevertheless discriminate against racial minorities⁷³ and hold false, negative

⁶⁷ Anthony G. Greenwald & Mahzarin R. Banaji, *Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes*, 102 *Psychol. Rev.* 4, 15 (1995) (defining implicit racism); see also Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 *J. Personality & Soc. Psychol.* 5, 16 (1989) (suggesting that “prejudice need not be the consequence of ordinary thought processes”).

⁶⁸ Greenwald & Banaji, *supra* note 67, at 20.

⁶⁹ Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 *J. Personality & Soc. Psychol.* 1464, 1464 (1998); see also Anthony G. Greenwald & Mahzarin R. Banaji, *The Implicit Revolution: Reconceiving the Relation Between Conscious and Unconscious*, 72 *Am. Psychologist* 861, 866–67 (2017) (building on the IAT introduced in the 1998 Greenwald study).

⁷⁰ James R. Rae & Anthony G. Greenwald, *Persons or Situations? Individual Differences Explain Variance in Aggregated Implicit Race Attitudes*, 28 *Psychol. Inquiry* 297, 297 (2017); Blair & Brondolo, *supra* note 49, at 169–71.

⁷¹ Mitchell, *supra* note 52, at 33–39 (2018).

⁷² Keith Payne et al., *How to Think About “Implicit Bias,”* *Sci. Am.* (Mar. 27, 2018), <https://www.scientificamerican.com/article/how-to-think-about-implicit-bias/> [<https://perma.cc/2WTG-VAVE>].

⁷³ Physicians: Alexander R. Green et al., *Implicit Bias Among Physicians and its Prediction of Thrombolysis Decisions for Black and White Patients*, 22 *J. Gen. Internal Med.* 1231, 1233–34 (2007) (physicians reported no explicit preference between black and white patients, but showed different implicit preferences and treatment by race); Michelle van Ryn & Steven S. Fu, *Paved With Good Intentions: Do Public Health and Human Service Providers Contribute to Racial/Ethnic Disparities in Health?*, 93 *Am. J. Pub. Health* 248, 248–52 (2003) (discussing considerable evidence that individual physician’s unconscious stereotypes influence behavior unknowingly, even though providers may be devoted to justice and equity).

assumptions about them.⁷⁴ Therefore, notwithstanding unanswered questions about the quantification and predictive capacity of implicit racial attitudes, implicit and explicit racial attitudes share much in common.⁷⁵ They are based on inaccurate information, can influence individual and institutional behavior, and are associated with harmful discrimination. Moreover, the argument in this Section is that explicit and implicit racial prejudices also share the propensity to escalate into structural racism and violence. This is because they both emanate from the same erroneous psychological assumption. Negative implicit biases, as well as explicit racial prejudice, are informed by a potent normative conclusion that has overriding importance for understanding how peaceful and bucolic Charlottesville, Virginia could erupt into terror. Dehumanization—the conviction that members of minority groups lack essential qualities of what makes a human distinctive—sustains and amplifies all forms of racial bias, and informs racial discrimination, whether the discrimination is motivated by implicit or explicit racial discrimination.

Dehumanization is the process by which one denies the human status of a person or people group, discounting their capacity for conscious experience, rational thought, or emotional feeling.⁷⁶ Psychologists describe

Police: Andrew Gelman et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, 102 *J. Am. Stat. Ass'n* 813, 814, 822 (2007) (noting the police explanation that racialized rates for stop and frisk reflect only different crime rates by race as opposed to evidence that showed NYC police disproportionately stop minorities more than whites both in comparison to their overall population and to estimated crime rates for each group); see also Rob Voigt et al., *Language from Police Body Camera Footage Shows Racial Disparities in Officer Respect*, 114 *PNAS* 6521, 6521 (2017) (finding that police spoke less respectfully to black community members using systematic analysis of bodycam recordings during traffic stops); Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 *J. Personality & Soc. Psychol.* 1006, 1011 (2007) (find that police bias in response speed of shoot/no-shoot decision through latency correlated with explicit bias).

Judges: compare Justin D. Levinson et al., *Judging Implicit Bias: A National Empirical Study of Judicial Stereotypes*, 69 *Fla. L. Rev.* 63, 107–08 (2017) (noting that Catholic and Protestant Judges self-reported stereotypes correlated with Anti-Asian and Anti-Jewish implicit biases).

⁷⁴ Kelly M. Hoffman et al., *Racial Bias in Pain Assessment and Treatment Recommendations, and False Beliefs about Biological Differences Between Blacks and Whites*, 113 *PNAS* 4296, 4297, 4300 (2016).

⁷⁵ See Wilhelm Hofmann et al., *A Meta-Analysis on the Correlation Between the Implicit Association Test and Explicit Self-Report Measures*, 31 *Personality & Soc. Psychol. Bull.* 1369, 1369 (2005).

⁷⁶ See Adam Waytz & Juliana Schroeder, *Overlooking Others: Dehumanization by Commission [sic] and Omission*, 21 *TPM* 1, 1–2 (2014).

dehumanization at the individual level, but give familiar examples, often from wars and genocide, that involve communities engaging in extreme cruelty and violence from a collectively shared perspective of blatant dehumanization.⁷⁷ Examples include Nazis referring to Jews as subhuman “rats” and “vermin” during the Holocaust;⁷⁸ Rwandan genociders calling Tutsi people “inyenzi” (cockroaches) in 1994;⁷⁹ and American troops’ atrocities such as the My Lai Massacre, committed against people they called “dinks, gooks, slopes, [and] slants” in Vietnam.⁸⁰ Researchers have shown that white Americans who associate African Americans with apes consequently adjudge blacks fit for heightened criminal penalties to control the perceived, albeit exaggerated, danger they present.⁸¹ Blatant dehumanization is also associated with willingness to torture enemy combatants and approve of verbally aggressive criticism of political opponents.⁸² Blatant dehumanization may also take the form of ascribing superhuman—monstrous powers—to a people group that is to be feared and exterminated for the threat they present.⁸³ Research into the psychology of blatant dehumanization originally arose as scientists sought to understand those capable of human atrocity after World War II.⁸⁴ However, war is not the only setting in which dehumanization operates.

⁷⁷ Nour S. Kteily & Emile Bruneau, *Darker Demons of Our Nature: The Need to (Re)Focus Attention on Blatant Forms of Dehumanization*, 26 *Current Directions Psychol. Sci.* 487, 487–88 (2017).

⁷⁸ Johannes Lang, *Questioning Dehumanization: Intersubjective Dimensions of Violence in the Nazi Concentration and Death Camps*, 24 *Holocaust & Genocide Stud.* 225, 232, 234 n.37 (2010).

⁷⁹ Kennedy Ndahiro, *Dehumanisation: How Tutsis Were Reduced to Cockroaches, Snakes to Be Killed*, *The New Times* (Mar. 13, 2014), <https://www.newtimes.co.rw/section/read/73836> [<https://perma.cc/ZT97-UCAB>].

⁸⁰ Nick Turse, *Kill Anything That Moves: The Real American War in Vietnam* 28 (2013).

⁸¹ Themal I. Ellawala, *Pulling the Trigger: Dehumanization of African Americans and Police Violence*, 2 *Scholarly Undergraduate Res. J. Clark* 1, 4–5 (2016); see also Aneeta Rattan & Jennifer L. Eberhardt, *The Role of Social Meaning in Inattentional Blindness: When the Gorillas in Our Midst Do *Not* Go Unseen*, 46 *J. Experimental Soc. Psychol.* 1085, 1086 (2010) (“This association [between African Americans and apes] is dehumanizing, leads people to condone violence against African Americans, and is related to a higher likelihood of death sentences for African American than European American defendants in capital cases.”).

⁸² Kteily & Bruneau, *supra* note 77, at 488.

⁸³ See Peter Holtz & Wolfgang Wagner, *Essentialism and Attribution of Monstrosity in Racist Discourse: Right-Wing Internet Postings about Africans and Jews*, 19 *J. Community & Applied Soc. Psychol.* 411, 420, 423 (2009).

⁸⁴ Kteily & Bruneau, *supra* note 77, at 487.

Researchers have shown the enduring appeal of ordinary Americans' everyday associations between black Americans and apes,⁸⁵ or Muslims with camels.⁸⁶ These everyday associations are called "infracommunication," in part because this brand of dehumanization does not require conscious awareness or endorsement. Subtle or implicit dehumanization similarly deprives others of human tendencies, but in more everyday settings.⁸⁷ Subtle or implicit dehumanization, unlike blatant dehumanization, is less likely to be associated with the attitudes and behaviors that lead to large scale atrocities such as mass killings but is nevertheless consequentially associated with attitudes such as implicit bias and behaviors that discriminate against minorities.⁸⁸ For example, researchers who conducted a study of a large, representative group of white Americans found that whites who dehumanized blacks were more likely to support punitive policies such as "three strikes" criminal justice legislation that had a disproportionately adverse effect on blacks, even after controlling for party affiliation, conservatism, racial resentment, and stereotyping.⁸⁹

Research has shown the subtler form of dehumanization, just like blatant dehumanization, also operates reductively, giving one group license to deny that another group shares human traits and emotions that distinguish them from animals or machines. Concomitantly, both forms mitigate the dominant group's feelings of acceptance, compassion, or forgiveness. Both forms allow the dominant group to rationalize aggression and minimize responsibility for its own misdeeds.⁹⁰ Even though the blatant form is more strongly associated with dominance and authoritarianism over the dehumanized group, subtle dehumanizers demonstrate a

⁸⁵ Phillip A. Goff et al., Not Yet Human: Implicit Knowledge, Historical Dehumanization, and Contemporary Consequences, 94 *J. Personality & Soc. Psychol.* 292, 292–93 (2008).

⁸⁶ Sunita Sohrabji, Halliburton Staff Called Muslim American Employees 'Terrorist' and 'Camel Jockey' at Workplace, Alleges EEOC Suit, *India-West* (July 18, 2018), https://www.indiawest.com/news/global_indian/halliburton-staff-called-muslim-american-employees-terrorist-and-camel-jockey/article_13cc75fe-8ac8-11e8-a755-fff12a53ab06.html [<https://perma.cc/GVQ9-LXZQ>]; see also Sahar F. Aziz, Sticks and Stones, the Words that Hurt: Entrenched Stereotypes Eight Years After 9/11, 13 *N.Y. City L. Rev.* 33, 36 (2009) (finding enduring entrenchment of preexisting negative stereotypes).

⁸⁷ Nick Haslam & Steve Loughnan, Dehumanization and Infracommunication, 65 *Ann. Rev. Psychol.* 399, 403 (2014) (describing "animalistic" versus "mechanistic" dehumanization).

⁸⁸ *Id.* at 402; Kteily & Bruneau, *supra* note 77, at 489–90.

⁸⁹ Kteily & Bruneau, *supra* note 77, at 490.

⁹⁰ Nour Kteily et al., The Ascent of Man: Theoretical and Empirical Evidence for Blatant Dehumanization, 109 *J. Personality & Soc. Psychol.* 901, 902 (2015).

weaker objection to equality between the groups.⁹¹ Rather than the connection between blatant dehumanization and aggressive social order dominance, research has shown that subtle dehumanization is associated with more indirect efforts to enforce hierarchy between two groups, such as voicing objections to affirmative action or supporting political conservatism.⁹² Dehumanization may be grounded on one hand in hostility and animosity, or on the other hand in apathy or indifference toward a disfavored group. But important for the analysis here, dehumanization, once generally accepted as a social narrative, is accompanied by a correspondent positioning between two groups that correlate to societal level behaviors.

Social psychologists have helped to identify policies and behaviors that flow from dehumanization by distinguishing dehumanization by *commission* from dehumanization by *omission*.⁹³ Factors that contribute to dehumanization by commission include perceived threats of danger or disconnectedness from a disfavored group.⁹⁴ Not only do these factors help to elucidate the mindset of those who committed heinous acts during human atrocities abroad, such as the Holocaust or the Rwandan Genocide, but evidence of dehumanization also sheds light on the motivations of American terrorists, such as the architects of the 1995 Oklahoma City bombing. In his letter written to explain why he bombed the Murrah building, Timothy McVeigh wrote, “[f]rom this perspective, what occurred in Oklahoma City was no different than what Americans rain on the heads of others all the time, and subsequently, my mindset was and is one of clinical detachment. (The bombing of the Murrah building was not personal[]).”⁹⁵ By his admission, McVeigh was detached and “not personal.” He confessed disconnection from that group of people who were affected by the bomb. Moreover, he identified conflict with the “other” group—

⁹¹ Id. at 904. See also Victoria M. Esses et al., Justice, Morality, and the Dehumanization of Refugees, 21 Soc. Just. Res., Feb. 2008, at 4, 4 (demonstrating that “individuals who are higher in social dominance orientation are especially likely to dehumanize refugees”).

⁹² See Kteily et al., supra note 90, at 904–10 (showing subtle dehumanization as a significant predictor of more subtle opposition to equality between groups such as less compensation for injustice, or fewer donations to outgroup charity, while blatant dehumanization more predictive of more active social dominance).

⁹³ Waytz & Schroeder, supra note 76, at 1.

⁹⁴ Id. at 3.

⁹⁵ Tracy McVeigh, The McVeigh Letters: Why I Bombed Oklahoma, Guardian (May 6, 2001), <https://www.theguardian.com/world/2001/may/06/mcveigh.usa> [<https://perma.cc/F3WE-992U>].

Americans—and a perceived threat presented by the opponent group as the combined cause of his decision to bomb.

Dehumanization by omission arises from subtle dehumanization;⁹⁶ it ascribes insignificance to and independence from others. This frame of mind devotes few social and cognitive resources to the condition or circumstances. Dehumanization by omission regards people from the “other” group as irrelevant or at best, regards them for their “goal instrumentality.”⁹⁷ In lay terms, this describes a relationship in which a more powerful group of people treat a less powerful group as objects that are valuable only to the extent they are useful in pursuit of the powerful group’s goals, rather than for the value of their human qualities.⁹⁸ Importantly, while dehumanization by commission is associated with massive and violent killing, dehumanization through indifference can contribute to experiences of loneliness and exclusion, visiting adverse outcomes on the physical and mental health of both the target and the perpetrator.⁹⁹ Acts that affect the other group are held commonly by people with higher status, power, and money.¹⁰⁰ This form of dehumanization has been associated with contemporary desire of whites to preserve their dominant social position, while representing themselves as egalitarians.¹⁰¹ Empirical examples of this form include evidence that subtle dehumanization explains Portuguese study participants’ opposition to including Turkey in the European Union,¹⁰² decreased responsibility for their group’s past transgressions,¹⁰³ and reduced acceptance of Muslim immigrants.¹⁰⁴ Legal researchers have shown that both dehumanization by omission and commission can be unconscious or conscious.¹⁰⁵ Dehumanization animates both implicit and explicit biases.¹⁰⁶ Moreover, experts point out

⁹⁶ Waytz & Schroeder, *supra* note 76, at 12 (“[D]ehumanization by omission is more likely to result in subtle forms of failing to attend to others’ full humanity.”).

⁹⁷ *Id.* at 9.

⁹⁸ See Deborah H. Gruenfeld et al., Power and the Objectification of Social Targets, 95 *J. Personality & Soc. Psychol.* 111, 111 (2008).

⁹⁹ Kteily et al., *supra* note 90, at 901; Haslam & Loughnan, *supra* note 87, at 401.

¹⁰⁰ Waytz & Schroeder, *supra* note 76, at 10.

¹⁰¹ Tyrone A. Forman, Color-Blind Racism and Racial Indifference: The Role of Racial Apathy in Facilitating Enduring Inequalities, *in* *The Changing Terrain of Race and Ethnicity* 43, 43–45 (Maria Krysan & Amanda E. Lewis eds., 2004).

¹⁰² Kteily et al., *supra* note 90, at 902.

¹⁰³ Teun A. van Dijk, Discourse and the Denial of Racism, 3 *Discourse & Soc’y* 87, 89, 91–92 (1992).

¹⁰⁴ Kteily et al., *supra* note 90, at 902.

¹⁰⁵ Waytz & Schroeder, *supra* note 76, at 2.

¹⁰⁶ *Id.* at 1.

that though the two forms are different, the thought processes are equally consequential. Dehumanization by commission and omission “share common consequences, including willingness to torture . . . and decreased compassion during times of need.”¹⁰⁷ Thus, dehumanization could explain how segregation links past and present forms of racial violence—both political¹⁰⁸ and physical—in Charlottesville. Moreover, understanding the dehumanization roots of both implicit and explicit racial prejudices, provides the explanatory mechanism for the aggression that produces racial violence whether discrimination occurs subtly or overtly.

Most importantly, the key to understanding the nexus between dehumanization and racist discrimination lies in appreciating how both thrive in circumstances that isolate differing groups of people from one another. In psychological terms, dehumanization occurs in the context of “moral exclusion”—that is the mental process of placing people outside the boundary in which ordinary rules and values would apply.¹⁰⁹ In the absence of counterfactuals, dehumanization has been shown to progress from pity to scorn, to fear of the “other” where the out-group differences are related to mental illness,¹¹⁰ sexual orientation,¹¹¹ prisoners,¹¹² and disfavored medical patients.¹¹³ Similarly, dehumanization of black Americans in Charlottesville has generated irrational and unproductive pity, scorn, and fear. Charlottesville’s segregated communities ensured that racial groups had little personal contact or social interaction to counteract untested presumptions about one another, reinforcing dehumanization as a principle useful to create a tolerance of inequity and justification for violence. The next Part traces the centrality of dehumanization through Charlottesville’s segregationist history to recast the exceptionalist narrative that places racism in Charlottesville’s past or relegates it outside

¹⁰⁷ *Id.* at 11 (citations omitted).

