

UNIVERSITY OF PENNSYLVANIA JOURNAL OF LAW AND SOCIAL CHANGE

Volume 25, Number 3

2022

2022 EDWARD V. SPARER SYMPOSIUM KEYNOTE LECTURE*

BY DEBORAH N. ARCHER**

KARLA TALLEY, UNIVERSITY OF PENNSYLVANIA L'23: Good afternoon, everyone. Thanks for joining us virtually for our 41st annual Sparer Symposium, *Moving Toward Liberation: Transportation and Mobility Justice*. My name is Karla Talley, and I am a 2nd year law student and a Toll Public Interest Scholar at the University of Pennsylvania Law School. I am extremely excited to introduce our keynote speaker today – Professor Archer.

I had the opportunity to hear Professor Archer speak a year ago during my first year of law school. Professor Archer was a visiting speaker in a first-year elective where students were introduced to cutting-edge legal research on the relationship between law and inequality. And I so vividly remember leaving that class feeling energized, ready to share all that I had learned with my community, and ready to explore these issues further. I know I personally have been looking forward to this moment, and I am sure all of our audience members have as well so without further ado, I am excited to introduce our keynote speaker, Professor Archer.

PROFESSOR DEBORAH ARCHER, NEW YORK UNIVERSITY SCHOOL OF LAW: Thank you for the very generous introduction, Karla, and the invitation. I am excited to be here with you all today to join the incredible conversations around mobility and transportation justice.

It is Black History Month, so I want to start with words from Dr. King. Dr. King often spoke about the Beloved Community. He said: “The aftermath of nonviolence is the creation of the beloved community, so that when the battle is over, a new relationship comes into being between the oppressed and the oppressor.”¹ The Beloved Community was Dr. King’s vision for a truly integrated America, where every person and every community had access to social and economic opportunity—not separate and unequal, but a society where everyone could live lives of joy and dignity, where everyone was invested in the well-being and dignity of their fellow human beings. Dr. King believed that in the Beloved Community, we would experience true justice and equality. Opportunity would not be parceled out to privileged individuals or groups, but instead would be the birthright of everyone.

In many ways, American history is the history of American opposition to that ideal. And more than sixty years later, America remains profoundly segregated along racial lines – we live separately, we learn separately, and we socialize separately.²

The systems this country has so effectively built to protect the privileges and prerogatives of those with power, to maintain segregated communities and prevent the birth of the Beloved

* The 41st Annual Edward V. Sparer Symposium Keynote Lecture took place virtually on February 11, 2022 at the University of Pennsylvania Carey Law School. This transcript has been edited and excerpted.

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¹ MARTIN LUTHER KING, JR., *THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR.* 267 (Clayborne Carson ed., 2001).

² See generally Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173 (2019).

Community, have a tremendous negative impact on those who are excluded. Because you cannot separate the places people have access to from the opportunities people have access to.

Our home—not only our physical residence, but also the community in which it’s located—impacts our lives in numerous and interdependent ways.³ There is nothing that place does not touch. Our access to education and jobs, our physical safety and our health, our access to healthy food, our social networks, and even the quality of the air we breathe are all deeply impacted by where we live.⁴

In so many ways, the history of Black people in America is a history not only of control, but of exclusion. And legal and social limitations on how and where Black people live are central to that history.

I became a civil rights lawyer because I wanted to fight for the right of people like me and families like mine to live without discrimination and with dignity and respect. I grew up in Connecticut in the 70s and 80s as the child of Jamaican immigrants who worked hard yet struggled every day to provide for our family.

When I was a child, my parents moved from Hartford, Connecticut to a working-class Hartford suburb. They wanted to give us a chance for a better life – to live in a safer neighborhood and to attend better schools. When we moved, we were one of only three Black families in the neighborhood. We clearly were not wanted. And our new neighbors let us know it. I remember the day we woke up to find our house had been vandalized and “KKK” had been painted on our house and car. I was so young, and my parents had to explain to me and my brother who the KKK was and why some of our neighbors did not want us there. I was terrified to be in that house. To play in our yard. To walk in those streets. To go to school.

