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Race, Space, and Place: Interrogating Whiteness Through a Critical Approach to Place

Keith H. Hirokawa

RACE, SPACE, AND PLACE: INTERROGATING WHITENESS THROUGH A CRITICAL APPROACH TO PLACE

KEITH H. HIROKAWA*

> *The Civil Rights Movement is long past, yet segregation persists. The wider society is still replete with overwhelmingly white neighborhoods, restaurants, schools, universities, workplaces, churches and other associations, courthouses, and cemeteries, a situation that reinforces a normative sensibility in settings in which black people are typically absent, not expected, or marginalized when present.*[1]

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INTRODUCTION

One of the greatest modern tricks perpetuated against people of color has been the insistence that racism is big and boisterous,

* Associate Dean of Research and Scholarship and Distinguished Professor of Law, Albany Law School. I would like to express my sincere gratitude to Cinnamon Carlarne for three-spotting this piece; Angela Harris, J.B. Ruhl, Sonja Ziaja, Rik Scarce, Nina Farnia, and Jonathan Rosenbloom for their insightful comments; and the faculties at the Moritz College of Law at Ohio State University and Albany Law School for graciously allowing me to workshop this piece. I would also like to thank Evan Levesque, Kathleen Anderson, and Jason Thomas for their tireless research assistance.

1. Elijah Anderson, "*The White Space*," 1 SOCIO. RACE & ETHNICITY 10, 10 (2015).

violent and full of slurs, and that racism is *always and only* those things. In essence, the trick has been that an act or utterance is only racist if it is offensive to the sensibilities of white folks. The trick plays out when we realize that white folks are not particularly insulted by white communities, white culture, white heroes, and white literature.[2] From this perspective, because such spaces do not offend, they could not possibly be racist.[3] And yet, as noted by Elijah Anderson, racially subordinated people "often refer to such settings colloquially as 'the white space'—a perceptual category—and they typically approach that space with care."[4]

Drawing from George Lipsitz's notion that whiteness is "not so much a color as a condition,"[5] this Article embarks on the project of framing the manner and methods through which whiteness continues to dominate space and place. Wherever whiteness dominates space, space carries rules and expectations about the identity and characteristics of people who are present—visitors and jaunters, owners and occupiers—and the types of activities and cultural practices that might occur there.[6] Occasionally, spaces are racialized because of intentional practices of discrimination and segregation.[7] In others, less intentional methods produce racialized space.[8] In both, American spaces tell their own histories of exclusion and violence and hate.[9]

This Article proposes understanding how the white space is maintained by looking to the intersection of race, space, and place.[10] Race, a social construct often designed to create and maintain subordination,[11] is an essential lens for understanding the ways that

2. *See* LISA SUN-HEE PARK & DAVID NAGUIB PELLOW, THE SLUMS OF ASPEN: IMMIGRANTS VS. THE ENVIRONMENT IN AMERICA'S EDEN 204 (2011) ("The ultimate difficulty with social privilege is that it is often unrecognized and unmarked.").

3. *See* GEORGE LIPSITZ, HOW RACISM TAKES PLACE 6 (2011) ("Because of practices that racialize space and spatialize race, whiteness is learned and legitimated, perceived as natural, necessary, and inevitable.").

4. Anderson, *supra* note 1, at 10.

5. LIPSITZ, *supra* note 3, at 3 ("Largely because of racialized space, whiteness in this society is not so much a color as a condition. It is a structured advantage that channels unfair gains and unjust enrichment to whites while imposing unearned and unjust obstacles in the way of Blacks.").

6. *See id.* at 6.

7. *See id.* at 2.

8. *See id.*

9. *See* Danyelle Solomon, Abril Castro & Connor Maxwell, *Systemic Inequality: Displacement, Exclusion, and Segregation*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), https://www.americanprogress.org/article/systemic-inequality-displacement-exclusion-segregation.