¹⁰⁸ See generally Stathis N. Kalyvas, *The Ontology of “Political Violence”: Action and Identity in Civil Wars*, 1 *Persp. on Pol.* 475 (2003) (suggesting how politics can ally diverse, ambiguous private motives into violent, concerted action).

¹⁰⁹ Nick Haslam, *Dehumanization: An Integrative Review*, 10 *Personality & Soc. Psychol. Rev.* 252, 254 (2006).

¹¹⁰ Wesley D. White & Wolf Wolfensberger, *The Evolution of Dehumanization in our Institutions*, *Mental Retardation*, June 1969, at 5, 5–6.

¹¹¹ Evan Wolfson, *Civil Rights, Human Rights, Gay Rights: Minorities and the Humanity of the Different*, 14 *Harv. J. L. Pub. Pol’y.* 21, 21–22, 27–33 (1991).

¹¹² Craig Haney & Philip Zimbardo, *The Past and Future of U.S. Prison Policy: Twenty-Five Years After the Stanford Prison Experiment*, 53 *Am. Psychologist* 709, 710, 719 (1998).

¹¹³ Haslam, *supra* note 109, at 253.

Charlottesville's borders; the object is to shrink the perceived differences between explicit and implicit dehumanizing discrimination.

III. SEGREGATION

The City of Charlottesville was first settled by the Monacan Indians.¹¹⁴ From 1727 to 1737, European settlers “claimed” superior title to the land the Monacans had occupied in Charlottesville by grants recorded as patents from the English Crown.¹¹⁵ In 1761, the Virginia Assembly divided Albemarle County, reducing its size to 750 square miles, and placing Scottsville at the far south of the County, leaving the land that would become Charlottesville to the north.¹¹⁶ Then in 1762, the General Assembly founded the City of Charlottesville and established it as the Albemarle County seat by a legislative Act.¹¹⁷ From the mid-1700s through the end of the Civil War, there is ample evidence that slavery segregated black from white populations in Charlottesville.¹¹⁸ However, for a brief period

¹¹⁴ Jeffrey L. Hantman, Powhatan's Relations with the Piedmont Monacans, *in* Powhatan Foreign Relations, 1500–1722 94, 95–97 (Helen C. Rountree ed., 1993); Erin O'Hare, After Inhabiting Virginia Land for 10,000 Years, the Monacan Indian Nation Finally Receives Federal Recognition, *C-ville.com* (Mar. 9, 2018), <http://www.c-ville.com/inhabiting-virginia-land-10000-years-monacan-indian-nation-finally-receives-federal-recognition/#.W-d0vBN-Kjfy> [<https://perma.cc/6UDJ-8V5R>] (“Originally, the tribe’s territory covered more than half of the state of Virginia, including most of the Piedmont region and part of the Blue Ridge Mountains (Charlottesville and Albemarle County included).”); Our History, Monacan Indian Nation, <https://www.monacannation.com/our-history.html> [<https://perma.cc/7KQ7-KTNB>] (last visited November 10, 2018).

¹¹⁵ Charlottesville: A Brief Urban History, University of Virginia Institute for Advanced Technology in the Humanities, <http://www2.iath.virginia.edu/schwartz/cville/cville.history.html> [<https://perma.cc/PNE8-GFVM>] (last visited Mar. 8, 2019). In 1737, William Taylor received the land patent that became Charlottesville from representatives of the English Crown. See Charlottesville 2017: The Legacy of Race and Inequity, at ix (Louis P. Nelson & Claudrena N. Harold eds., 2018).

¹¹⁶ Charlottesville: A Brief Urban History, *supra* note 115.

¹¹⁷ *Id.*

¹¹⁸ For example, records show that “Virginia had the largest population of enslaved African Americans of any state in the Confederacy.” Encyclopedia Virginia, Slavery During the Civil War, https://www.encyclopediavirginia.org/Slavery_During_the_Civil_War [<https://perma.cc/7SPX-652T>] (last visited Feb. 7, 2019). In March 1865, when the Union forces occupied Charlottesville, records reveal that 14,000 enslaved residents were freed. See The African American Community at the University pre-1865, *in* President's Commission on Slavery and the University, University of Virginia (2018), at 39, https://vpdiversity.virginia.edu/sites/vpdiversity.virginia.edu/files/PCSU%20Report%20FINAL_July%202018.pdf [<https://perma.cc/-UDV4-GURC>]. Moreover, there is also evidence of the Charlottesville-Albemarle region's flourishing market in human beings prior to the Civil War—for example, court records such as a September 1798 Freedom Suit brought in Charlottesville by a family of enslaved people

following the Civil War, during Reconstruction, Charlottesville was not segregated. Resident Rebecca McGinnis recalled this time to an oral historian, explaining that “[w]hites and blacks lived together in the neighborhood until segregation was *legally promoted* and then the whites moved away. Almost all the houses on Oak Street were owned by whites. My neighborhood was close-knit and friendly. Many of the residents were railroad workers, both black and white.”¹¹⁹ A discussion of why race began to divide Charlottesville is beyond the scope of this Article. Whatever the reasons, the government and laws in Charlottesville became the mechanism to accomplish segregation. By the late 1800s it was common for Charlottesville’s *Jeffersonian Republican* newspaper to announce “Grand . . . Mass Meeting[s]” of the Conservative citizens of Albemarle County.¹²⁰ Politicians summoned voters to meet in Charlottesville, incentivizing attendance by listing the esteemed elected officials who would speak, food that would be served, and dire warnings of the dangers of “negro equality”:

Every white mother, wife, daughter, and sister should see to it, that every father, husband, brother, and sweetheart votes, to prevent having you placed upon social negro equality.¹²¹

The inland, sleepy agricultural community was also transformed by the arrival of national railroad lines that began to define the city’s racial contours and laid the foundations for a permanent system of residential segregation. At the same time, attitudes towards race began to change. First, the railroads racialized spaces by setting apart the geographic neighborhoods to which racial, not just socioeconomic, groups would be assigned.

to claim they were wrongly held as property, and regularly filed documents called the “Free Negro Register,” which were recorded pursuant to Acts passed by the Virginia Legislature in 1793 and 1803 requiring every ‘free negro’ or ‘mulatto’ to be registered and numbered in a book kept by county clerk. Freedom Suit, (Sept. 21, 1798) (on file with author); see, e.g., Phillip (M, 34): Free Negro Register, Slave Owner: John White, Albemarle County (Va.) Free Negro and Slave Records, 1799-1870 ca.; see also Gayle M. Schulman, *Slaves at the University of Virginia* (May 2003) (unpublished manuscript), https://latinamericanstudies.org/~latinam2/slavery/Slaves_University_Virginia.pdf [<https://perma.cc/KMC3-ZEUF>].

¹¹⁹ Recollections of Rebecca McGuinness, *From Porch Swings to Patios: An Oral History Project of Charlottesville Neighborhoods, 1914–1980* (Wilma T. Mangione ed., 1990) (emphasis added), <http://www2.iath.virginia.edu/schwartz/vhill/mcginness.html> [<https://perma.cc/3E2L-L9HH>].

¹²⁰ See, e.g., Grand Conservative Mass Meeting and Barbecue, *Jeffersonian Republican*, Oct. 15, 1873, at 3, <https://virginiachronicle.com/?a=d&d=JRP18731015.1.3&e=-----en-20-1--txt-txIN-----> [<https://perma.cc/SGJ7-GFV8>].

¹²¹ *Id.*

Starting in 1868, the Chesapeake & Ohio (“C&O”) Railroad began to run east-west through Charlottesville, placing the University and larger estates to the north, while businesses and more modest residences located south of the railroad.¹²² In 1894 the Southern Line began running roughly north-south, crossing the C&O line in Charlottesville’s downtown at Union Station, known as “The Junction.”¹²³ The intersection of these two lines formed an “X” that crossed in the center of downtown, dividing the city into four quadrants, which in turn resulted in four different areas of development: the University of Virginia occupied the northwest, residential neighborhoods for white residents occupied the northeast, while the southeast represented Charlottesville’s business and industrial district, and a fourth quadrant, still largely undeveloped stretched to the southwest.¹²⁴ The 1907 map of Charlottesville pictured in Figure 1 below shows Union Station at the downtown junction circled in red, and the black dotted lines trace the railroad tracks that bisected Charlottesville into four quadrants.

¹²² Charlottesville Area Transit (CAT): History, City of Charlottesville, <http://www.charlottesville.org/departments-and-services/city-services/charlottesville-area-transit-cat/history> [<https://perma.cc/G3N6-KP9D>].

¹²³ *Id.*

¹²⁴ *Id.*

Figure 1
Sanborn Fire Insurance Map of Charlottesville, Virginia (1907)



Source: Charlottesville, Virginia Sanborn Map Company, February 1907, Sheets 2, 8–12¹²⁵

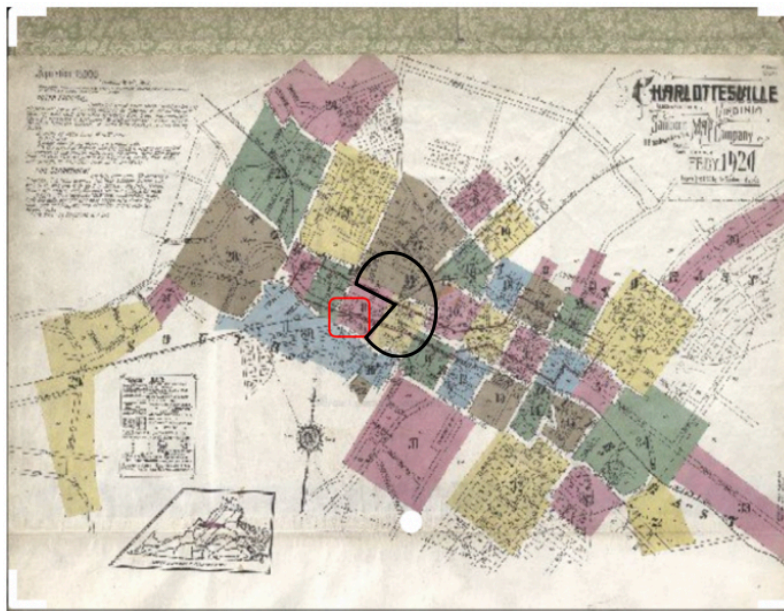
This map provides a point of reference because it is color-coded. The pink buildings throughout the map are commercial, brick buildings, while the yellow structures were made of wood, the material typically used for residences.¹²⁶ Therefore, by looking over the 1907 map, it is easy to see that the areas around Union Station and the railroad tracks were largely commercial. Railroad construction not only outlined the physical spaces that blacks and whites would soon occupy exclusively, but the railroad construction process also changed Charlottesville's demography; it increased the presence of blacks in the region. Between the 1830s and 1850, Charlottesville whites purchased over 400 enslaved people, some of

¹²⁵ Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (1907), <https://geoportal.lib.virginia.edu/UVASanbornDiscovery/>, <https://search.lib.virginia.edu/catacat/u28-11723#?c=0&m=0&s=0&cv=3&xywh=-87%2C-1%2C12384%2C15295>, <http://sanborn-umi.com.proxy01.its.virginia.edu/va/8995/dateid-000005.htm?CCSI=302n>.

¹²⁶ FIMo, How to Interpret Sanborn Maps, <http://www.historicalinfo.com/fimo-interpret-sanborn-maps/> [<https://perma.cc/C3LZ-C8PS>] (last visited Feb. 7, 2019); Sanborn Insurance Maps: About This Collection, Library of Congress, <https://www.loc.gov/collections/sanborn-maps/about-this-collection> [<https://perma.cc/ATG2-UHAQ>].

whom provided free labor to build railroad lines that connected Charlottesville westward to Richmond, and to Staunton in the east.¹²⁷ By the year 1900, the Census reported that Albemarle County, Virginia had a total population of 28,473; of those ages 5 to 20, 61.1% were white, and 38.9% were black.¹²⁸ By the 1920s, blacks in Charlottesville almost exclusively occupied only the neighborhoods surrounding the Union Station railroad junction. Figure 2 below shows where these neighborhoods were located on a 1920 Sanborn Map of the city. Again, Union Station is circled in red, and the predominately black residences in the City are circled in black.

Figure 2
Sanborn Fire Insurance Map of Charlottesville, Virginia (1920)



Source: Charlottesville, Virginia Sanborn Map Company, February 1920, Sheet 1¹²⁹

¹²⁷ Charlottesville Area Transit, *supra* note 122 (“More than 400 slaves, some purchased specifically for building the railroad, made up the construction crew. When completed, the connection was described as: ‘... an important link in the connection of the metropolis with the West.’”).

¹²⁸ US Census 1900: Albemarle County, Virginia, Social Explorer, <https://www.socialexplorer.com/tables/Census1900/R11884366> (last visited Nov. 21, 2018).

¹²⁹ Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (Feb. 1920), <https://geportal.lib.virginia.edu/UVASanbornDiscovery/>, <http://search.lib.virginia.edu/cat->

Importantly, Charlottesville was not completely segregated by 1920; indeed, historian Dr. Karen Waters-Wicks reports there were sixteen African-American neighborhoods in the early twentieth century, and they ranged in location and wealth.¹³⁰ For example, the 1920 map shows a small, predominately black neighborhood in southwest Charlottesville, off Ridge Street. In this area, Parrot and Diggs Streets were “[p]opulated primarily by black citizens [and] these streets were in close proximity to some of the wealthiest homes in the city, built by white businessmen and merchants along Ridge Street.”¹³¹ But by 1920, the segregation ordinance had effectively done its work to separate white and black residences. Some blacks left Charlottesville completely as racial violence and prejudice escalated.¹³² Other black and white families moved to their respective locations over time to create segregated Charlottesville. The location of these racialized neighborhoods is confirmed vividly in an account of Charlottesville’s prostitution history written by Professor Daniel Bluestone. In Charlottesville, as in many cities, brothels frequented by people of all races were allowed to proliferate in African-American neighborhoods but excluded from communities where whites lived. Thus, Bluestone’s careful history of prostitution offers a detailed record of the gradual concentration of African American families who came to live immediately southwest of the Union Station junction, near the intersection of Garret and Fifth Street Southwest.¹³³ Similarly, Waters-Wicks identifies the black neighborhoods that had emerged near Union Station by 1920, on the north- and south-west sides of West Main Street, extending from Fourth to approximately Tenth Streets. These segregated black

[alog/u2811715#?c=0&m=0&s=0&cv=0&xywh=3563%2C718%2C7368%2C9100](http://u2811715#?c=0&m=0&s=0&cv=0&xywh=3563%2C718%2C7368%2C9100), <http://sanborn.umi.com.proxy01.its.virginia.edu/va/8995/dateid-000007.htm?CCSI=302n> [<https://perma.cc/2L5D-WWVS>].

¹³⁰ Karen C. Waters-Wicks, An Ordinance to Secure for White and Colored People a “Separate Location of Residence for Each Race”: A History of *de jure* Residential Segregation in Charlottesville and Richmond, Virginia, 72 Mag. Albemarle County Hist. 107, 120–21 (2014).

¹³¹ Id. at 123.

¹³² For a series of excellent historical resources, see A Century of Displacement of African American Neighborhoods in Charlottesville, <https://www.w-here2stay.org/vinegar-hill.html> [<https://perma.cc/4Q34-3T5C>].

¹³³ Daniel Bluestone, Charlottesville’s Landscape of Prostitution, 1880–1950, 22 Buildings & Landscapes: J. Vernacular Architecture Forum, Fall 2015, at 44–45.

neighborhoods had names such as “Preston Heights,” “Starr Hill,” “Gospel Hill,”¹³⁴ and the tragically destroyed “Vinegar Hill.”¹³⁵

Detailed sections of the 1920 Sanborn maps provide a closer look at the living conditions of black and white populations in Charlottesville at the time. Figure 3 below presents an enlarged section of Charlottesville’s black, largely middle-class neighborhood—Starr Hill¹³⁶—north and south west of Union Station on the right, and an enlarged section of Charlottesville’s working-class white neighborhood¹³⁷—Woolen Mills—on the left. Comparing these Charlottesville neighborhoods over time elucidates the dehumanizing effects of residential segregation.

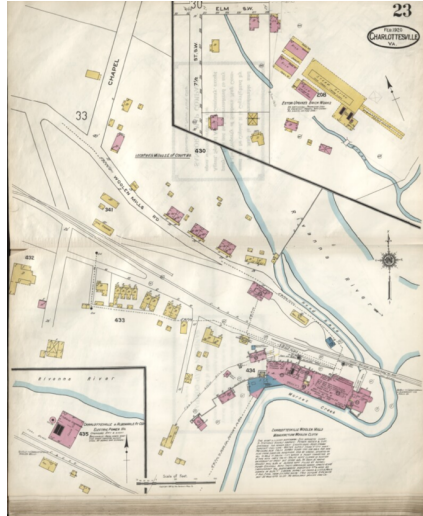
¹³⁴ Waters-Wicks, *supra* note 130, at 121.

¹³⁵ These neighborhoods also have rich histories and family stories that are beyond the scope of this Article. But, for brief accounts, see, e.g., Graham Moomaw, Charlottesville Officially Apologizes for Razing Vinegar Hill, *Daily Progress* (Nov. 7, 2011), https://www.dailyprogress.com/news/charlottesville-officially-apologizes-for-razing-vinegar-hill/article_83b8aed-4-2f4a-5ee2-baaa-2e7c9d43c2b0.html [<https://perma.cc/AZZ9-4KET>]; Laura Smith, In 1965, the City of Charlottesville Demolished a Thriving Black Neighborhood: The Razing of Vinegar Hill Displaced Families and Dissolved the Community, *Timeline.com* (Aug. 15, 2017), <https://timeline.com/charlottesville-vinegar-hill-demolished-ba27b6ea69e1> [<https://perma.cc/QA3X-5VZB>]; Albemarle Charlottesville Historical Society, *More than a Mall: A Guide to Historic Downtown Charlottesville, Tour Three: Vinegar Hill Remnants of a Lost Neighborhood*, 42–52, <https://issuu.com/uvaarch/docs/cvillemallbooklet> [<https://perma.cc/FPM7-PAB4>]; Vinegar Hill, African American Historic Sites Database, Virginia Foundation for the Humanities, <http://www.aahistoricsitesva.org/items/show/457> [<https://perma.cc/EDU3-NE-ZN>] (last visited Feb. 8, 2019).