I have learned that America is fundamentally an idea – a set of principles and demands. The story of America is, at its heart, a story about the fight to protect and implement those principles and demands. Who gets to feel like they belong? Who gets to benefit from the unprecedented wealth of this nation? Who has access to the opportunities, the potential, that being in America offers? Who gets to receive the equal protection of our laws? And who gets to live with safety and dignity?

When I think back to my experience growing up in Connecticut, why did my parents have to move from a predominantly Black neighborhood to a predominantly white neighborhood in order for us to have a quality education. Why was living in a white neighborhood considered safer and better, even though we always felt like targets. It is bad enough that my neighbors tried to push us out. But why did I have to go there in the first place?

We often talk about so-called “good neighborhoods” and “bad neighborhoods.” But let us never forget that we create those neighborhoods. The boundaries between those neighborhoods aren’t ordained by nature. Public policies and choices create those communities. Often through the barriers, roadblocks, and hurdles we put in the way. For my family and so many others, there were economic and social barriers. As Jamaican immigrants who did not have the opportunity to go to college, my parents faced discrimination and economic challenges that limited where they could live.

And even when you have the financial resources to live where you want, public policies and private actions create powerful barriers between communities. That’s how we normally think about segregation. They won’t sell us the house, or you have been redlined out of a mortgage. That is all real and powerful. But sometimes, the most powerful and persistent barriers separating communities are

³ Deborah N. Archer, *Creating Dr. King’s ‘Beloved Community’*, 66 VILL. L. REV. 865, 868 (2021).

⁴ *See id.*

physical.

One often-overlooked and powerful tool of racial segregation is transportation infrastructure and policy. America's transportation infrastructure is a fundamental part of the racial architecture of our country, with barriers both visible and invisible.⁵ Transportation infrastructure has been integral in creating and solidifying our racially segregated landscape, serving as walls, wedges, and extractors in Black communities around the country. Indeed, among the most prominent state-sponsored racial dividers, separating white communities from Black communities, and communities of opportunity from communities of exclusion, are the physical barriers that America has built, often with the express intent of enforcing racial lines. They are everywhere, yet we barely notice them and their profound impact.

Although many communities were harmed by transportation infrastructure and have stories to tell about the resulting devastation, today I am going to talk about the experience of predominantly Black communities. The historical relationship between Black people and transportation, the intentional racial discrimination at the heart of transportation infrastructure development in Black communities, the layering of the devastating impact of transportation infrastructure over decades of discriminatory housing laws, policies, and practices, and the stark racial divides that persist today make the link between transportation infrastructure and Black communities unique. Transportation infrastructure is part of the infrastructure of white supremacy. It has controlled where Black people lived, what was taken from them, how they were valued, the places they had access to, the wealth they could accumulate, and the opportunities they had access to.

From the building and funding of highways to roads to bridges, sidewalks, and public transit—transportation policy and our nation's transportation infrastructure was built at the expense of Black communities and contributed to the underdevelopment of Black America and still does. One result is a man-made physical landscape, and transportation policies layered over that landscape, that make many Black communities inhospitable for success and economic opportunity.

The physical barriers and boundaries created by transportation infrastructure do more than simply reflect the existing racial and economic divisions in our society; they often created or reinforced those divisions. Reflecting the marriage of decades of racially discriminatory housing policies and the power of transportation infrastructure to not only connect, but also to divide, exclude, and destroy.