10. The title of this Article and structure of the analysis are intended as a tribute to my friend Keith Aoki, without whom I would not have entered the academy. *See* Keith Aoki, *Race, Space, and Place: The Relation Between Architectural Modernism, Post-Modernism, Urban Planning, and Gentrification*, 20 FORDHAM URB. L. J. 699, 700 (1993).

11. *See* Angela Onwuachi-Willig, *Race and Racial Identity Are Social Constructs*, N.Y. TIMES: THE OPINION PAGES (Sept. 6, 2016), https://www.nytimes.com/roomfordebate

history and power disparities shape the values we attach to land and that come to define our communities. Space in this Article refers to geographical and temporal location, where racially defining moments may occur. Place, often appearing as a community's sense of place, illustrates the ways that individuals attach to spaces and communities, as well as how spaces and community attach to individuals. This examination reveals that racism produces, and is produced by, the spaces that we inhabit, visit, or even hear about. This examination also reveals that such racialized spaces can become racialized places. Yet, just as place can serve as the consecration of bias, it can also assist in identifying and naming racial subordination.

To understand how the framework of race, space, and place operates, this Article examines the idea of the community's comprehensive land use plan, the publication of which signifies the moment when a grounded group of people raise their flags and announce to the world, "this is who we are." The comprehensive plan is the grasp of the past, the path to the future, and the self-assessment of the character of a particular community. It is the statement that sets a community apart from others, and it entails the reasons that residents adore (or suffer) their communities. Although there is a lot of anti-racist work to do in the land use context, the comprehensive plan serves as a good launching point because it is intended as a tool of local strength and cohesion. The comprehensive plan is, in the land use context, the essential community-building moment of local governance.

In most cases, community-building in the United States has been an exercise in exclusion, segregation, and racial violence.[12] Indeed, the history of local land use policies provides more than a century of intentional and implicit practices of racial violence.[13] From formal zoning schemes intended to produce segregated neighborhoods, zoning and planning schemes designed to support redlining practices, and discriminatory practices of infrastructure improvement planning, to

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/2015/06/16/how-fluid-is-racial-identity/race-and-racial-identity-are-social-constructs#:~:text=In%20sum%2C%20the%20fact%20that,of%20consequence%20or%20tangible%20effects [https://perma.cc/9WKY-39B3].

12. *See* Terry Gross, *A 'Forgotten History' of How the U.S. Government Segregated America*, NPR (May 3, 2017), https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america [https://perma.cc/2B5C-3TLE].

13. At the least, this is significant because we often mark the inception of land use law only a century ago at either the first comprehensive zoning plan in New York City in 1916 or the Supreme Court's approval of comprehensive zoning in 1926 in *Ambler v. Village of Euclid*, 272 U.S. 365, 388 (1926). *See* EDWARD M. BASSETT, ZONING: THE LAWS, ADMINISTRATION, AND COURT DECISIONS DURING THE FIRST TWENTY YEARS 23 (1940) ("It may fairly be said, however, that the zoning enabling act embodied in the New York City charter and the building zone resolution of that city constituted the first comprehensive zoning of the height, area, and use in this country.").

urban blight removal, and neighborhood-busting transportation planning, local governments have engaged in a rich history of racism.[14] Yet, besides vague and imprecise claims of "diversity," most comprehensive plans do not attribute generational wealth (and intergenerational wealth) to slavery practices and privilege, do not recount their expressions (individual and collective) of hate and exclusion, and do not plan to acknowledge, much less lift, the lives of survivors of racial violence.[15] Hence, the comprehensive plan is also and always revealing.

Of course, pointing out that communities have either forgotten their racial histories or, worse, have been unable to see past the racialized tropes, is not a particularly novel claim.[16] Yet the exercise is far from mundane, if only because there is little legal literature focusing on the racism that is typically embedded in local comprehensive land use plans.[17] Given the critical role that land use planning plays in the long-term visions of communities, of self-identification and direction,[18] it seems odd that this subject would lay dormant. As the pinnacle of local land use planning, the comprehensive plan is at once the most revealing of a community's racial biases, while also being the best opportunity for a community to identify as anti-racist and act in anti-racist ways.