¹³⁶ See *Cvillepedia*, Starr Hill Neighborhood, https://www.cvillepedia.org/Starr_Hill_-_neighborhood [<https://perma.cc/Y82U-GF5S>] (last visited Feb. 8, 2019) (“Starr Hill got its name because it was home to many educated and wealthy black families.”).

¹³⁷ Woolen Mills was a factory and neighborhood tied closely to the Confederate cause. Owned by confederate Henry Clay Marchant, the mill first manufactured Confederate uniforms during the Civil War, and was known for the “cheap grade” cloth it produced for owners to clothe enslaved laborers. Later, it continued to fill military contracts. Rick Britton, *The Charlottesville Woolen Mills: Clothing a Nation*, in *The Albemarle Handbook* (Wm. H. Prout ed., 1888).

Figure 3
Detail of Sanborn Fire Insurance Map of Charlottesville, Virginia (1920)



**Predominately White, Woolen Mills and Predominately Black,
Starr Hill Neighborhoods**



*Source: Charlottesville, Virginia Sanborn Map Company,
February 1920, Sheets 23 and 10*

Even without reading street names, the Sanborn company's color coding reveals similarities and differences between these two neighborhoods. The color pink denotes industrial and commercial buildings made of brick or concrete, while the color yellow on these maps denote the wood frame structures. Houses in middle-class black and poor white neighborhoods were generally constructed of wood frames, and located in close proximity to pink industrial buildings or railroad tracks. Schools and places of worship dotted both neighborhoods, though buildings that housed churches like Zion Union Baptist¹³⁸ or Jefferson Public School¹³⁹ were carefully labeled "(Negro)," while Woolen Mills Union Chapel and High Schools (not shown)¹⁴⁰ bore no racial labels. However, other differences are more striking. Although these two maps are "snapshots," successive Sanborn maps of the same areas taken from 1929 to 1950 reveal similar neighborhood disparities even as Charlottesville's population grew.¹⁴¹

These maps communicate important information about blatant and subtle dehumanization. First, homes in black communities were more densely located and close together on smaller lots than neighborhoods in other sections of Charlottesville from 1920 to 1950. Wealthier white families occupied homes on stately lots, many constructed of brick or concrete,¹⁴² while well-to-do blacks remained in much smaller wooden homes. Second, the Sanborn maps reveal that even though low-income white families, like black families, also occupied wood-frame homes, such as in the southeast quadrant of Charlottesville near the Belmont neighborhoods, these homes around Monticello, Bolling, Blenheim, Montrose, and Elliot Avenues were spread out on larger lots. Third, both black and poor white families lived proximate to businesses that likely produced hazardous waste and odors. The nearby wood sheds and livery stable did not represent steady, community-wide employment for blacks the way that the textile mills in southeastern Charlottesville did for poor

¹³⁸ Square 19w on 4th Street NW near Smith's Row. Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (Feb. 1920), Sheet 10.

¹³⁹ Square 191 on 4th Street NW and Commerce Street NW. Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (Feb. 1920), Sheet 10.

¹⁴⁰ See Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (Feb. 1920), Sheet 33.

¹⁴¹ Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (1929), <http://sanborn.umi.com.proxy01.its.virginia.edu/va/8995/dateid-000008.htm?CCSI=302>; Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (1929–June 1950), <http://sanborn.umi.com.proxy01.its.virginia.edu/va/8995/dateid-000009.htm?CCSI=302n>.

¹⁴² See Sanborn Map Company, Sanborn Fire Insurance Maps: Charlottesville (Feb. 1920), Sheet 24.

whites. To be sure, the lumber and textile mills located in southeast Charlottesville also exposed poor white neighbors in Charlottesville to pollutants and noise. The difference, of course, was that white textile laborers could organize into unions to strike and thus enjoyed better work and living conditions in Woolen Mills,¹⁴³ while black laborers remained relegated to inferior work¹⁴⁴ and living conditions. Moreover and importantly, whites could move out of these neighborhoods if their fortunes rose, while the law constrained blacks to neighborhoods where living conditions became progressively worse than in neighborhoods inhabited by whites. Fourth, the maps show that black neighborhoods had inferior access to basic determinants of human health such as public water supplies when compared to other neighborhoods. This is shown by the number, size, and location of water pipes serving densely packed black homes, as compared to the number and size of water pipes serving densely packed black homes in Starr Hill, as compared to the number and size of water pipes that snake around the dwellings west of the Woolen Mills. While water pipes lay on West Main Street at the bottom of the Starr Hill map, these water pipes presumably serve the commercial buildings in the neighborhood only; no pipes encircle the numerous homes in Starr Hill. While the Rivanna River, wide streets, and open spaces grace the Woolen Mills neighborhood,¹⁴⁵ Starr Hill maps reveal little recreational space. Indeed, by 1938, Charlottesville opened, just four miles north of Woolen Mills, the McIntire Park, a 130-acre public park that included ball fields, picnic shelters, nature trails, a pool, and Charlottesville's first public golf facility where "a poor man will have a chance to have some fun,"¹⁴⁶ but only so long as that man was white.¹⁴⁷ Sadly, these neighborhood disparities do not

¹⁴³ Andrew H. Myers, *The Charlottesville Woolen Mills: Working Life, Wartime, and the Walkout of 1918*, 53 *Mag. Albemarle County Hist.* 71, 71–72 (1995); see also *Labor Dispute at Woolen Mills Leads to Worker Strike*, *Daily Progress* (Feb. 5, 2017).

¹⁴⁴ Richard Love, *Labor in Virginia During the Twentieth Century*, *Encyclopedia Virginia*, https://www.encyclopediavirginia.org/Labor_in_Virginia_During_the_Twentieth_Century [<https://perma.cc/6SZS-PLLE>] (last visited Feb. 8, 2019).

¹⁴⁵ For an essay that includes brief history of the Woolen Mills area of Charlottesville, including average wages and racial composition beginning in 1880, see Myers, *supra* note 143.

¹⁴⁶ See City of Charlottesville, *McIntire Park History*, <http://www.charlottesville.org/departments-and-services/departments-h-z/neighborhood-development-services/historic-preservation-and-design-review/historic-surveys/mcintire-park-history> [<https://perma.cc/LQ87-A6-ZV>] (last visited Feb. 8, 2019).

¹⁴⁷ Paul G. McIntire instead, in 1926, purchased the "Pest House Property," and donated the land to the City for use as "a public park and playground for the colored people of Charlottesville." This property, which later became the segregated, Negro "Washington Park," had been used by the Charlottesville Board of Health as a possible location to quarantine

improve when comparing the Starr Hill and Woolen Mills neighborhoods over time.¹⁴⁸ Perhaps the most important message that these maps convey is the effectiveness of laws that institutionalized Charlottesville's segregated living patterns, not only with respect to physical location, and as a limitation on the quality of African American life in the City, but also as a mechanism to ensure that blacks and whites shared few living experiences that would expose one another to the mutual humanity shared by both groups of Charlottesville residents.

A. Blatant Dehumanization by Commission

The 1912 Charlottesville City Council's unanimous adoption of a segregation ordinance that expressly legalized racial isolation was an example of blatant dehumanization.¹⁴⁹ The ordinance made it illegal for blacks and whites to live in the same neighborhoods or buildings. Residential integration was pronounced a crime punishable by a fine between \$50 and \$100 payable to the Police Justice of the City of Charlottesville, who also had the discretion to confine offenders in the city jail for not less than thirty nor more than ninety days.¹⁵⁰ The law, titled "An Ordinance: To Secure for White and Colored People a Separate Location of Residence for Each Race," provided:

1. That it shall be unlawful for any white person to move into and thereafter occupy as a residence or place of abode any house, building or structure, or any part of any house, building or structure in any street or alley wherein a greater number of houses are occupied as residences by colored people than are occupied as residences by white people.

contagious patients during the 1905 Scarlet Fever Epidemic. See Washington Park Timeline, Charlottesville, VA, <http://stowekeller.com/Portfolio/CityParks/WashingtonPark/timeline.html> [https://perma.cc/E4F6-AUB3] (last updated June 2, 2001); see also City of Charlottesville, A Timeline of Park History, <http://www.charlottesville.org/departments-and-services/departments-h-z/parks-recreation/parks-trails/city-parks/parks-history/history-of-washington-park/a-timeline-of-park-history> [https://perma.cc/HV37-767F] (last visited Feb. 8, 2019) (detailing the history of "Washington Park").

¹⁴⁸ See Sanborn Map Company, (1929), *supra* note 141; Sanborn Map Company, (1929–June 1950), *supra* note 141.

¹⁴⁹ Waters-Wicks, *supra* note 130, at 125–26. For a photo of the ordinance, please see Legal Aid Justice Center, *The Impact of Racism on Affordable Housing: A Report by the Charlottesville Low-Income Housing Coalition* 34 (2018).

¹⁵⁰ Waters-Wicks, *supra* note 130, at 126–27.

2. That it shall be unlawful for any colored person to move into and thereafter occupy as a residence or place of abode any house, building or structure, or any part of any house, building or structure in any street or alley wherein a greater number of houses are occupied as residences by white people than are occupied as residences by colored people.¹⁵¹

According to this ordinance, new construction permits were required to declare whether the building was intended for use by white or colored people and obtaining a permit required compliance with the segregation provisions.¹⁵² The segregationist principles that animated Charlottesville's criminal ordinances were also enshrined in Virginia state law. In *Hopkins v. City of Richmond*, the state's highest court upheld the police power vested in Virginia's towns and municipalities to enact segregation zoning ordinances, pursuant to a 1912 declaration of the Virginia Legislature that "the residences of white and colored citizens in close proximity to one another in the cities and towns throughout the state endangered the preservation of public morals, public health, and public order."¹⁵³ Virginia's police power permitted city governments to segregate neighborhoods.¹⁵⁴ Although in the 1917 case styled *Buchanan v. Warley*, the United States Supreme Court ruled that segregationist zoning provisions, such as this Charlottesville ordinance, violated the 14th Amendment,¹⁵⁵ the Court acquiesced to the premise that the psychology of racial separation stood above the law. In fact, the *Buchanan* Court was careful to distance itself from any attempt to disrupt the "essential" goal of maintaining the "purity of the races."¹⁵⁶ To distinguish the challenged ordinance from one that was constitutionally protected, the *Buchanan* Court confidently pronounced that "[t]he case presented does not deal with an attempt to prohibit the amalgamation of the races."¹⁵⁷ Amalgamation, after all, was another matter altogether. On the issue of racial amalgamation, this Court reveals, blacks and whites certainly did not enjoy equal protection of the laws.

¹⁵¹ Waters-Wicks, *supra* note 130, at 139; see Legal Aid Justice Center, *supra* note 149, at 34.

¹⁵² Waters-Wicks, *supra* 130, at 126.

¹⁵³ 86 S.E. 139, 143 (Va. 1915), overruled in part by *Irvine v. City of Clifton Forge*, 97 S.E. 310, 310 (Va. 1918).

¹⁵⁴ *Hopkins*, 86 S.E. at 145.

¹⁵⁵ 245 U.S. 60, 82 (1917).

¹⁵⁶ *Id.* at 81.

¹⁵⁷ *Id.*

The Court used the word “amalgamation” here to refer to sexually blending blacks and whites to produce mixed-race children.¹⁵⁸ Some religious leaders of the day taught that amalgamation was a sin prohibited by God, plainly because “[t]he Negro Race is NOT Human.”¹⁵⁹ The religious community was not alone in adopting dehumanizing objections to amalgamation that were equally dehumanizing.¹⁶⁰ Leaders in the Charlottesville medical community espoused the dehumanizing doctrine from the halls of the University of Virginia and operationalized eugenics through law and policy as members of the City’s Council and Board of Health.¹⁶¹ Indeed the fact that white supremacy and racial hostility permeated and inspired twentieth century lawmakers and citizens in Charlottesville is demonstrated by the popular press of the day. In 1924, *The Daily Progress*, a Charlottesville newspaper, reported gleefully that a Ku Klux Klan parade through downtown Charlottesville was a “spectacular” crowd-pleaser:

Judged by the crowd of people who lined the sidewalks of Main Street on Saturday night, the citizens of Charlottesville were intensely interested in the parade of the Ku Klux Klan . . . Main Street presented

¹⁵⁸ See David M. Heer, *Intermarriage and Racial Amalgamation in the United States*, 14(2) *Eugenics Quarterly* 112, 113 (Jun. 1967).

¹⁵⁹ Amalgamation: “The Negro Race is NOT Human,” A Denominational Embarrassment, 1 Timothy 4:13, http://www.1timothy4-13.com/files/bible/sda_amalgamation.html [https://perma.cc/7XR3-JTQY] (citing 3 Ellen G. White, *Spiritual Gifts* 45 (1864) (explaining White’s view that God destroyed the earth by flood because of amalgamation of man and beast and indicating that White had declared that God had never made the ‘Darkey’)); see Jon H. Roberts, *Darwinism and the Divine in America: Protestant Intellectuals and Organic Evolution, 1859–1900* (1988).

¹⁶⁰ Letter from Walter Lewis to Mr. Harry S. Truman (Nov. 17, 1958) (“Mr. Allan Nevins the college professor in the University of Columbia is now urging intermarriage. He wants the white men to marry a black ugly snakes and crocodiles and keep them for their wives and let the beautiful white women starve to death walking the streets day and night unemployed, broke and hungry. The white women don’t want Niggers, the white women would rather starve than have an African black ugly cannibal for husband because white women have a shame, the pride and principle which means more to them than all the Niggers’ gold. Any white man who would marry black ugly Nigger woman with the big black ugly lips looks like a mule and flat ugly nose looks like an ape and hard sharp skin on her looks like a crocodile and to have a creature like that for his wife something has to be wrong with that white man and Mr. Allan Nevins is that white man.”).

¹⁶¹ See Gregory Michael Dorr, *Assuring America’s Place in the Sun: Ivey Foreman Lewis and the Teaching of Eugenics at the University of Virginia, 1915–1953*, 66 *J. S. Hist.* 257, 258 (2000).

such a scene as is usually observed on circus day, and, despite the long wait for the parade, the crowd seemed bent on seeing the celebration.¹⁶²

The Klan parade was not merely a spectacle observed from a distance; *The Daily Progress* had earlier reported that Charlottesville's Klan organization, while not the largest in Virginia, numbers "many of our able and influential citizens, and it is here to stay . . . a power for good in this community."¹⁶³ The organization outlined its view of the community "good" as follows:

Rigid preservation of white supremacy. The destinies of America shall remain with the white race; they shall never be entrusted to the black, the brown, or the yellow, or to the unclean hands of hybrids and mongrels. These are the American principles and those who oppose them are not Americans, but are enemies to our country.¹⁶⁴

Thus, in Charlottesville, the doctrine of white supremacy was espoused as the basis for being an American patriot, while the view that blacks were anything more than animals was deemed treasonous. The city's legal institutions lined up to ensure that blacks and whites in Charlottesville lived in accordance with these convictions.

After its explicitly racist criminal zoning ordinance was declared unconstitutional, the City turned to private contract law to enforce residential segregation. Residential deeds were drafted to contain restrictive racial covenants that prohibited the sale of property to people of color.¹⁶⁵ These private deed restrictions had the Supreme Court's tacit constitutional approval of racial restriction covenants.¹⁶⁶ In Charlottesville, as in the rest of the nation, restrictive racial covenants were enforced to keep blacks confined to specific areas and prohibited from moving into white areas, thus ensuring not only that spaces were racialized but that the races were also spatialized.¹⁶⁷ In essence, they kept blacks in their place. For

¹⁶² Klan Parade Spectacular, *The Daily Progress*, Nov. 24, 1924, at 1.

¹⁶³ Ku Klux Klan, *The Daily Progress*, Aug. 23, 1922, at 3.

¹⁶⁴ *Id.*

¹⁶⁵ Jordy Yager, A New Page: Longtime 10th and Page Residents are Seeing a Shift in the Neighborhood, *Cville* (Dec. 1, 2017), <http://www.c-ville.com/new-page-longtime-10th-page-residents-seeing-shift-neighborhood> [<https://perma.cc/KV8Q-KLBN>].

¹⁶⁶ See, e.g. *Corrigan v. Buckley*, 271 U.S. 323, 332 (1926) (denying the Court had jurisdiction to decide the constitutionality of covenants).