So much of this was intentional: a post-Jim Crow response to the fall of traditional tools of racial segregation, and the culmination of federal and state laws that mandated segregation. A key example is our nation's interstate highway system. Construction of the interstate highway system played a key role in creating the spatial and economic conditions prevalent in urban centers today—conditions that influence interracial interactions, economic mobility, and community stability. Indeed, highway construction both “symbolically and physically” encouraged racial segregation and isolation. The passage of the Federal-Aid Highway Act of 1956 facilitated the destruction of Black communities.⁶ Federal and state highway builders purposely targeted Black communities to make way for massive highway projects.⁷ In states around the country, highways disproportionately displaced and destroyed Black homes, churches, schools, and businesses, sometimes leveling entire communities.⁸ Although billed as an opportunity to remove “blight,” highways often tore through vibrant communities, ripping

⁵ Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: *Advancing Racial Equity Through Highway Reconstruction*, 73 VAND. L. REV. 1259, 1330 (2020).

⁶ *See id.* at 1264–65.

⁷ *See id.* at 1265.

⁸ *See id.*

apart the social fabric of those communities and inflicting economic and psychological wounds on both those forced to leave their homes and those left behind.⁹

First, the highways were a tool of removal. In states around the country, highway construction displaced Black households and cut the heart and soul out of thriving Black communities as homes, churches, schools, and businesses were destroyed. In some communities the highway became the tool that white government officials had been looking for years.

The destruction of a Black community to make way for I-95 in the Overtown section of Miami, Florida provides an example of how construction of the interstate highway system was often used to actualize a racial agenda to destroy vibrant and economically self-sufficient Black communities. I-95 tore through the center of Overtown, which was a large and vibrant Black community then considered to be the center of economic and cultural life for Black people living in Miami.¹⁰ The destruction of Overtown was the realization of a decades-long campaign by white business leaders to remove Black residents and claim that land to expand Miami's central business district.¹¹ By the late 1960s, Overtown was dominated by the highway and there was no evidence of why it was once called the Harlem of the South.¹² No corner of Overtown was saved. They demolished homes, churches, apartment buildings and businesses. Although nearly 40,000 Black people lived in Overtown before the highway expansion, only about 8,000 remained in a hollowed-out community after the highway was built.¹³

In Pittsburgh, Pennsylvania, a Black community known as the Hill District was devastated in order to build Interstate 579.¹⁴ When I-579 opened to traffic, it had effectively cut off the Hill District from Pittsburgh's thriving downtown area and displaced thousands of Black residents.¹⁵ The population of the Hill District dropped from approximately 54,000 in 1950 to approximately 9,500 in 2013.¹⁶ More than four hundred businesses were lost.¹⁷ The community was essentially damned. Today, about forty percent of the Hill District's residents live below the poverty line.¹⁸ Some people who could not or did not want to move remained in the "hollowed-out communities" adjacent to the highways, trying to rebuild.¹⁹ Those communities and their residents also bear the marks of decades of accumulated disadvantage.²⁰

Importantly, highway building gutted the economic cores of these communities and killed off

⁹ See *id.* at 1276–77.

¹⁰ See *id.* at 1278.

¹¹ See *id.* at 1279.

¹² See *id.* at 1280.

¹³ See *id.*

¹⁴ See *id.* at 1265.

¹⁵ See *id.* at 1265–66.

¹⁶ See *id.* at 1266.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ See *id.* at 1247 (quoting Sam Ross-Brown, *Transportation Secretary Foxx Moves to Heal Scars of Urban Renewal*, AM. PROSPECT (Sept. 30, 2016), <https://prospect.org/civil-rights/transportation-secretary-foxx-moves-heal-scars-urban-renewal/> [<https://perma.cc/E25G-C5MX>]).

²⁰ See *id.* at 1268.

a generation of businesses.²¹ The elimination of Black-owned businesses through displacement deeply impacted segregated communities that were already deprived for economic investment.²² Ownership of homes and businesses is critical in building generational wealth.²³ Highway projects robbed Black people of these resources and opportunities.²⁴

Second, highways were tools of segregation. Instead of going through Black communities, some interstate highways encircled them to contain and confine Black residents.²⁵ So, the highway was a tool of a segregationist agenda, erecting a post-Jim Crow wall that separated white and Black communities, protected white people from Black migration, and further entrenched racial segregation.