Although relevant to the discussion, the focus of this Article is not on the more overt acts of exclusion, segregation, divestment, and disempowerment in communities, which has been documented and analyzed by others.[19] Rather, this Article focuses on the structural[20]

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14. *See, e.g.*, RICHARD ROTHSTEIN, THE COLOR OF LAW viii (2017).

15. *See id.* at 187.

16. *See* Margery Austin Turner & Solomon Greene, *Causes and Consequences of Separate and Unequal Neighborhoods*, URB. INST., https://www.urban.org/racial-equity-analytics-lab/structural-racism-explainer-collection/causes-and-consequences-separate-and-unequal-neighborhoods [https://perma.cc/JFZ5-EFJ2] (last visited Jan. 27, 2023).

17. K. Steven Brown, Kilolo Kijakazi, Charmaine Runes & Margery Austin Turner, *Confronting Structural Racism in Research and Policy Analysis*, URB. INST. 2 (Feb. 2019).

18. *See* SABAK, WILSON & LINCO, INC., GLENVIEW AREA NEIGHBORHOOD PLAN (2010), https://louisvilleky.gov/advanced-planning-and-sustainability/document/glenview-neighborhood-plan [https://perma.cc/F45W-AZ73].

19. *See* ROTHSTEIN, *supra* note 14, at xv; Michelle Wilde Anderson, *Mapped Out of Local Democracy*, 62 STAN. L. REV. 931, 932 (2010); SHERYLL CASHIN, THE FAILURES OF INTEGRATION (2005); JAMES W. LOEWEN, SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM 1 (2005, 2018 ed.); Angela Harris, Margaretta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073, 2085 (2007); PARK & PELLOW, *supra* note 2, at 98; K-Sue Park, *This Land Is Not Our Land*, 87 U. CHI. L. REV. 1977, 1978, 2018 (2020); ROBERT A. CARO, THE POWER BROKER 950–54 (1975) (discussing the plan of Robert Moses to prevent the use of the Long Island parkway for mass transit by designing and building lower-clearance overpasses than needed for bus travel).

20. William M. Wiecek, *Structural Racism and the Law in America Today: An*

and implicit[21] prejudices that pervade the land use planning process. Part I of this Article introduces the purposes and challenges of the comprehensive plan, followed by an analysis of the racial biases evident in the planning undertaken in the seemingly picturesque Amherst, Massachusetts. Part II examines the framework of race, space, and place, identifying and illustrating the types of coded language and systemic practices that surface in a racial justice audit of local planning documents. Part III then introduces a variety of devices that will make racialized histories more visible and transform the white domination of space into something more just and inclusive.

As this Article repeatedly declares, where the consequences of maintaining racialized space are not being addressed, they are being ignored and perpetuated. Moreover, that whiteness operates to prevent an understanding of such consequences is a special type of seemingly intractable challenge, as "the blindness of power is a disease that is difficult to cure."[22] This Article encourages a reading of land use self-expressions to identify missed opportunities in transforming racialized spaces into anti-racist places. Envisioning land use anti-racism through race, space, and place reveals the baselessness of hate and the benefits of community.[23]

I. INTERROGATING WHITENESS IN THE COMPREHENSIVE PLAN

A distinctive feature of modern communities is the need to make loud claims of distinctiveness and of character.[24] Communities such as Louisville, Kentucky, tout such visions in their comprehensive plans: "In our vision of 2020 . . . [this] County is a community widely

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Introduction, 100 KY. L.J. 1, 5 (2011) (defining structural racism as "a complex, dynamic system of conferring social benefits on some groups and imposing burdens on others that results in segregation, poverty, and denial of opportunity for millions of people of color. It comprises cultural beliefs, historical legacies, and institutional policies within and among public and private organizations that interweave to create racial disparities in life outcomes.").