¹⁶⁷ Note, Enforcement of Race Restrictive Covenants and the Constitution, 34 *Va. L. Rev.* 306, 2130 (1948) (discussing the constitutional question of race restrictive covenants generally).

example, the southwest quadrant where Fry's Spring was located was preserved for whites by racially restrictive covenants. According to the Registration Form filed with the United States Department of Interior to nominate Fry's Spring an historic district:

Records confirm that there were no African-Americans [sic] residents in the Fry's Spring area until the 1960s unless they were domestic servants in private homes or were farmers living on small rural parcels on the far reaches of Fry's Spring Road in the late 19th century. Early-20th-century legal restrictions and ordinances that essentially prohibited integrated neighborhoods were supported by Charlottesville ordinances in the first decade of the 20th century and later by prohibitions written into land development covenants in succeeding decades.¹⁶⁸

Restrictive racial covenants also protected the northeast quadrant of Charlottesville from black incursion. The National Register of Historic Places prepared for the Martha Jefferson Historic District in Charlottesville provides:

The early growth of the neighborhood was, therefore, precipitated by a relatively homogenous group of white, middle- and upper-middle class Virginians. . . . This homogeneity was due, at least in part, to deed restrictions placed on the properties and listed in the earliest and then subsequent deeds for each plot subdivided in 1891. A ubiquitous clause stated that the land could not be used as a cemetery, houses built there could not cost less than \$1,000, and that African Americans could never buy or occupy the lots. . . . While the minimum cost clause ensured that only buyers who could afford to construct houses of a certain size or quality would build there, the racial restriction kept the neighborhood exclusively white.¹⁶⁹

¹⁶⁸ Fry's Spring Historic District, National Register of Historic Places Registration Form, at 64 (Sept. 24, 2014) (footnote omitted), <https://www.nps.gov/nr/feature/places/pdfs/1400-0944.pdf> [<https://perma.cc/KSE9-Y9QL>] ("These covenants were not ruled unconstitutional until 1948."); see also Yager, *supra* note 165 ("These racial covenants existed in North Downtown, Locust Grove, Belmont, Fry's Spring, Jefferson Park Avenue, Johnson Village and Rugby Hills.").

¹⁶⁹ Martha Jefferson Historic District, National Register of Historic Places Registration Form, at 94 (Jul. 22, 2007), <http://www.charlottesville.org/home/showdocument?id=12138> [<https://perma.cc/E4R6-Y675>].

Specifically, the Locust Grove neighborhood was reserved for whites only for all property sold by the Locust Grove Investment Company.¹⁷⁰ There,

[t]he restrictions continued to be listed or referenced in the deeds of sale for property in Locust Grove through the 1980s, however, even though they were no longer binding. They serve as a reminder that the neighborhood was exclusively white at least until the early 1950s. Other Charlottesville neighborhoods, such as the Fifeville-Castle Hill area, were also affected by such racial restrictions. Because the LGIC's development began on what was essentially a clean slate, however, with practically no previous construction, the racial demographic of the area was exclusively white from the beginning.¹⁷¹

The extent of legalized racial dehumanization that controlled Locust Grove and all of Charlottesville's development is remarkable not only for its pervasiveness, but also for its persistence.

The reach of these covenants was reinforced by state courts that authorized segregationist contracts. In *People's Pleasure Park Co. v. Rohleder*, for example, the Virginia Supreme Court upheld a covenant that read "[t]he title to this land never to vest in a person or persons of African descent," or "in a colored person or persons."¹⁷² Later, when restrictive covenants were declared unconstitutional,¹⁷³ Charlottesville, like other American cities, turned to zoning ordinances to enforce residential segregation. Zoning maps identified African American and white residential neighborhoods, and indicated that commercial development would be allowed only where blacks lived.¹⁷⁴ The examples of legal mechanisms that constructed segregation in Charlottesville discussed here are illustrative. They do not provide a comprehensive chronicle of how criminal, municipal zoning, and private contract laws operated to construct and enforce racial residential segregation; that historical account has yet to be

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 95.

¹⁷² 61 S.E. 794, 794 (Va. 1908) (but implying that restricted lands could be used to form public parks used by African Americans), *aff'd on reh'g*, 63 S.E. 981, 982 (Va. 1909).

¹⁷³ *Shelley v. Kraemer*, 334 U.S. 1, 20–21 (1948).

¹⁷⁴ Melissa Castro, *Restrictive Zoning Makes Tight Charlottesville Housing Supply Even Tighter*, Daily Progress (Apr. 22, 2018), https://www.dailyprogress.com/realestate/articles/restrictive-zoning-makes-tight-charlottesville-housing-supply-even-tighter/article_ef1e97fa-443b-11e8-8564-ab108fb49611.html [<https://perma.cc/G5D6-K5TH>].

written.¹⁷⁵ Moreover, this discussion does not extend to ways in which blatant racist use of law continues to influence housing in Charlottesville today.¹⁷⁶ The point of reviewing Charlottesville's segregation ordinance and selected restrictive covenants here is to underscore that the deliberate organization of black and white spaces in this City was first and foremost born of blatant dehumanization. The expressed and accepted justification for residential segregation in Charlottesville was the presumption that blacks threatened the purity of white humanity.

B. Subtle Dehumanization by Omission

Once people in Charlottesville were separated by race from one another residentially, the City's government used legal processes to systematically deprive African-American neighborhoods of basic public services. Excluded services were so basic to human subsistence, that it is reasonable to infer that these legal processes were influenced by the misapprehension that blacks did not require the same basic resources to live as whites. From its inception, Charlottesville's City Council, by ordinance, has controlled the distribution and quality of water delivered to residents through publicly owned pipelines.¹⁷⁷ A City Council Report dated January 25, 1905, began with the description of Charlottesville's "extremely limited supply of water" that at that time cost the city approximately \$8,300 per year.¹⁷⁸ The Report addressed contamination and muddy water conditions by proposing to issue a \$125,000 city bond to build a new reservoir and water main for the city.¹⁷⁹ Although that reservoir was built, maps of the City show that the benefits of that reservoir were not shared equally among the black and white neighborhoods and residents. Sanborn Fire Insurance maps of Charlottesville dated 1907, 1929, and 1929–1950 reveal that public water main pipes distributed clean water throughout

¹⁷⁵ But see, e.g., Yager, *supra* note 165, for description of current work toward that end.

¹⁷⁶ For reference to the important work of current historians such as Planning Commission member Lyle Solla-Yates, see, e.g., Castro, *supra* note 174.

¹⁷⁷ See, e.g., An Ordinance Concerning the Water-Works of Charlottesville and the University of Virginia (1885) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia) ("Section 1. At the first meeting after the organization of the Council . . . the Council shall elect a Superintendent of the Water-Works Sec. 2. The Committee on Water shall have the general superintendence and government of the Water-Works . . .").

¹⁷⁸ Report of Water Committee of City Council on the Question of Increasing Water Supply 1 (Jan. 25, 1905) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

¹⁷⁹ *Id.*

parts of the City.¹⁸⁰ Water mains delivered water to the University, businesses, and white residential areas, but served only the perimeters of the downtown neighborhoods where African Americans lived.¹⁸¹ Whether the omission was inadvertent is betrayed by the 1917 *City Council Minutes* that recorded the outcome of a black neighborhood's request for waterlines that would have allowed indoor plumbing. The report said, "The petition for extension of water line to Kellytown¹⁸² has been considered and estimated and the conclusion reached by the Superintendent and myself is that the line would not prove a paying proposition."¹⁸³ Thus, in the middle of the twentieth century, this black neighborhood was excluded from the benefits of city-provided water,¹⁸⁴ while other neighborhoods in Charlottesville were not excluded. Other housing conditions remained structurally inferior as well.

By the middle of the twentieth century, there was abundant evidence that the segregated black sections of Charlottesville were suffering disproportionately from the city government's neglect. In an inventory of African American Historic Sites compiled recently, the City of Charlottesville cited historic records to describe living conditions in the historically black Vinegar Hill section of the city:

African Americans first moved onto the "Hill" after the Civil War. From the 1920s to the early 1960s it was the city's principle black business district and the vibrant center of the community's social life . . .

¹⁸⁰ See Sanborn Map Company, maps for 1907, 1929, and 1929–June 1950, *supra* notes 125 and 141.

¹⁸¹ *Id.*

¹⁸² Kellytown was the name of the section of Charlottesville that later became Starr Hill, just northwest of Union Station. See Rose Hill Neighborhood Historic District Preliminary Information Form for the Virginia Department of Historic Resources, at 8 (April 17, 2018), https://www.dhr.virginia.gov/wp-content/uploads/2018/06/104-5276_Rose_Hill_HD-2018_PIF.pdf; see also Frank A. Massie, *A New and Historical Map of Albemarle County, Virginia* (1907) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia) (labeling the neighborhood northwest of Union Station as "Kellytown").

¹⁸³ Letter of City Manager S.A. Stecker to Charlottesville Common Council on February 28, 1917, City of Charlottesville Common Council Meetings Minutes, Charlottesville Common Council Minute Book E, 16 (Mar. 8, 1917), <http://statues.law.virginia.edu/charlottesville-city-council-minutes-1916-1924> [<https://perma.cc/MWF6-QU9R>].

¹⁸⁴ For evidence quality and quantity of clean water access was legally controlled by Charlottesville City government, see Williamson, Carroll & Saunders, *Blueprints for Improvements in the Charlottesville Water System* (1921), <http://search.lib.virginia.edu/catalog/u3901822> [<https://perma.cc/E2JY-G7UV>] (on file with the Albert and Shirley Small Special Collections Library, University of Virginia) (detailing plans for construction of Charlottesville water filtration system).

Until the 1960s, “Vinegar Hill” was a large African American neighborhood located in Charlottesville just west of the city’s present-day Downtown Mall . . . [and] became a focal point for black residential and social life following the 1863 Emancipation Proclamation and continued until the city’s urban renewal project in the 1960s. . . . Though many rented their Vinegar Hill housing that often lacked running water, indoor plumbing, and electricity, residents lived and worked among their homes, schools, and churches in a close-knit community.¹⁸⁵

One 1948 report stated, “The question of enforcing the city code on housing sanitation was raised. Mr. Barr reported that the city’s health council is studying the problem and finds very little teeth in the law to enforce the requirement for running water and inside toilet for every house.”¹⁸⁶

That the houses in question were those occupied by black Charlottesville residents was clear. After asserting that “[t]he worst slum in Charlottesville is owned by the richest man in town,” the speaker cited the U.S. Housing Authority for data that showed, despite inferior services, that “Negroes do pay higher rents for value received, and that Negro property is assessed higher than white property; landlords are often spared legal action simply because there is no other place for Negro tenants to go.”¹⁸⁷

The evidence that these conditions had taken their toll on the health of Charlottesville’s black population is also clear. For example, in a 1948 presentation by a representative of the Southern Aid Insurance Company, a Charlottesville company that sold “sickness benefits”—health insurance—and for which “[t]he core of its business [was] with colored people, who show[ed] fine cooperation with the company,”¹⁸⁸ the representative explained the health differences among his clients:

Mr. Edwards, in answer to questions, reports that his company writes a number of policies for white people but they are generally poor risks – the kind of white people who are regarded as shiftless. There is general feeling that a colored agent should stay in his own circle. Negroes are

¹⁸⁵ City of Charlottesville, Blue Ribbon Commission on Race, Memorials, and Public Spaces, Report to City Council (Dec. 19, 2016), at 15 and table in Appendix C.

¹⁸⁶ Summary of Discussion of Business Opportunities for Negroes, Charlottesville Human Relations Council 2 (May 12, 1948) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 1.

able to buy insurance in white companies, but their rates and premiums are figured on different tables, because the life-expectancy rates are different for Negroes and whites; costs are higher for Negroes.¹⁸⁹

In the same meeting, a real estate agent explained that black residents in Charlottesville were mostly renters, rather than homeowners.¹⁹⁰ Mr. Barbour, likely a black man, opined that when blacks did purchase homes, they did so at severely inflated rates, for which he blamed the Negro leaders because of their failure to restrain black individuals, as one would restrain a child, from such ill-advised purchases.¹⁹¹

In 1942, concerned citizens formed an “interracial commission” which they deemed “a necessity for interracial understanding and betterment.”¹⁹² The group elected a chair and turned to its first speaker who “pointed out particular Negro sections which were fire hazards and unsanitary.”¹⁹³ When the same group met on November 10, 1949, they received an update that told of worsening conditions.¹⁹⁴ As Charlottesville grew, the neighborhoods where black residents were permitted to live shrank and were increasingly denied sanitary living conditions:

The present state of Negro housing in Charlottesville produces several problems of city-wide concern. Any segment of the population that is living in delapidated [sic], unsanitary and unwholesome fire traps should be a problem of concern to all.

The direct correlation between slums and delinquency, crime and vice, should of itself be ample evidence of the necessity of more rigorous fire and sanitary inspection, slum clearance, and the provision of adequate, low-rent housing.

¹⁸⁹ Id. Interestingly, Mr. Edwards also explained that “[s]ome auto liability companies have cancelled colored policies because they found they always lost in any court . . .” Id.

¹⁹⁰ Id. at 1–2.

¹⁹¹ Id. at 2 (“[H]e has seen a house worth \$1800 sell for \$5000 in the excitement of an auction. He said that he ‘put sole blame on Negro teacher [sic] and preachers for the progress of the Negroes’; if those leaders had done their job adequately they would find their people better able to resist such foolishness.”).

¹⁹² Meeting Minutes from Charlottesville Interracial Comm’n (Dec. 15, 1942) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

¹⁹³ Id.

¹⁹⁴ Conclusions on Housing, Charlottesville Interracial Comm’n (Nov. 10, 1949) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

To merely clear up the slums by zoning the areas for business is no real solution. Such measures only produce more overcrowding in smaller areas and similar or worse conditions result.¹⁹⁵

By 1949, the City had begun to use non-racial zoning laws to move blacks out of Charlottesville's downtown area but considered all other regions of the city off limits to these residents.¹⁹⁶ The question of where to house blacks in Charlottesville came to be known as the "Negro Problem."¹⁹⁷

The unsanitary and unsafe conditions that prevailed in black segregated sections of Charlottesville persisted, and even worsened, in the decades that followed. A 1969 Housing Committee Report prepared by the League of Women Voters of Charlottesville and Albemarle is telling. The Report summarizes a lawsuit brought to enjoin further public housing development in existing, segregated slums located on Garrett Street and First and Ridge Streets, as well as the building of a public school on Harris

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* ("The proposed zoning ordinances and slum clearance programs are not without merit. The increase in business and population in Charlottesville makes such provision for expansion inevitable. It must not be forgotten in this regard, however, that steps must be taken to re-house adequately any displaced persons and the big question seems to be – where? A most natural move would have seemed to be out Preston Avenue. This is now impossible. A pincer [sic] movement of upper class whites has occurred. Rugby Road, and Rugby Avenue, is [sic] wholly occupied by whites and this new development has completely cut off any possible movement of the Negro population in that direction and the Negroes are gradually being pushed into a more crowded island in the very heart of Charlottesville. This area is now threatened by expanding business and it seems more and more certain and inevitable that the Negroes must go somewhere else – but where? It would seem that in the interest of all concerned a real and concerted effort should be made to clear up the existing conditions before Charlottesville, in common with many cities throughout the United States, has a real 'Negro Problem.'").

Street.¹⁹⁸ The Report further described the lack of building code enforcement in these neighborhoods until the 1964 Civil Rights era.¹⁹⁹

The City Council of Charlottesville not only controlled physical conditions, but also controlled access to employment well into the last third of the twentieth century. A citizen's group called the Human Rights Council worked during the latter half of the twentieth century to advocate for equal employment for blacks in Charlottesville. The records that recount their interviews with prospective government employers, such as the Health Department and the Charlottesville Police Department,²⁰⁰ reveal not only the extent of the local government's control in areas of employment but also the attitudes that city officials held towards black individuals:

Mr. Sturkie was very cordial and honest and easy to talk to and we ranged far afield during the 1 ½ hours, giving me more background on Chville, [sic] discussing philosophy of service, etc. He made it very clear that he cannot hire a Negro clerical worker until the City Manager changes his attitude, which will probably only [sic] when the City

¹⁹⁸ Housing Comm. Report, League of Women Voters of Charlottesville and Albemarle 1 (1969) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia). These are neighborhoods that remain predominately black today. Map of Race and Ethnicity by Block in Downtown, Charlottesville, Virginia, Statistical Atlas, <https://statisticalatlas.com/neighborhood/Virginia/Charlottesville/Downtown/Race-and-Ethnicity> [https://perma.cc/85KT-6JDW] (last visited Nov. 20, 2018); Map of Race and Ethnicity by Block in Ridge St, Statistical Atlas, <https://statisticalatlas.com/neighborhood/Virginia/Charlottesville/Ridge-St/Race-and-Ethnicity> [https://perma.cc/KJ4W-K9TT] (last visited Nov. 20, 2018); Map of Race and Ethnicity by Block in Rose Hill, Statistical Atlas, <https://statisticalatlas.com/neighborhood/Virginia/Charlottesville/Rose-Hill/Race-and-Ethnicity> [https://perma.cc/9HWA-KW8Y] (last visited Nov. 20, 2018).

¹⁹⁹ Housing Comm. Report, *supra* note 198, at 2–3 (“A Minimum Standards Ordinance was adopted by the Charlottesville City Council on October 5, 1964 in response to a need for a workable housing program to satisfy federal requirements for beginning Urban Renewal here. In February 1965 a program of inspection was begun. Of 700 units inspected in the Ridge and Garrett Street areas 98 units or 14% of those inspected were found to be nonrehabilitable ‘Of over 12,000 structures in Charlottesville, 360 (5–7% of which are probably vacant) are classed as dilapidated and 1006 as deteriorating’ Perhaps it is difficult for some of us to envision the very real infractions of the code. For these examples I quote from ‘The Virginia Weekly’ ‘when you can see out through the walls instead of the windows and the wind and rain come in through the walls, when only three of 32 homes surveyed have working toilets and three or four families share a common water supply, sometimes a standpipe in the backyard, these are all clear violations of the Code.’ The code has not been enforced because the tenants have no other choice of housing.”).