They were assisted by existing racial segregation patterns, redlining, and the racial zoning laws that were rampant. Highway builders were able to build highways on previously formal or informal boundary lines between white and Black neighborhoods and skirt constitutional prohibitions on racial zoning.²⁶ This was often accomplished at the explicit request of white residents who feared integration.²⁷ In Orlando, Florida, and at the insistence of white residents, I-4 was built to provide a barrier separating Black residents on the west side of town from white residents and the central business district on the east side.²⁸

Finally, the construction of the highways upended Black communities by dividing them up, breaking apart the sense of community, and destroying the social connections that make cities and communities thrive. In Nashville, I-40 was built right through the main Black business district, which had been home to 128 Black-owned businesses.²⁹ In addition to destroying most of those businesses, six Black churches were destroyed and fifty local streets were dead-ended.³⁰ I-40 also “separated children from their playgrounds and schools, parishioners from their churches,” and patients from the hospital.³¹ Fisk University, Meharry Medical College, and Tennessee State University, three historically Black colleges and universities, were walled off from each other and from the community the schools served.³² The highway also physically constrained the future growth of the three institutions.³³

²¹ See *id.* at 1289.

²² See *id.*

²³ See Cedric Herring & Loren Henderson, *Wealth Inequality in Black and White: Cultural and Structural Sources of the Racial Wealth Gap*, 8 RACE & SOC. PROBS. 4, 6 (2016).

²⁴ See Deborah N. Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125, 2131-32 (2021).

²⁵ See Archer, *supra* note 5, at 1281.

²⁶ See *id.*

²⁷ Raymond A. Mohl, *Race and Space in the Modern City: Interstate-95 and the Black Community in Miami*, in URBAN POLICY IN TWENTIETH-CENTURY AMERICA 100, 135 (Arnold R. Hirsch & Raymond A. Mohl eds., 1993). See, e.g., Charles E. Connerly, *From Racial Zoning to Community Empowerment: The Interstate Highway System and the African American Community in Birmingham, Alabama*, 22 J. PLAN. EDUC. & RES. 99, 101-04 (2002) (explaining how Birmingham highways were placed according to the desires and concerns of white residents); *Memphis v. Greene*, 451 U.S. 100 (1981).

²⁸ See Archer, *supra* note 24, at 2136 (quoting Mohl, *supra* note 27, at 135).

²⁹ See Archer, *supra* note 5, at 1295.

³⁰ See *id.* (citing Mohl, *supra* note 27, at 880).

³¹ See *id.*

³² See *id.*

³³ See *id.*

These examples are just the tip of the iceberg. Virtually every state has a story about a highway destroying a Black community or other community of color. And, this construction had a lasting impact.

While the highways connected white people living in suburbia with economic opportunities in the city, Black residents were excluded from white neighborhoods.³⁴ And when the highway destroyed their homes, they were forced to find new housing in communities already intensely segregated by race and class, further entrenching racial segregation, and further taxing inadequate housing, employment opportunities, and public services.³⁵ Those communities and their residents bear the marks of decades of accumulated disadvantage—racial segregation, concentrated poverty, and economic isolation.

Of course, the interstate highway system did not cause every problem urban communities face. However, its construction compounded discrimination, exclusion, and exploitation, and created boundaries—physical, economic, and psychological. These physical boundaries have withstood the adoption and evolution of civil rights laws. Rather than be forced to comply with the law, the highways became the law. In fact, part of the perceived genius in utilizing highways and roads to cement racial inequality was the belief that the exclusionary impact would outlast then-current laws that facilitated racial exclusion, and skirt future laws that might facilitate or mandate integration.³⁶ The law has always been a powerful tool to both subjugate and liberate. The laws' role in transportation infrastructure development is no different.

So, how do we move forward? Today, the interstate highway system is on the verge of transformational change as aging highways around the country are crumbling or insufficient to meet growing demand and must be rebuilt, replaced, or reimagined.³⁷ What we do to rebuild America's infrastructure will shape our future for decades to come. But weaving cities back together, rebuilding them, revitalizing them and redressing the harms of highway development will be no easy task.