²⁰⁰ Meeting Minutes from Human Relations Council Job Opportunities Comm. 1–2 (Nov. 29, 1960) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

Council members give him a clear mandate to do so, which may be only when [sic] inter-racial climate here gets pretty favorable.²⁰¹

In interviews with the city police department, officers explained that they could not hire a Negro police officer because policy required that two officers work a beat together; hiring one black officer would mean that the department would have to hire two.²⁰²

The explicit and implicit dehumanization that was expressed through the laws and legal processes that segregated twentieth-century Charlottesville are in many ways unsurprising because American-built spaces are socially constructed through land use laws, which serve as an index of dominant social values.²⁰³ The dominant culture in Charlottesville after Reconstruction was unabashed and unmitigated white supremacy. When blacks exercised their franchise to vote Republican in 1889, the Charlottesville newspaper reported plans to discharge them from employment, following the City of Richmond's example: "The negroes in the employment of the city of Richmond who voted the Republican ticket are being discharged and men of the Democratic faith are being put in their places. This will be done in Charlottesville. It ought to be done and done thoroughly."²⁰⁴

Bleak employment conditions for black individuals in Charlottesville reveal economic deprivation in addition to loss of the voting franchise. For example, records of one Interracial Commission of Charlottesville meeting describe a presentation by the single employment agency in the city that handled "Negro employment," which explained that:

Employment open for Negroes is of limited kinds, chiefly domestic, though she often has calls for men with skills that her clients do no [sic] have; . . . [such as] for a plasterer Wages in domestic service have not been raisedmuch [sic] sinc [sic] 1941, and now there is an effort to cut wages. . . . The average wage is about \$20 [per week]; the range is from \$18 to \$25. Hours are long – from 8 a.m. to 10 p.m., often later

²⁰¹ Interview by Human Relations Council with Dr. Sturkie (Nov. 2, 1960) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

²⁰² Meeting Minutes from Human Relations Council Job Opportunities Comm., supra note 200, at 1.

²⁰³ Steven A. Moore & Barbara B. Wilson, *Questioning Architectural Judgment: The Problem of Codes in the United States* 89 (2014).

²⁰⁴ James Blakely, *Local Briefs*, *Jeffersonian Republican*, Nov. 27, 1889, at 3.

when there are parties [sic]. Many jobs [sic] that are supposed [sic] to include board do not give enough to eat; she has many complaints.²⁰⁵

Despite reports of inhumane working conditions that included food deprivation, even the forward-thinking members of the Interracial Commission only briefly considered but did not advocate for better hours and wages, which would have addressed the dehumanizing conditions imposed by employers.²⁰⁶ Instead, the Commission's efforts were directed toward equipping black workers to operate within the dehumanizing conditions by bettering their housekeeping and cooking skills.²⁰⁷ The motivation, of course, was to equip the workers to earn better wages, but in fact, all the suggestion did was reinforce the need for black women to become super-humans—robots able to perform better work while withstanding fourteen-hour work days for mediocre pay and insufficient food.

1. Beyond Housing: Neighborhood Dehumanization

Blacks quickly learned at the turn of the century that residential segregation also meant exclusion from other public resources, most particularly public schools reserved for whites. Black neighborhoods in Charlottesville had black schools, and white neighborhoods housed white schools.²⁰⁸ In 1900, the Supreme Court of Virginia upheld the state's authority to limit blacks' educational opportunities by excluding their children from white schools.²⁰⁹ In *Eubank v. Boughton*, the Virginia Supreme Court refused a writ of mandamus that would have forced the school district to admit George Boughton's son to a school "set apart for white children" on the grounds that it would violate Section 1492 of the state's code, which provided "that white and colored persons shall not be taught in the same schools but in separate schools under the same general regulations" ²¹⁰ The opinion reads, "It is the duty of the board to assign white children to schools for white children, and it is none the less their duty to assign colored children to the schools for colored children."²¹¹

²⁰⁵ Meeting Minutes from the Interracial Comm'n of Charlottesville 1 (Oct. 13) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia, in "Records of the Charlottesville Interracial Commission 1942–1950" collection).

²⁰⁶ *Id.*

²⁰⁷ *Id.* at 2.

²⁰⁸ See Frank A. Massie, *supra* note 182.

²⁰⁹ *Eubank v. Boughton*, 36 S.E. 529, 530–31 (Va. 1900).

²¹⁰ *Id.* at 530.

²¹¹ *Id.*

The social impact that explicit racial prejudice had on blacks and whites in twentieth century Charlottesville was far-reaching. It appeared, from records kept by the Charlottesville-Albemarle School Board during the period of Massive Resistance that followed the *Brown v. Board of Education* decision, that blatantly dehumanizing views intensified.²¹² City Council and School Board records are full of correspondence that supported the eventual closing of public schools, rather than allowing integration.²¹³ The reasons given for this preference in the letter quoted below are representative of the dominant view of blacks' sub-human status:

Though we have four children to educate we will be perfectly willing to abolish the present public school system The negro is a pure jungle product and has no pride of race but realizes that the only way for him to rise above his natural level is to be assimilated by the White race. We and most of the Whites prefer for our descendants to be all whites and not half bred race of mongrel stock.

Very truly yours,
Mr. & Mrs. P. S. Purcell.²¹⁴

As it happened, the medical community in Charlottesville provided much of the leadership that disseminated these dehumanizing views of African Americans for many years. The City's health care infrastructure was a bastion of dehumanizing practices, sanctioned and sustained by law. Charlottesville's City Code established the City's Joint Health Department in 1930 as a joint venture between the City of Charlottesville, Albemarle County, and the University of Virginia.²¹⁵ The University's role is important because that University of Virginia Medical Faculty

²¹² Letter from Walter Lewis to Mr. Harry S. Truman, supra note 160 (objecting to Truman's support for integration: "If you had a good sense you too would stick up for the white people instead of you are throwing stones into white people and sticking up for the Niggers. I can't figure you out, what do you see in filthy black Niggers that you can't see in the beautiful white people.?).

²¹³ See, e.g., Charlottesville-Albemarle School Board Records (Sept. 17, 1954) (on file with the Albert and Shirley Small Special Collections Library, University of Virginia).

²¹⁴ Id.

²¹⁵ James W. Barksdale, *A Comparative Study of Contemporary White and Negro Standards in Health, Education and Welfare Charlottesville, Virginia* 14 (1949) (published M.A. thesis, University of Virginia) (on file with Special Collections, Alderman Library, University of Virginia); Charlottesville, Va., *The Code of the City of Charlottesville Virginia* ch. 29, § 365 (1932). Before 1930, the Charlottesville City Code provided for a City Physician who served as the health officer responsible to "see that all necessary steps [were] taken to preserve the public health." Charlottesville, Va., *Rev. Ordinances* ch. 11, § 1 (1894).

played an active leadership role in the Eugenics Movement during this period.²¹⁶ The Charlottesville Health Board, thus, became an important avenue for the dehumanizing influence of eugenicists to influence public health policy in the City. These physicians were committed to solving the “Negro Problem” immediately after emancipation by removing, isolating, or exterminating blacks from white humanity. Among them were prominent deans and faculty of the University of Virginia Medical School who would have had considerable influence over public health policy in Charlottesville through this Joint Department. Dean Ivey Lewis, for example, in 1948 spewed racist and anti-Semitic venom such as this declaration: “[T]here is no biological principle better established than that of inequality of races, and yet sociologists, especially Jewish ones, are loud and effective in their denial of any racial differences, even . . . scorn[ing] such books as Madison Grant’s *Passing of The Great Race*.”²¹⁷

Unsurprisingly, these leaders severely and inhumanely denied access to the quality of health care enjoyed by white residents of Charlottesville. By 1948, only one of the City’s two hospitals treated black patients (Martha Jefferson did not admit blacks), and the University of Virginia treated all black adults and child patients, whether suffering from physical or mental health ailments, in the two Negro wards located in the hospital basement.²¹⁸ Barksdale confirmed the basement that provided the only hospital treatment available to blacks was a “poor and unhealthy location” because conditions were “deplorable.”²¹⁹ Based on his first-hand observations, he wrote:

Separate ward facilities for Negro children over 12 years of age are insufficient, and two of the five-bed wards used for Negro children up to 12 years of age are dark and poorly ventilated. Because of the present

²¹⁶ P. Preston Reynolds, Eugenics at the University of Virginia and its Legacy in Health Disparities, in *Charlottesville 2017: The Legacy of Race and Inequity* 118, 119–20, 123–25 (Louis P. Nelson & Claudrena N. Harold eds., 2018). For example, James Lawrence Cable, who joined the UVA Medical faculty in 1837 wrote in *The Testimony of Modern Science in the Unity of Mankind*, that although all humans could be saved by God spiritually, all were not equal in the physical world. Cable explained whites’ superiority and blacks’ enslavement thusly: “Contact with whites under the benign institution of slavery may have been intended by the merciful and wise providence of God as the only means of extricating [blacks] from their otherwise inevitable destiny.” *Id.* at 120–21 (alteration in original).

²¹⁷ Jonathan Spiro, From Old Dominion to New South: Eugenics in Virginia, 9 *J. Gilded Age & Progressive Era* 547, 548 (2010) (reviewing Gregory M. Dorr, *Segregation’s Science: Eugenics and Society in Virginia* (2008)) (alteration in original); Dorr, *supra* note 161, at 258.

²¹⁸ Barksdale, *supra* note 215, at 25, 27, 30.

²¹⁹ *Id.* at 30.

facilities for Negro children at the University Hospital, it has been said that many Negro parents are reluctant to use this facility.²²⁰

Barksdale further observed that the housing conditions that prevailed in Charlottesville's black neighborhoods were not conducive to good health. He lamented the lack of sanitation and educational opportunity in segregated Charlottesville communities and the adverse impact these conditions had on health.²²¹ As a consequence, Barksdale reported that death rates for all reported diseases were higher for blacks than for whites.²²² However, he found the disparities in deaths due to tuberculosis particularly tragic simply because they could be traced to the fact that no hospital or physician in Charlottesville would treat the disease among the African American population.²²³ Instead, the closest treatment option for blacks during this period was over sixty miles away.

In 1937 the tuberculosis death rate for Negroes was approximately 17 times as high as that for whites. These are alarming figures representing a deplorable condition—not in the sense, of course, that the white and Negro death rates from this disease should be equal. . . . The basic reasons for this would appear to be chiefly two: (1) the Negro does not have an equal chance to avoid contracting tuberculosis, and (2) he does not have equal access to preventive and curative treatment.²²⁴

The social impact that blatant and implicit dehumanization had on blacks in twentieth century Charlottesville was far-reaching. Sociologists explain that the long history of legal policies and practices of exclusion and denial that characterize Charlottesville history operated nation-wide as “a central mechanism for skewing opportunities and life chances in the United States along racial lines.”²²⁵ Put another way, dehumanization supported institutionalized discrimination and was mediated through the “legal” institutions that constructed residential segregation. Drs. David Williams and Selina Mohammed summarize the evidence connecting racial discrimination and inferior life outcomes by identifying racism as a “fundamental cause” of poor health and social outcomes for non-dominant

²²⁰ *Id.*

²²¹ *Id.* at 30–33, 38–39.

²²² *Id.* at 38.

²²³ *Id.* at 30.

²²⁴ See *id.* at 38.

²²⁵ George Lipsitz, *The Racialization of Space and the Spatialization of Race: Theorizing the Hidden Architecture of Landscape*, 26 *Landscape J.* 10, 13 (2007).

racial populations.²²⁶ A key feature of a fundamental cause is that it operates through multiple laws and legal processes that organize and allocate access to societal resources and opportunities. A fundamental cause travels through multiple proximal pathways to produce reduced access to housing, educational attainment, and socioeconomic opportunities.²²⁷ A second key feature of a fundamental cause is that changes in the resulting (or downstream) responses to the cause will not cause lasting improvement so long as the fundamental (or upstream) cause remains unaddressed. So, if racism is a fundamental cause of poor health outcomes, for example, changing patients' behavioral patterns or reducing the psychological stress of discrimination with better mental health treatment or access will not sustainably improve minority patients' health outcomes because the fundamental or root cause—racism—remains intact. Fundamental cause theory teaches that only interventions that aim to address the fundamental cause itself, rather than impacts that are proximate to it, will substantially and sustainably change outcomes. The fundamental cause theoretical model also applies to the adverse consequences that flow from residential segregation. Indeed, a core claim of this Article is that to the extent that blatant or subtle dehumanization informs equal protection law, governments in cities like Charlottesville will construct and maintain racially segregated neighborhoods that impair the health and social outcomes experienced by minority communities. If, instead, Charlottesville's government used legal mechanisms to reverse and dismantle segregation and other systems fundamentally informed by dehumanization of African Americans, then black and white residents alike would finally enjoy equal protection of the laws.

²²⁶ David R. Williams & Selina A. Mohammed, *Racism and Health I: Pathways and Scientific Evidence*, 57 *Am. Behav. Scientist* 1152, 1152–55, 1157–58 (2013) (discussing how institutional racism is a fundamental cause of poor health outcomes because it: 1) informs policies and procedures that reduce access to housing, 2) negatively affects economic status, and 3) operates as a psychosocial stressor that adversely impacts health). A “fundamental cause” is a proximate influence that persists to cause multiple disparate and adverse outcomes so long as it is not corrected, notwithstanding reforms and corrections of less proximate factors and influences. See also Bruce G. Link & Jo Phelan, *Social Conditions as Fundamental Causes of Disease*, 35 *J. Health & Soc. Behav. (Extra Issue)* 80, 81, 87–88 (1995) (describing ontological characteristics of a “fundamental cause”).

²²⁷ Williams & Mohammed, *supra* note 226, at 1157–58.

2. *Unequal Protection of the Laws*

The evidence from Charlottesville confirms three premises concerning the relationship among dehumanization, residential segregation, and the 14th Amendment's promise of equality in Charlottesville and in the nation. First, the United States Supreme Court has historically interpreted the 14th Amendment to allow discrimination against racial and ethnic minority groups in the United States, thus ensuring their social and economic inequality.²²⁸ As Michal Klarman explains, from the outset, the Framers' plain language approved inequality between blacks and whites with respect to voting in Section 2, despite the equal protection language contained in Section 1 of the 14th Amendment.²²⁹ Moreover, there is ample reason to accept the view that at the time the 14th Amendment was adopted, and for many years thereafter, residential segregation itself was not conceived of as a contradiction to the 14th Amendment's Equal Protection Clause by the Supreme Court. This can be seen by analogy to school segregation cases. As many have explained, the original intent of Colonial era drafters was to preserve school segregation despite the language of the Equal Protection Clause. Some explain this was because the Founders did not regard education as a fundamental right and because they erroneously regarded segregation as impacting whites and blacks equally.²³⁰ Others have reasoned that school segregation was beyond the reach of constitutional demands that black and white school children be treated equally because it was thought to involve a social rather than civil right, and therefore unaffected by the 14th Amendment.²³¹ Still others rely on protestations of judicial neutrality and restraint²³² and fidelity to the mindset of constitutional drafters to justify inequitable access to

²²⁸ Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 *Stan. L. Rev.* 1111 (1997) (arguing 14th Amendment jurisprudence is "preservation-through-transformation" whereby changes in law change to enforce traditional subordinated status stratification of women and racial minorities).

²²⁹ Michael Klarman, *An Interpretive History of Modern Equal Protection*, 90 *Mich. L. Rev.* 213, 228–29 (1991) (also arguing that equality was not constitutionally required until the twentieth century).

²³⁰ Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 *Va. L. Rev.* 947, 1005–06 (1995).

²³¹ *Id.*

²³² But see Mark V. Tushnet, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 *Harv. L. Rev.* 781, 823–24 (1983) (explaining how principles of neutrality and rules of judicial restraint merely reflect the unchallenged views of the times).

educational opportunity.²³³ The originalist interpretation of the Equal Protection Clause before *Brown v. Board of Education* is that it did not guarantee equality between blacks and whites in education, and also did not address residential inequality. To those familiar with America's racial history, this is not a surprising conclusion. The Equal Protection Clause, after all, was ratified only two years after slavery ended. However, even the originalist interpretations do not stand in the way of correcting the Framers' racist errors in order that the United States Constitution may indeed serve to "form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence [sic], promote general Welfare, and secure the Blessings of Liberty" to all, regardless of race.²³⁴ To borrow Ronald Dworkin's syntax, the Supreme Court's fidelity to the general concept²³⁵ of equal protection conception gives reason to hope and continue to fight for a conception of equal protection that does not presume the dehumanization of non-whites.

The second premise confirmed by Charlottesville's historical record is that throughout history residential segregation has remained viable because the 14th Amendment has been interpreted to affirm either the blatant or subtle dehumanization of blacks. During periods when the Supreme Court's interpretations of the 14th Amendment rested upon the patently false dehumanizing presumptions about blacks that prevailed when the 14th Amendment was ratified in 1868,²³⁶ Charlottesville and

²³³ Raoul Berger, *Government by Judiciary: The Transformation of the Fourteenth Amendment* 135–36 (1977). Berger's originalist view contains, by adoption, the same presumption of black dehumanization that infected the Colonial society. Berger's position may properly be regarded as morally abhorrent because it does no more than urge acquiescence to preserving the morally insupportable views of the drafters in order to argue that segregation and other forms of discrimination are not prohibited by the 14th Amendment because racism prevailed during the time of the Amendment's adoption.

²³⁴ U.S. Const. pmb1.

²³⁵ Ronald Dworkin, *The Forum of Principle*, 56 N.Y.U. L. Rev. 469, 477 (1981).

²³⁶ In 1868 during his Fourth State of the Union Address, President Andrew Johnson lamented that Reconstruction was an "attempt to place the white population under the domination of persons of color in the South." He went on to refer, presumably to the recently ended slave era, that these attempts had "impaired, if not destroyed, the kindly relations that had previously existed between them." President Andrew Johnson, Fourth Annual Message (Dec. 9, 1868), in 6 *A Compilation of the Messages and Papers of the Presidents* 3870, 3870 (James D. Richardson ed., Bureau of Nat'l Literature & Art ed. 1910) (1897); see also Akwasi Owusu-Bempah, *Race and Policing in Historical Context: Dehumanization and the Policing of Black People in the 21st Century*, 21 *Theoretical Criminology* 23, 27–28 (2017) (arguing that dehumanization was crucial to defense of black American slavery by twentieth century politicians and eighteenth century philosophers).

other localities were free to give expression to dehumanizing convictions by using local laws and legal processes to segregate expressly. However, it is clear that the Amendment was not forever constrained to the morally abhorrent view of blatant black inhumanity and thus inequality. As the majority of American society moved away from overtly racist convictions, so too did its Constitution.²³⁷ But it is also fair to say that the constitutional guarantee of equal protection only went extended as far as Americans' conceptualization of black humanity generally extended. When the 14th Amendment reflected covert dehumanization, Charlottesville systematically disadvantaged African Americans, and generally preserved the geographic and socioeconomic contours of its historically segregated neighborhoods, albeit more subtly. Explicitly racial exclusions in Charlottesville's zoning ordinances remained legal until 1917,²³⁸ state action to enforce restrictive covenants in Charlottesville were constitutionally permissible tools of residential segregation until 1948.²³⁹ The Equal Protection Clause plainly failed to extend equal protection of the laws to blacks during the Jim Crow era when laws expressly discriminated against African Americans. For example, the Equal Protection Clause was powerless to enforce the 15th Amendment right to vote for blacks during the Jim Crow era in the Southern states; and, many of those same states continue to press for voting exclusions that disproportionately affect minority racial groups today. It was not until the Court's 1954 decision in *Brown* that the Court broadly rejected the view that "separate but equal" laws that blatantly perpetuated racial inequality are constitutionally permissible.²⁴⁰ Then, over time, the Constitution was freed from blatantly dehumanizing interpretations, and legislative pronouncements followed. In 1968, the Fair Housing Act codified the view that segregation violated the constitutional provisions guaranteeing equality and thus prohibited housing discrimination based on race.²⁴¹ The blatant presumptions that blacks were not equal to whites had disappeared.

²³⁷ Alexander M. Bickel, *The Original Understanding and the Segregation Decision*, 69 *Harv. L. Rev.* 1, 65 (1955).

²³⁸ *Buchanan v. Warley*, 245 U.S. 60, 82 (1917). However, the Court disavowed any approval of "the amalgamation of the races." *Id.* at 81.

²³⁹ *Shelley v. Kraemer*, 334 U.S. 1, 20–21 (1948).

²⁴⁰ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954); Michael Klarman, *An Interpretive History of Modern Equal Protection*, 90 *Mich. L. Rev.* 213, 252 (1991). But even then, Chief Justice Warren noted that the Framers' intent with regard to racial equality was "inconclusive." *Brown*, 347 U.S. at 489.

²⁴¹ Fair Housing Act, 42 U.S.C. §§ 3601–19, 3631.

However, subtle forms of dehumanization arguably persisted to sustain, even causing discriminatory omissions. For example, the Supreme Court winked at more subtle forms of residential discrimination, such as the Federal Housing Administration's practice of denying minorities equal access to mortgage funding available to low-income whites.²⁴² In another example, the Supreme Court's 1977 decision in *Village of Arlington Heights v. Metropolitan Housing Development Corp.* both challenged ostensibly race-neutral zoning ordinances and also paved the way for discriminatory zoning to cloak racial animus with constitutional impunity.²⁴³ While the manifestations of blatant and subtle dehumanization have changed over time, the consequences of both forms of dehumanizing laws remain adverse, though as the next section will show, the severity of those consequences may differ somewhat by degree.

The third premise that the Charlottesville case confirms concerns the causal relationship between inequitable laws and inequitable outcomes. The historic failure of equal protection law to act as a protective factor against dehumanization, in both implicit and explicit forms, mediates disparate social outcomes that continue to burden communities today. Social scientists generally define a protective factor as a mechanism that reduces the risk of harm.²⁴⁴ Individually, messages of racial pride can act as a protective resource or factor against the damaging effects of discrimination.²⁴⁵ Structurally, improved neighborhood environment may serve as a protective factor against criminal involvement for some adolescents.²⁴⁶ In the legal context, equal protection laws can operate as a protective factor against the risk of dehumanization. When governments embrace or fail to reject dehumanization in the interpretation and application of equal protection laws, populations are left vulnerable to the structural effects of dehumanization. The result is systemic racial inequality. As James Kushner wrote in 1989, "[t]he inability to abate widespread discriminatory

²⁴² See Rothstein, *supra* note 42, at 77; Bill Dedman, *The Color of Money*, *The Atlanta Journal-Constitution*, May 1, 1988, at A1.

²⁴³ 429 U.S. 252, 265–71 (1977).

²⁴⁴ See Per-Olof H. Wikström & Rolf Loeber, *Do Disadvantaged Neighborhoods Cause Well-Adjusted Children to Become Adolescent Delinquents? A Study of Male Juvenile Serious Offending, Individual Risk and Protective Factors, and Neighborhood Context*, 38 *Criminology* 1109, 1125 (2000).

²⁴⁵ See, e.g., April Harris-Britt et al., *Perceived Racial Discrimination and Self-Esteem in African American Youth: Racial Socialization as a Protective Factor*, 17 *J. Res. on Adolescence* 669, 670–71 (2007).

²⁴⁶ See Wikström & Loeber, *supra* note 244, at 1133–34.

practices within the real estate industry is attributable to the weak enforcement tools and efforts of the past, as well as to the national preference for segregated lifestyles.”²⁴⁷ The next Part explores constancy of inequitable consequences that have flowed from racial segregation in Charlottesville, whether it was informed by blatant dehumanization traditions ensconced in Colonial and pre-Civil Rights law, or by subtle dehumanization that made lawmakers blind to the persistently inequitable systems they maintained.

IV. OUTCOMES

Ecosocial theory explains that populations biologically embody adverse exposures from ecological and societal influences.²⁴⁸ The data in Charlottesville evinces the persistence and prevalence of segregation geographically and biologically. First, the racial concentration of Charlottesville neighborhoods has remained doggedly consistent over time. By 1973, the geographical landscape of Charlottesville, Virginia remained largely segregated. Blacks continued to occupy, almost exclusively, the neighborhoods originally laid out at the turn of the Century. Figure 4 below, identifies the historically black neighborhoods of Vinegar Hill, Starr Hill, Fifeville, Belmont, and 10th and Page Streets in Charlottesville circa 1970, and locates Union Station in the middle of these historically African-American neighborhoods.²⁴⁹ This map identifies the contemporary location of predominately African-American neighborhoods in Charlottesville, in 1972.²⁵⁰

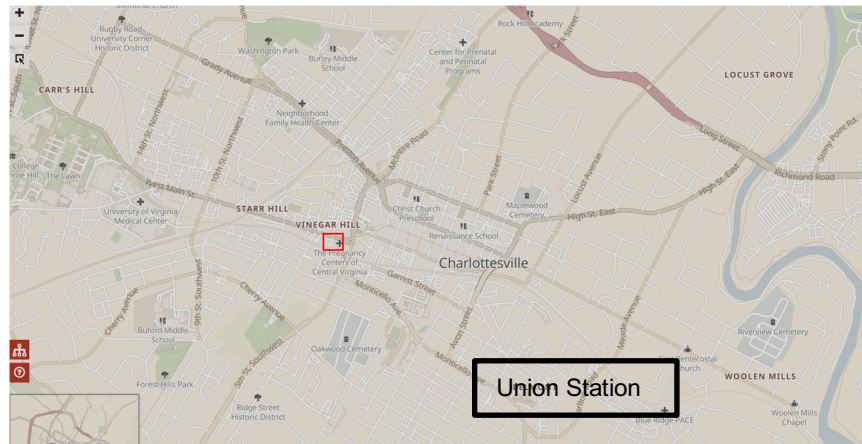
²⁴⁷ James A. Kushner, *The Fair Housing Amendments Act of 1988: The Second Generation of Fair Housing*, 42 *Vand. L. Rev.* 1049, 1050, 1087–96 (1989).

²⁴⁸ Nancy Krieger, *Theories for Social Epidemiology in the 21st Century: An Ecosocial Perspective*, 30 *Int’l J. Epidemiology* 668, 672 (2001).

²⁴⁹ See Preliminary Information Form from Jeff Werner & Maral S. Kalbian, *supra* note 182, at 3–4, 6, 8.

²⁵⁰ Vinegar Hill, African American Historic Sites Database, Virginia Foundation for the Humanities, *supra* note 135. To confirm that these locations are historically black neighborhoods, see, City of Charlottesville, Blue Ribbon Commission on Race, Memorials, and Public Spaces, *supra* note 185, at Appendix C “Inventory of historic sites.”

Figure 4
Charlottesville's Black Neighborhoods, Circa 1972

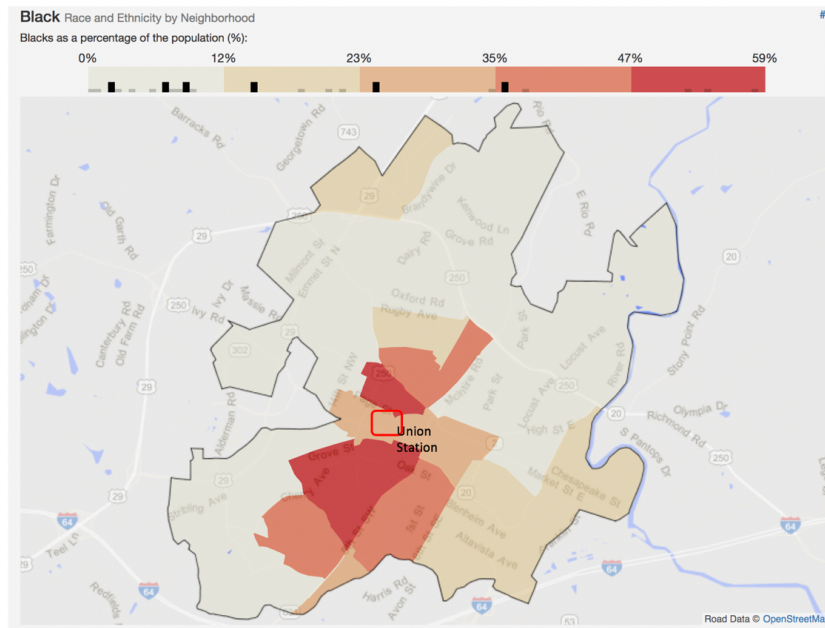


Source: African American Historic Sites Database, Virginia Foundation for the Humanities

Charlottesville's demographic map has remained largely unchanged. Figure 5 shows the present-day concentration of African American residents in Charlottesville. Note that Charlottesville's predominately black neighborhoods continue to cluster around the original location of Union Station.²⁵¹

²⁵¹ Race and Ethnicity in Charlottesville, Virginia (City), Statistical Atlas, <https://statisticalatlas.com/place/Virginia/Charlottesville/Race-and-Ethnicity#data-map/neighborhood> (last visited Oct. 17, 2018) (select "Black" within the interactive maps to toggle by race and ethnicity).

Figure 5
Charlottesville, Virginia Neighborhood Segregation by
Black Population, 2018²⁵²



Source: *Race and Ethnicity in Charlottesville, Virginia (City), Statistical Atlas*²⁵³

Residents in these neighborhoods continue to experience the lowest median household incomes²⁵⁴ and educational attainment.²⁵⁵ The inequities that African-American residents of Charlottesville continue to

²⁵² Id. (showing blacks as a percentage of the population in each neighborhood: Fifeville (51.9%); 10th and Page (54.1%); Orangedale-Prospect Ave. (58.2%); Main-Starr Hill (24.6%); Johnson Village (36.1%); Rose Hill (35.8%); and Ridge Street (37.6%)) (hover over neighborhoods within map to reveal percentages).

²⁵³ Race and Ethnicity in Charlottesville, Virginia (City), Statistical Atlas, <https://statisticalatlas.com/place/Virginia/Charlottesville/Race-and-Ethnicity> [https://perma.cc/LPS8-E4-RV].

²⁵⁴ See Household Income in Charlottesville, Virginia (City), Statistical Atlas, <https://statisticalatlas.com/place/Virginia/Charlottesville/Household-Income#data-map/neighborhood> [https://perma.cc/JD8T-NPXS] (last visited Oct. 17, 2018).

²⁵⁵ See Educational Attainment in Charlottesville, Virginia (City), Statistical Atlas, <https://statisticalatlas.com/place/Virginia/Charlottesville/Educational-Attainment#data-map/neighborhood> [https://perma.cc/AC2U-Q7WC] (last visited Oct. 21, 2018).

experience today are the consequence of the legally enabled dehumanization these populations have suffered historically.

A. Racialized Health Outcomes

Comparing the health outcomes of black and white populations over time provides an indication of the impact that racial residential segregation has had in Charlottesville. This is because epidemiological research has shown that the result of economically and socially skewed influences is a disparate distribution of health outcomes.²⁵⁶ Consistent with this theory, numerous sociologists, including David Williams and Chiquita Collins, have identified residential segregation within neighborhoods as a “fundamental cause of racial disparities in health outcomes.”²⁵⁷ Indeed, social scientists have observed that structural practices “that create and reinforce oppressive systems of race relations whereby people and institutions engaging in discrimination adversely restrict, by judgment and action, the lives of those against whom they discriminate”²⁵⁸ are also a fundamental cause of health disparities.²⁵⁹ Put another way, systemic racism, institutionalized through multiple mechanisms that control the disparate distribution of resources essential to human existence, necessarily produces inequitable health outcomes. This is because the conditions under which people work, live, and eat, and the environment in which they live, more directly influence health outcomes than any biological factor alone.²⁶⁰ Therefore, it has been shown that inequitable living environments generally, and neighborhood segregation more specifically, serves as an important mechanism to produce racial differences in health. In

²⁵⁶ Nancy Krieger, *Methods for the Scientific Study of Discrimination and Health: An Ecosocial Approach*, 102 *Am. J. Pub. Health* 936, 938–39, 942–43 (2012).

²⁵⁷ David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 *Pub. Health Rep.* 404, 404 (2001).

²⁵⁸ Nancy Krieger, *Does Racism Harm Health? Did Child Abuse Exist Before 1962? On Explicit Questions, Critical Science, and Current Controversies: An Ecosocial Perspective*, 98 *Am. J. Pub. Health* S20, S21 (2008); see also Eduardo Bonilla-Silva with Amanda Lewis, *The “New Racism”: Toward an Analysis of the U.S. Racial Structure, 1960s–1990s* 1 (Ctr. for Research on Social Org., Working Paper No. 536, 1996) (describing racism as a structure).

²⁵⁹ Jo C. Phelan & Bruce G. Link, *Is Racism a Fundamental Cause of Inequalities in Health?*, 41 *Ann. Rev. Soc.* 311, 312–13 (2015); see also David R. Williams, *Racial/Ethnic Discrimination and Health: Findings from Community Studies*, 98 *Am. J. Pub. Health* S29, S29, S31, S35 (2004) (assessing effect of discrimination on mental health).

²⁶⁰ Michael Marmot, *Status Syndrome*, 1 *Significance* 150, 152–54 (2004).

short, and on balance, segregation is bad for your health.²⁶¹ Racially divided neighborhoods, independent of individual-level socio-economic status, account for different access to public services, health care, and affordable housing. “Highly segregated black communities . . . tend to have older housing stock” and increased exposure to lead levels.²⁶² Racially segregated black neighborhoods are more often burdened by toxic environmental exposures,²⁶³ inferior quality of nutrition opportunities, poorer police and fire protection, inferior recreational spaces, higher levels of tobacco and alcohol advertising,²⁶⁴ and inferior access to quality health care.²⁶⁵ Racially segregated neighborhood conditions have been shown to adversely impact health behaviors, family structures, and neighborhood violence—characteristics and conditions often blamed for disparate health and social outcomes.²⁶⁶ Indeed, because the health outcomes of middle-class and low-income blacks seem to be similarly and differentially affected by segregation when compared to poor whites, the social science literature suggests that residential segregation is a “central mechanism” for health, social, and economic inequality in America.²⁶⁷ The historic record reviewed here confirms these structural differences have operated to distinguish living conditions for the vast majority of blacks and whites in Charlottesville. Therefore, comparing the health outcomes of black and white human lives in Charlottesville is a reliable way to evaluate the effect of dehumanizing laws and legal practices.

Figures 6 and 7 below summarize comparative health outcome data for black and white populations in Charlottesville. The data compare historic mortality (i.e., death) rates for adults and infants from 1935 to 1948 with

²⁶¹ Thomas A. LaVeist, *Linking Residential Segregation to the Infant-Mortality Race Disparity in U.S. Cities*, 73 *Soc. & Soc. Res.* 90, 90–91 (1989).

²⁶² *Id.* at 91 (citation omitted).

²⁶³ Rachel Morello-Frosch & Bill M. Jesdale, *Separate and Unequal: Residential Segregation and Estimated Cancer Risks Associated with Ambient Air Toxics in U.S. Metropolitan Areas*, 114 *Env'tl. Health Persp.* 386, 386 (2006).

²⁶⁴ Williams & Collins, *supra* note 257, at 410.