The possibility of significant infrastructure development offers an opportunity to redress and repair some of the harm caused by the original building of the interstate highway system, to strengthen impacted communities, and to advance racial equity and economic opportunity moving forward. In fact, the Biden administration has promised that this will be a central goal.³⁸ The current focus on racial equity in infrastructure certainly holds promise.

But the statement of a goal alone does not mean we will advance racial equity. This moment brings risks just as surely as it brings opportunity. There is a risk that federal, state, and local highway builders will repeat the sins of the past at the expense of communities of color whose homes, businesses, and community institutions again stand in the path of the bulldozers.

³⁴ *See id.* at 1268 (citing PAUL MASON FOTSCH, WATCHING THE TRAFFIC GO BY: TRANSPORTATION AND ISOLATION IN URBAN AMERICA 90 (2007) (“The federal housing policies . . . barred government-backed loans in neighborhoods with even a single African American resident.”); RICHARD HÉBERT, HIGHWAYS TO NOWHERE: THE POLITICS OF CITY TRANSPORTATION 20 (1972) (describing how highway construction displaced Black families, forcing them into crowded neighborhoods where public services were already overburdened).

³⁵ *See id.*

³⁶ *See id.* at 1275.

³⁷ *See id.* at 1298.

³⁸ *See, e.g.,* Jim Tankersley & Zolan Kanno-Youngs, *Biden Seeks to Use Infrastructure Plan to Address Racial Inequities*, N.Y. TIMES (Apr. 1, 2021), <https://www.nytimes.com/2021/04/01/us/politics/biden-infrastructure-racial-equity.html> [<https://perma.cc/UKV5-EM35>].

Racism is still woven deeply into the fabric of American society, and the politics of race, class, and infrastructure development remain deeply intertwined. The officials who built the interstate highway system in the 1950s and 1960s were often motivated explicitly by racism and placed little value on Black communities. This racism persists, of course, and Black lives and Black homes continue to be valued less than others.³⁹

How do we address the lingering impact of transportation racism? How do we invest in communities in a way that ensures that all people are able to participate, contribute, and thrive?

Historically, urban planners and government officials have not demonstrated sensitivity to these concerns, and do not have a great track record of integrating concepts of racial justice into their work.⁴⁰ And, as other scholars have noted, “[w]here transportation policy has been constructed to limit the opportunity and development of Black people and Black communities, planning [professionals] ha[ve] provided the rationale, the data, and the plan of action.”⁴¹ Rather than embracing the potential to improve the quality of life in Black communities or putting equity at the forefront of siting and infrastructure development projects, planners have regularly given in to the forces of racism, classism, and tradition. Race continues to be a powerful and frequently used tool to sort physical space, guide public policy, and distribute public benefits and burdens.

Instead, racial equity—focusing on repairing racialized harm and advancing racial justice in both process and outcome—must be a central calculus at each stage. This will not be easy. A shift in national transportation policy, including reimagining how we use transportation and infrastructure to serve and support communities of color, is a critical first step, but alone is not sufficient. To truly transform the relationship between transportation and inequality, we need to do more than just recognize the link between transportation policy, segregation, and the underdevelopment of Black communities, we need to break that link.

Social justice advocates must harness the power of civil rights laws to dismantle systems and structures of racial inequality and the discrimination at the intersection of race, class, and place that we see in transportation policy.

We know that the road forward isn’t simple. We have a window of opportunity now, to demand better, to stand up, and to do better. To move us closer to the Beloved Community. The conversations we are having today are a powerful start and I appreciate this opportunity to contribute.

Thank you.

³⁹ See Archer, *supra* note 5, at 1269.

⁴⁰ See *id.* at 1300.

⁴¹ See *id.* at 1300-01 (quoting Robert W. Collin, Timothy Beatley & William Harris, *Environmental Racism: A Challenge to Community Development*, 25 J. BLACK STUD. 354, 356 (1995)).