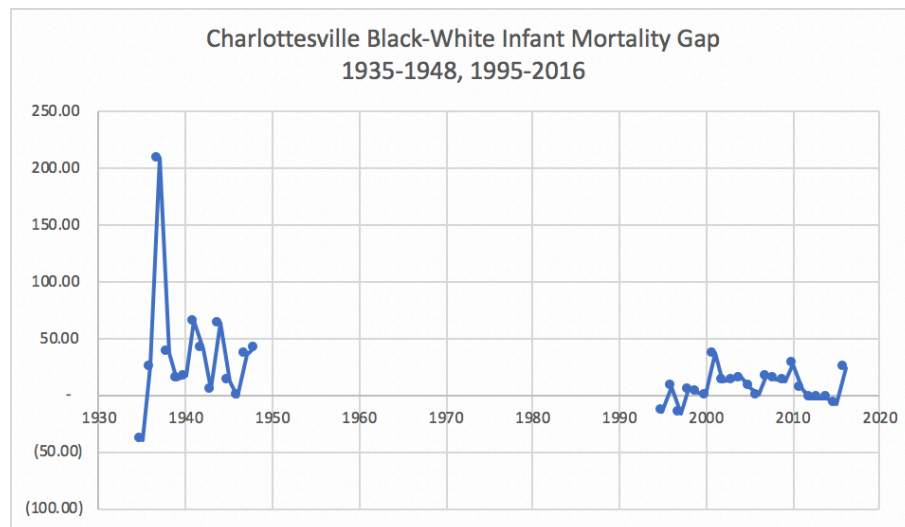
²⁶⁵ LaViest, *supra* note 261, at 91; see also Peter B. Bach, et al., *Primary Care Physicians Who Treat Blacks and Whites*, 351 *New Eng. J. Med.* 575, 575 (2004); Jonathan Skinner et al., *Mortality After Acute Myocardial Infarction in Hospitals that Disproportionately Treat Black Patients*, 112 *Circulation* 2634, 2634 (2005).

²⁶⁶ David R. Williams & Pamela Braboy Jackson, *Social Sources of Racial Disparities in Health*, 24 *Health Aff.* 325, 327–29 (2005); see also Williams & Collins, *supra* note 257, at 410–11, 413.

²⁶⁷ Williams & Jackson, *supra* note 266, at 327–29.

contemporary data from 1995 to 2017.²⁶⁸ On the x-axis, these graphs show the difference between black and white deaths in the corresponding year. Epidemiologists record population annual mortality rates—that is the number of deaths per 1,000 people—in order to determine their overall health. Mortality rates are a standard measure that capture a snapshot of health and equity. By comparing the disparities in health outcomes among otherwise similar populations—the racial mortality “gap”—it is possible to observe the impact of inequities that distinguish those populations.

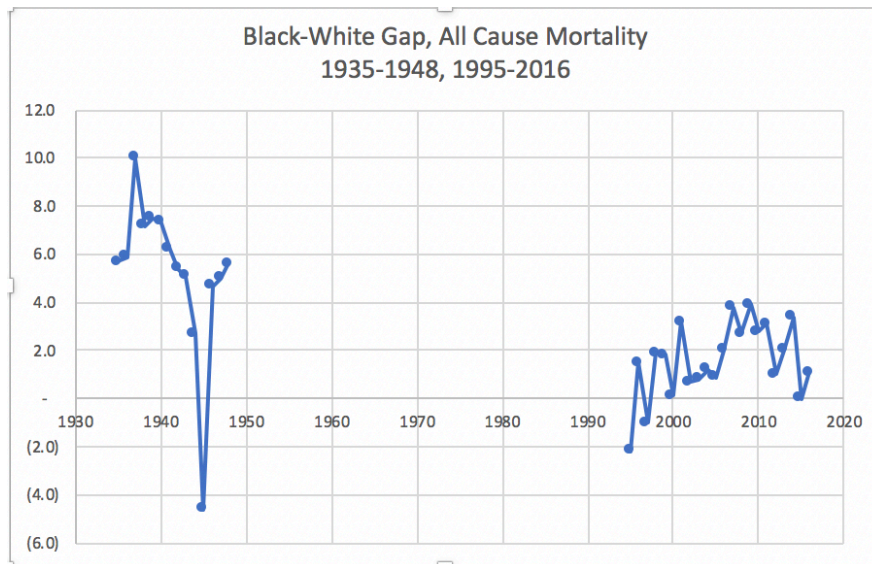
Figure 6



Source: Barksdale, *A Comparative Study of Contemporary White and Negro Standards in Health*; Virginia Department of Health, *Statistical Reports & Tables*.

²⁶⁸ James W. Barksdale, *A Comparative Study of Contemporary White and Negro Standards in Health, Education and Welfare Charlottesville, Virginia* 34–37, (1949) (published M.A. thesis, University of Virginia) (on file with Special Collections, Alderman Library, University of Virginia); Virginia Department of Health, *Statistical Reports and Tables*, <https://www.vdh.virginia.gov/HealthStats/stats.htm> [<https://perma.cc/WH5R-6D6K>].

Figure 7



Source: Barksdale, A Comparative Study of Contemporary White and Negro Standards in Health; Virginia Department of Health, Statistical Reports & Tables.

Several observations from these data support the conclusion that dehumanizing legal practices throughout Charlottesville's history have had and continue to have life and death impact on African Americans. Of course, the most impressive fact is that overall health outcomes have markedly improved for both black and white populations over time, especially during the period from 1950 to 1995. Though data is "missing" during this period, the sharply declining line dramatizes the progress made improving health outcomes during this period. However, despite declines in absolute rates, the relative mortality rates between blacks and whites has not improved. Using Poisson regression to test for differences, for example, in infant mortality rates, shows that there were an additional 8.8 deaths per 1000 live births in blacks versus whites in the early twentieth century, while in the later period, the difference declined to an additional 1.6 deaths per 1000 live births in blacks versus whites; however, in both periods blacks have almost a 2-fold higher infant mortality rate compared to whites in Charlottesville. Thus, there has been little relative improvement over the 80-year period from 1936 to 2016 in the disparities between black and white adult and infant mortality rates. However, by looking

more closely at the periods, improvements in black infant mortality reached an all-time high in 2000, so that between 1995 and 2000 infant mortality rates for blacks were actually lower than those experienced by whites in some years. These data suggest the conclusion that during the period from 1995 to 2000, when civil rights laws were more vigorously enforced, infant and adult mortality rates for blacks were actually lower than for whites.²⁶⁹

What changed after that? Arguably civil rights enforcement relaxed after 2001 when the Supreme Court decided *Alexander v. Sandoval*.²⁷⁰ That case erased precedent and removed the private cause of action that allowed individuals to allege disparate impact discrimination under Title VI of the Civil Rights Act of 1964.²⁷¹ In its wake, federal health officials no longer had a reason to vigorously enforce the 14th Amendment's equality guarantee; thus they ceased to require providers and other recipients of federal funding to treat black and white people equally.²⁷² The gap in health outcomes has responded. Admittedly, very small numbers and the isolated snapshot of one year's data does not produce a dispositive picture. Yet it is remarkable nonetheless that in Charlottesville, Virginia, a city that boasts world class medical care, the infant mortality rate in 2016 was more than ten times higher for black babies than for whites.²⁷³

Remarkably, the gap between the rate at which black Charlottesville babies died in their first year of life as compared to the death rate of white babies was among the highest in 80 years during 2016, the most recent year for which data is available.²⁷⁴ Arguably, these disparities are a

²⁶⁹ Analysis relies on the data from Barksdale, *supra* note 268, and Virginia Department of Health, Statistical Reports and Tables, *supra* note 268. Calculations are the original work of the author.

²⁷⁰ Sara Rosenbaum & Joel Teitelbaum, Civil Rights Enforcement in the Modern Healthcare System: Reinvigorating the Role of the Federal Government in the Aftermath of *Alexander v. Sandoval*, 111 Yale J. Health Pol'y L. & Ethics 215, 216–17 (2002).

²⁷¹ *Alexander v. Sandoval*, 532 U.S. 275, 278, 285, 287, 293 (2001).

²⁷² See Rosenbaum & Teitelbaum, *supra* note 270, at 217.

²⁷³ Tara Wheeler, High Infant Mortality a Concern in Charlottesville, CBS 19 News (May 4, 2016, 7:34 PM), <https://www.cbs19news.com/home/headlines/High-Infant-Mortality-a-Concern-in-Charlottesville-377995481.html> [<https://perma.cc/WVK6-M6WP>] (rate for the most recent five-year period reported); Virginia Department of Health, Statistical Reports and Tables, *supra* note 268; see also America's Gap Between Black and White Infants' Mortality Has Stopped Narrowing, The Economist (July 11, 2017), <https://www.economist.com/blogs/graphicdetail/2017/07/daily-chart-5> [<https://perma.cc/4GQ7-NR3N>] (discussing the nationwide racial disparity in infant mortality rates and possible medical and social reasons why it has stopped narrowing).

²⁷⁴ See Virginia Department of Health, Statistical Reports and Tables, *supra* note 268.

quantifiable consequence of the institutionalized differences in living environments that blacks and whites have experienced in this city due to segregation as well as a reflection of the extent to which equal protection law protected against dehumanization of black Charlottesville residents.

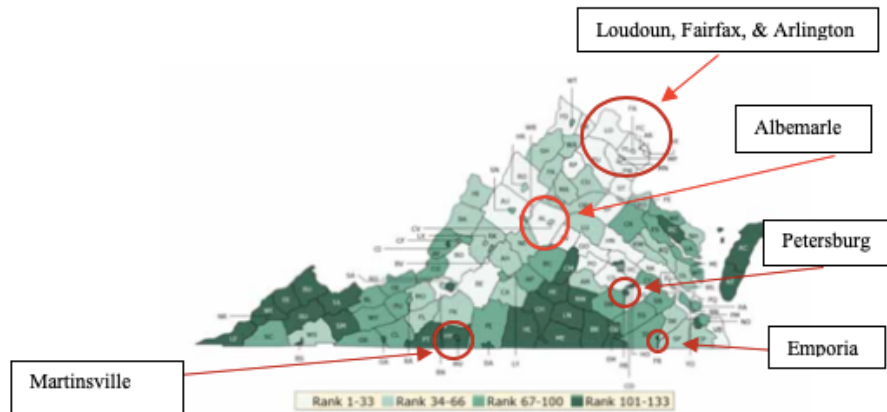
The association between residential segregation and poor health outcomes is not unique to Charlottesville. Throughout Virginia, geographic differences in county health outcomes by race are an example of what George Lipsitz has called “the racialization of space and the spatialization of race.”²⁷⁵ The racially disparate outcomes are related to the extent to which counties are segregated by race because opportunities for good health are spatialized. Figure 9 below shows a 2018 map of Virginia’s health outcomes. It locates the most and least healthy counties in the state. The healthiest Virginia counties—all located in Northern Virginia—are predominately white (Loudoun (57.1% white), Fairfax (51.5% white), and Arlington (62.5% white)), while the unhealthiest counties in the state—Petersburg (76.7% black), Emporia (62.5% black), and Martinsville (45.5% black)—are overwhelmingly black.²⁷⁶ Albemarle County, where Charlottesville is located, is Virginia’s sixth healthiest county and is also overwhelmingly white; 77.3% of Albemarle’s population is white and 9.6% is black.²⁷⁷

²⁷⁵ Lipsitz, *supra* note 225, at 11.

²⁷⁶ Virginia: Compare Counties, County Health Rankings & Roadmaps, <http://www.countyhealthrankings.org/app/virginia/2018/rankings/outcomes/overall> [https://perma.cc/JPT5-3TVM]. (last visited Oct. 21, 2018) (select each county from the drop-down menu to create a table); County Health Rankings & Roadmaps, Virginia Rankings Data, <http://www.countyhealthrankings.org/app/virginia/2018/downloads> [https://perma.cc/57NF-EMWV] (last visited Nov. 27, 2018) (access “2018 Virginia Data” and sort according to “Health Outcomes” and “Rank.”). The U.S. Census Bureau reports that 19.8% of Virginia’s population is Black or African American alone, and 69.7% is white alone, as of July 1, 2017. Quick Facts: Virginia, U.S. Census Bureau, <https://www.census.gov/quickfacts/va> [https://perma.cc/95ZG-BVME] (last visited Nov. 12, 2018).

²⁷⁷ Albemarle County, County Health Rankings & Roadmaps, <http://www.countyhealthrankings.org/app/virginia/2018/rankings/albemarle/county/outcomes/overall/snapshot> (last visited Oct. 19, 2018); Virginia: Compare Counties, *supra* note 276 (select “Albemarle County” from the drop-down menu to view demographic data).

Figure 8
Charlottesville Situated Among Virginia's Three Most and Three Least Healthy Counties, 2018



Source: *Virginia: Compare Counties, County Health Rankings & Roadmaps*

This map reflects the theoretical understanding that the ideology of racism that produced racially divided social structures in twentieth century Virginian society also produced racially divided material results.²⁷⁸ Moreover, the map reflects the way in which the process that created segregated geographic spaces also formed enduring inequities.²⁷⁹ The racialization of space in Charlottesville is the result of a long history of legal policies and practices of exclusion that operate as “a central mechanism for skewing opportunities and life chances . . . along racial lines.”²⁸⁰ The evidence of health outcome disparities in Charlottesville and throughout Virginia confirms that the quality and length of life that human populations experience is related to the quality of their environments. Therefore, the persistent prevalence of disparities between black and white health outcomes in

²⁷⁸ County Health Rankings and Roadmaps, Virginia: 2018 County Health Rankings Report 4 (2018), www.countyhealthrankings.org/sites/default/files/state/downloads/CHR2018_VA_v2.pdf [<https://perma.cc/2A4Y-UXPT>]; supra notes 276 and 277 and accompanying material.

²⁷⁹ See David Harvey, Contested Cities: Social Process and Spatial Form, *in* *Transforming Cities: Contested Governance and New Spatial Divisions* 19, 19–20 (Nick Jewson & Susanne MacGregor eds., 1997) (discussing the effect of urbanization in producing social inequity and class segregation).

²⁸⁰ Lipsitz, supra note 225, at 13.

Charlottesville provide evidence of the high cost of dehumanization. They are also evidence of the connectedness of explicit and implicit racial prejudices, once both are understood as expressions of dehumanization.

Some researchers suggest the explanation for these associations include the stress from discrimination that accompanies living in high-bias communities, decreased utilization of and access to health services, or the adverse impact on minority family social capital that community biases impose.²⁸¹ However, this Article posits that the fact that governments—particularly at the state and local level—can employ laws and legal process to structurally distribute access to housing, education, employment, health care, food, and a clean environment based on a shared, fundamental dehumanization of blacks, is a more powerful explanator for the correlation between the prejudice and disparately poor social outcomes. This Article advances that conversation by demonstrating that, in exact opposition to the language of the Constitution’s 14th Amendment, state and local governments use law and legal processes as a mechanism through which racism—whether based upon implicit or explicit assumptions—operates to establish and perpetuate the structural barriers to equality. While the use of law may have originally required explicit expressions of racism, contemporary examples of structural inequity do not. Yet both work to the same tragic end. Arguably, the laws that have isolated black and white populations in Charlottesville also created an environment in which racialized violence could thrive.

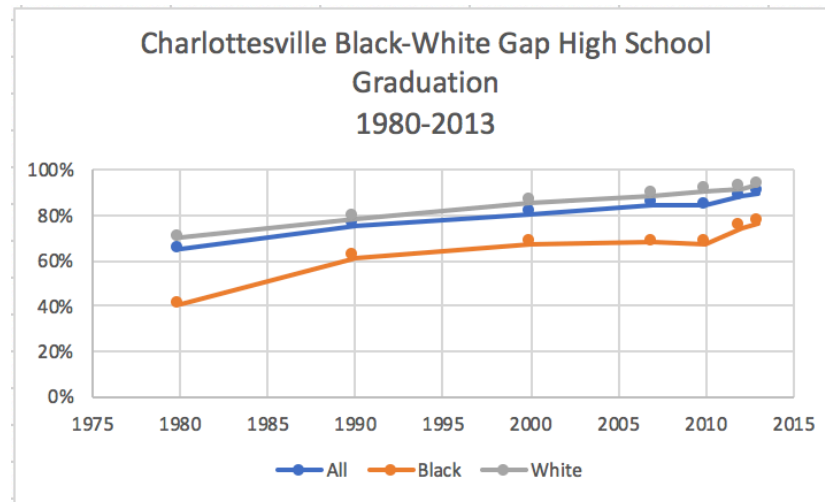
B. Beyond Health: Structural Racial Inequity

It is a mistake to distinguish racial violence that occurred in Charlottesville during the 1800s from racial violence that continues to occur in Charlottesville today. The pernicious effect of residential segregation is that it not only isolates groups to allow fantasies of essential biological differences between them to grow, but the isolation produces confirming physical evidence of differences as segregation works to disproportionately allocate resources and opportunities. This can be seen in

²⁸¹ Irene V. Blair & Elizabeth Brondolo, *Moving Beyond the Individual: Community-Level Prejudice and Health*, *Soc. Sci. & Med.*, Apr. 2017 at 169, 169–70; Jordan B. Leitner et al., *Blacks’ Death Rate Due to Circulatory Diseases Is Positively Related to Whites’ Explicit Racial Bias: A Nationwide Investigation Using Project Implicit*, 27 *Psychol. Sci.* 1299, 1309 (2016).

Charlottesville. Figure 9 below shows contemporary trends in differences between black and white high school graduation rates.²⁸²

Figure 9²⁸³



Source: U.S. Census Data²⁸⁴

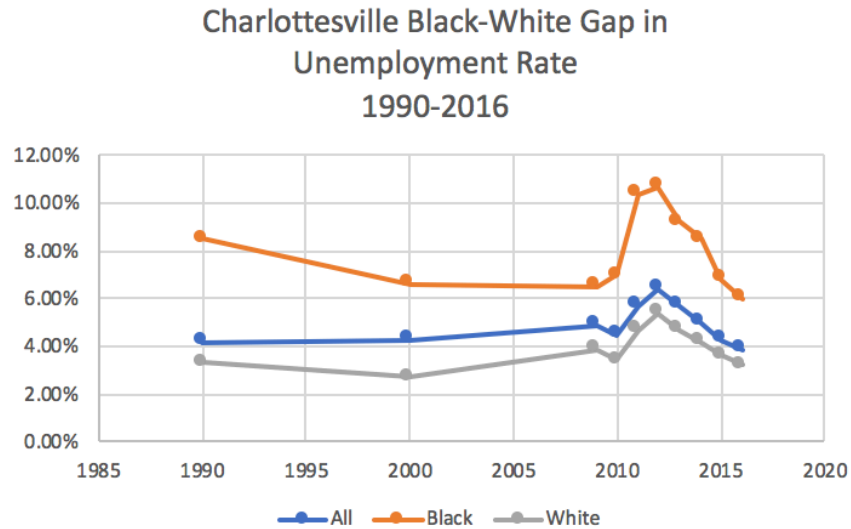
²⁸² U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2007 American Community Survey (2008); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993); U.S. Bureau of the Census, PC80-1-B48, 1980 Census of Population – General Social and Economic Characteristics: Virginia (1982); see also Erica L. Green & Annie Waldman, “You Are Still Black”: Charlottesville’s Racial Divide Hinders Students, *The N.Y. Times* (Oct. 16, 2018), <https://www.nytimes.com/2018/10/16/us/charlottesville-riots-black-students-schools.html> [<https://perma.cc/B5FL-DMKR>] (discussing racialized educational disparities in Charlottesville).

²⁸³ U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2007 American Community Survey (2008); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993); U.S. Bureau of the Census, PC80-1-B48, 1980 Census of Population – General Social and Economic Characteristics: Virginia (1982).

²⁸⁴ U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2007 American Community

Predictably, disparate graduation rates contribute to disproportionate employment opportunities. Figure 10 below shows the difference in black and white unemployment rates Charlottesville residents have experienced over nearly the last quarter century.

Figure 10²⁸⁵



Source: U.S. Census data²⁸⁶

Survey (2008); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993); U.S. Bureau of the Census, PC80-1-B48, 1980 Census of Population – General Social and Economic Characteristics: Virginia (1982).

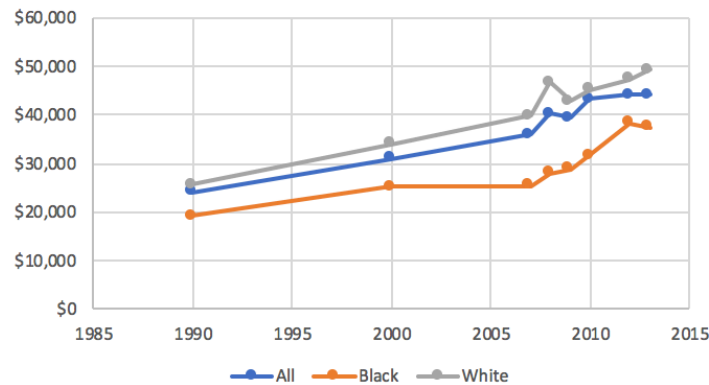
²⁸⁵ U.S. Census Bureau, 2012–2016 American Community Survey 5-Year Estimate (2017); U.S. Census Bureau, 2011–2015 American Community Survey 5-Year Estimate (2016); U.S. Census Bureau, 2010–2014 American Community Survey 5-Year Estimates (2015); U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2007–2011 American Community Survey (2012); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2005–2009 American Community Survey (2010); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993).

²⁸⁶ U.S. Census Bureau, 2012–2016 American Community Survey 5-Year Estimate (2017); U.S. Census Bureau, 2011–2015 American Community Survey 5-Year Estimate (2016); U.S.

Unsurprisingly, disparities in wealth and income follow the same racialized pattern. Figure 11 shows the difference in black and white households' median incomes in Charlottesville.

Figure 11²⁸⁷

**Black-White Gap in Charlottesville Median Household Income
1990-2013**



Source: U.S. Census Data²⁸⁸

Census Bureau, 2010–2014 American Community Survey 5-Year Estimates (2015); U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2007–2011 American Community Survey (2012); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2005–2009 American Community Survey (2010); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993).

²⁸⁷ U.S. Census Bureau, American Community Survey 5-Year Estimate (2017); U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2006–2010 American Community Survey (2011); U.S. Census Bureau, 2005–2009 American Community Survey (2010); U.S. Census Bureau, 2008 American Community Survey (2009); U.S. Census Bureau, 2007 American Community Survey (2008); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993).

²⁸⁸ U.S. Census Bureau, American Community Survey 5-Year Estimate (2017); U.S. Census Bureau, 2009–2013 5-Year American Community Survey (2014); U.S. Census Bureau, 2008–2012 American Community Survey (2013); U.S. Census Bureau, 2006–2010 American

The import of these differences in education, employment, and income cannot be understated in order to understand the connections between segregation and violence. Residential segregation produces outcomes that ensure that blacks and whites, on the whole, will remain isolated from one another not just at home, but even at school, at work, and at play. The two communities are structurally consigned to operate in separate spaces. Nevertheless, the isolation is admittedly less complete today. Minority populations experience the persistence of residential segregation and its sequelae, while white populations may perceive increasing diversity as gains made at their expense, and therefore a reason for increased anger.²⁸⁹ Any political attempts to lessen the divide are perceived as an unjust threat to white dominance.²⁹⁰ Indeed, there is evidence that the perceived threat to white supremacy today²⁹¹ is as virulent as it was after the Civil War, thus making analogies between the resulting racial violence of the two eras more comparable than ever.

C. Racialized Violence Then and Now

Lynching parties were reported in post-Reconstruction Charlottesville, but the only recorded lynching completed there was of John Henry James. James was accused of sexually assaulting a white woman near her home, which was, of course, a crime that placed him in the wrong quadrant of the city.²⁹² This violation of special divides alone was sufficient to rile the “infuriated citizens of Charlottesville and the county.”²⁹³ Injustice was

Community Survey (2011); U.S. Census Bureau, 2005–2009 American Community Survey (2010); U.S. Census Bureau, 2008 American Community Survey (2009); U.S. Census Bureau, 2007 American Community Survey (2008); U.S. Census Bureau, PHC-2-48, 2000 Census of Population and Housing – Summary Social, Economic, and Housing Characteristics: Virginia (2003); U.S. Bureau of the Census, CP-2-48, 1990 Census of Population – Social and Economic Characteristics: Virginia (1993).

²⁸⁹ See Maureen A. Craig & Jennifer A. Richeson, *More Diverse Yet Less Tolerant? How the Increasingly Diverse Racial Landscape Affects White Americans’ Racial Attitudes*, 40 *Personality & Soc. Psychol. Bull.* 750, 758 (2014).

²⁹⁰ See *id.*

²⁹¹ Maureen A. Craig & Jennifer A. Richeson, *On the Precipice of a “Majority-Minority” America: Perceived Status Threat from the Racial Demographic Shift Affects White Americans’ Political Ideology*, 25 *Psychol. Sci.* 1189, 1195 (2014).

²⁹² Brendan Wolfe, *The Lynching of John Henry James (1898)*, *Encyclopedia Virginia*, https://www.encyclopediavirginia.org/James_The_Lynching_of_John_Henry_1898 [<https://perma.cc/EKG5-XWAZ>] (last modified July 18, 2018).

²⁹³ *They Lynched Him: A Colored Man Dealt With—Taken From the Train. Died Protesting Innocence. A Brutal Murder—Mob Makes No Efforts at Disguise. The Law Defied—Anarchy in Virginia*, *Richmond Planet*, July 16, 1898, <https://chroniclingamerica.loc.gov/lccn->

swift. James was arrested within hours, and removed to Staunton, Virginia the same day.²⁹⁴ The next day, while James was being transported by train, a mob boarded the train and removed him from custody of the Albemarle County Sheriff and Charlottesville police.²⁹⁵ Over his protests of innocence, the mob lynched John Henry James on a nearby locust tree, shot his body full of bullets, and left him hanging on display for spectators who came by to ogle the gruesome spectacle.²⁹⁶ Both the killing and the spectators are exemplary of blatant dehumanization.²⁹⁷ But so too was the legal aftermath. The Richmond paper praised the county judge for “realizing that prompt and efficient means would have to be resorted to to calm the excited populace.”²⁹⁸ After he was hung, James was indicted that same day of rape on the testimony of two witnesses after his death, and a coroner’s jury pronounced his death was at the hands of “persons unknown” though newspaper accounts report the lynchers were unmasked.²⁹⁹ The Daily Progress later extended the dehumanization by an editorial that condemned lynching but blamed blacks equally for the mob violence because they failed in controlling their criminals,³⁰⁰ while another Charlottesville man wrote to recommend that Charlottesville citizens resort to voting Democratic to protect property and white supremacy.³⁰¹ The words of a Richmond newspaper summed up the crowd’s dehumanization with commentary about the fact that James’ body was left on exhibition: “When the mob dispersed they came away in any direction that suited them—some coming on to the city, others returning to their homes, all with a perfect indifference as to any future investigation.”³⁰²

/sn84025841/1898-07-16/ed-1/seq-1/ [https://perma.cc/X2DB-8CC5] [hereinafter *They Lynched Him*].

²⁹⁴ Wolfe, *supra* note 292.

²⁹⁵ *Id.*

²⁹⁶ *They Lynched Him*, *supra* note 293. At least one paper reported James confessed. John James Hanged. The Negro Assailant of Miss Hotopp Met by a Mob of 25 or 30 Unmasked Men, *Shenandoah Herald*, July 15, 1898, <https://chroniclingamerica.loc.gov/lccn/sn8502-6941/1898-07-15/ed-1/seq-2.pdf> [https://perma.cc/VL6B-L7JX] [hereinafter *John James Hanged*].

²⁹⁷ See Wolfe, *supra* note 292.

²⁹⁸ *They Lynched Him*, *supra* note 293.

²⁹⁹ Wolfe, *supra* note 292; *They Lynched Him*, *supra* note 293 (noting prosecutor “indisposed to say much about the affair”); *John James Hanged*, *supra* note 296 (noting lynchers did not wear masks and sheriff was present and pled for trial, but lynching proceeded regardless).

³⁰⁰ *Lynching*, *The Daily Progress*, May 29, 1899.

³⁰¹ *Letters from Albemarle: The Negro Problem a Vital Question*, *The Daily Progress*, May 29, 1989.

³⁰² *They Lynched Him*, *supra* note 293.

During the past decade, most racialized violence in Charlottesville has arisen from white supremacists' attempts to preserve white domination of spaces. School desegregation, restaurant and theater integration, and even integration of the University itself, all came as attempts to counteract the isolation of African Americans from whites in Charlottesville's public and private spaces, as the Constitution's 14th Amendment seemed to ensure. However, repeated incidents of racial violence must be understood as efforts to claim and retain exclusive rights to space for whites. The dehumanizing beliefs that fuel this violence remain common in Charlottesville. For example, in March 2015, black UVA student Martese Johnson was beaten until bloody by state Department of Alcoholic Beverage Control officers on "The Corner" and then arrested and sued by the state for misdemeanor charges that were later dropped.³⁰³ Johnson wrote of dehumanizing events that occurred well before the beating in an open letter to reflect on Charlottesville's deadly white supremacist rally:

It took me halfway into my first semester at UVa to be called a nigger in front of my peers at a white fraternity party. It took two semesters to see that very same word written across our university's popular Beta Bridge, accompanying cartoon graffiti of a creature with an obscenely large penis.³⁰⁴

In his report of the beating of Martese Johnson, Ben Railton wrote, "[o]f course, every community in the Jim Crow South was defined by many such histories [of segregation]. But in Charlottesville, they extended with special clarity and force well into the Civil Rights era."³⁰⁵

³⁰³ Chloe Heskett, University Student, Honor Committee Member Martese Johnson Arrested, *Cavalier Daily* (Mar. 18, 2015), <http://www.cavalierdaily.com/article/2015/03/university-student-honor-committee-member-martese-johnson-arrested> [<https://perma.cc/7X8G-RE3N>]; Will Cadigan, UVA Student Bloodied by Police in 2015 Incident: Charlottesville Rally "Heartbreaking," *CNN* (updated Aug. 17, 2017, 9:59 PM), <https://www.cnn.com/2017/08/17/politics/martese-johnson-charlottesville/index.html> [<https://perma.cc/AX-8H-ZHGB>]; Holly Yan & Dana Ford, Black UVA Student Bloodied During Arrest: "How Could this Happen?," *CNN* (updated March 19, 2015, 9:00 PM), <https://www.cnn.com/2015/03/19/us/uva-police-brutality-allegations/index.html> [<https://perma.cc/6AUV-4T-8B>].

³⁰⁴ Martese Johnson, Essay: Martese Johnson Writes an Open Letter to the University of Virginia's Class of 2021, *NBC News* (updated Aug. 16, 2017, 3:10 PM), <https://www.nbcnews.com/news/nbcblk/essay-martese-johnson-writes-open-letter-uva-class-2021-n792511> [<https://perma.cc/ST3A-PNAG>].

³⁰⁵ Ben Railton, Behind UVA's Violent Arrest, a Racist Past in Charlottesville, *Talking Points Memo* (Mar. 25, 2015, 6:00 AM), <https://talkingpointsmemo.com/cafe/before-uva-arrest-charlottesville-segregation> [<https://perma.cc/WS4X-39JN>].

However, the savagery of the physical beating that several white supremacists inflicted on DeAndre Harris, an African-American counter-protester on August 12, 2017,³⁰⁶ would suggest that Charlottesville's history of racial violence extends with clarity and force well beyond the Civil Rights era.

Some accounts of the violence that killed Heather Heyer on that same day suggest that a serene community was invaded by hatred and strife from the outside. Senator Mark Warner tweeted, for example “white nationalists came to a peaceful Virginia town seeking to use hate and division to incite violence against fair-minded, innocent civilians.”³⁰⁷ Senator Warner's account fails to acknowledge that a fundamentally segregated society continues to underlie the peaceful Virginia town he describes. As in most American cities,³⁰⁸ despite passage of the Fair Housing Act that prohibited racially restrictive covenants,³⁰⁹ housing remains racially stratified in Charlottesville.³¹⁰ The crucial importance of persistent residential segregation in Charlottesville and nationally cannot be overstated. Segregation maintains the basic structure of isolation that permits, fosters, and even encourages dehumanization of minority racial groups. The patterns of racial discrimination may move along a continuum from extreme racial violence due to blatant dehumanization, to everyday biases due to dehumanization of omission. Both extremes, and all degrees of dehumanization between the extremes, enable the implicit and explicit racism that results in egregious harm to minority residents. Recent research on

³⁰⁶ Ian Shapira, *White Supremacist Is Guilty in Charlottesville Parking Garage Beating of Black Man*, Wash. Post, (May 2, 2018), https://www.washingtonpost.com/local/white-supremacist-is-guilty-in-charlottesville-parking-garage-beating-of-black-man/2018/05/01/033396b4-4af9-11e8-8b5a-3b1697adcc2a_story.html?noredirect=on [<https://perma.cc/6CJE-LGDP>].

³⁰⁷ Anne Gearan, *Trump Commemorates Aug. 12 with Appeal to Unity*, Wash. Post (Aug. 11, 2018), https://www.dailyprogress.com/news/local/trump-commemorates-aug-with-appeal-to-unity/article_c386d144-9db3-11e8-9775-7f7949e52ac0.html [<https://perma.cc/C45F-GRLN>].

³⁰⁸ See Aaron Williams & Armand Emamdjomeh, *America Is More Diverse than Ever – But Still Segregated*, Wash. Post (updated May 10, 2018), https://www.washingtonpost.com/graphics/2018/national/segregation-us-cities/?utm_term=.4078b8d2237b [<https://perma.cc/92G9-2NWX>] (to explore demographics of individual cities, click “jump to explore your city” and search for any city, address, or zip code using the search bar).

³⁰⁹ Fair Housing Act, 42 U.S.C. §§ 3601–19.

³¹⁰ Dustin Cable, *One Dot Per Person for the Entire United States*, Weldon Cooper Ctr. for Pub. Serv. (July 2013), <https://demographics.coopercenter.org/racial-dot-map> [<https://perma.cc/G2QL-CJTC>] (Click “Access the Map,” then click “Add Map Labels” and zoom in to view Charlottesville's demographic data).

community-level bias supports this conclusion. Even more telling, however, is the dehumanizing response to persistent violence in Charlottesville, arguably made possible by the continued isolation of communities by race.

V. CONCLUSION

The racial violence that occurred last summer in Charlottesville, Virginia has had a substantial impact on the city's residents. These impacts were profound and disproportionately visited upon minority populations. However, they were neither new nor unpredictable. The data reviewed here reveals how little has changed in Charlottesville where the lives, deaths, and safety of black residents are concerned. Sadly, there is reason to believe that the disproportionate deaths, disease, and targeted racial violence will continue to reoccur unless interventions that fundamentally disrupt the legalized legacy of racial dehumanization is addressed as a fundamental cause of inequitable law and governance. Legal and policy reforms must appreciate and reverse the dehumanizing traditions that are enshrined in Charlottesville law and culture. The promise of equal protection will ring hollow if the legal reforms are not accompanied by social reforms that directly target the psychological messages that motivate racial discrimination—whether explicit or implicit—and that threaten the moral core of our constitutional democracy. The racial violence in Virginia is not isolated and did not spontaneously erupt but is the product of structural and systemic discrimination that has historically been enabled by laws that dehumanize minority populations. Dehumanization—whether blatant or subtle—motivates both discrimination by commission and omission, historically and contemporarily. Therefore, as the legal institutions that constructed structural racism enabled residential segregation historically, state and local lawmakers can similarly chart a course of structural reforms that deconstruct the segregationist living patterns that have controlled and constrained the life chances of African Americans, while undergirding the political and literal violence of white supremacy.³¹¹

³¹¹ See, e.g., Adam Weiss, *Grutter, Community, and Democracy: The Case for Race-Conscious Remedies in Residential Segregation Suits*, 107 Colum. L. Rev. 1195, 1196–97 (2007) (providing one example of a structural reform that could help rectify segregation and address historical dehumanization of Black Americans).