21. *Id.* at 8 (describing implicit bias as "[u]nconscious racism . . . becomes an important element of structural racism. The explanatory model of aversive racism proposed by social cognition theory works this way: individuals harbor unrecognized, submerged mental associations that link people of color with crime, poverty, drugs, violence, and other negative racial stereotypes.").

22. PARK & PELLOW, *supra* note 2, at 244. *See also* BELL HOOKS, BELONGING: A CULTURE OF PLACE 49 (2009) ("Tragically, the power of dominator cultural to dehumanize more often than not takes precedence over our collective will to humanize.").

23. *See* LIPSITZ, *supra* note 3, at 244 ("The capacity to envision places where everybody can be somebody can be of tremendous value to everyone in this society, especially to white people.").

24. Nathakit Phetsuriya & Tim Heath, *Defining the Distinctiveness of Urban Heritage Identity: Chiang Mai Old City, Thailand*, SOC. SCI. 2 (2021).

recognized for its high quality of life, sense of tradition and competitive spirit,"[25] and further advertises "*Our* children have inherited a livable, vibrant and economically diverse community."[26] North Greenbush, New York, states: "*We* are a destination community . . . for innovation, education, commerce, and living—a place where you belong."[27] Minneapolis declares: "*Our* urban form also reflects the fact that Minneapolis is a Winter City."[28] These outward-directed statements of self, of pride and ownership, of who "we" are, and of belonging suggest a resolved collective self. Yet in so many instances, an interrogation of such identity-producing statements in comprehensive plans confirms not the livability or diversity of a community—or even that "we" refers to a collective entity—instead that use of such language acts as an exclusionary device at best, or at worst, an example of a white community's foray into racial capitalism.[29] To understand racism in the land use planning context, we begin with such statements and where they are found: the comprehensive plan.

A. Land Use and the Comprehensive Plan

Land use planning is critical to the construction of livable communities.[30] John Nolon describes land use planning as a searching and insightful process—no small feat:

> City planning is a science and an art concerned primarily with the city's ever-changing pattern. As a pure science, it examines causes (history and etiology) and reciprocal influences of man and environment (urban geography and ecology). As applied science, it synthesizes these findings with those of the economic, sociological, and political sciences as well as the technological branches of statistics, civil and sanitary engineering, architecture, landscape

25. SABAK, WILSON & LINCO, INC., *supra* note 18.

26. EHI CONSULTANTS, CANE RUN ROAD NEIGHBORHOOD PLAN (2016), https://louisvilleky.gov/advanced-planning-and-sustainability/document/cane-run-road-neighborhood-plan [https://perma.cc/8859-KH52] (emphasis added).

27. LABERGE GROUP, TOWN OF NORTH GREENBUSH FINAL COMPREHENSIVE PLAN (2009), https://www.townofng.com/sites/default/files/2021-12/tng_comprehensiveplan_final_20091210.pdf [https://perma.cc/22L8-HXQ3] (emphasis added).

28. CITY OF MINNEAPOLIS, THE MINNEAPOLIS PLAN FOR SUSTAINABLE GROWTH (2009), https://minneapolis2040.com/media/1836/the-minneapolis-plan-for-sustainable-growth.pdf [https://perma.cc/MK83-9RMV] (emphasis added).

29. Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2179 (2013) ("A white person or institution who engages in an exchange with a nonwhite person, therefore, gains status as a nonracist and cross-culturally competent actor by *signaling* those attributes through affiliation." (emphasis in original)).

30. *See, e.g.*, TASK FORCE ON LAND USE AND URBAN GROWTH, THE USE OF LAND: A CITIZEN'S POLICY GUIDE TO URBAN GROWTH (1973).

> architecture, and other pertinent branches of human knowledge, in an attempt to thoroughly understand conditions and their contexts and trends. As an art, it utilizes these materials, instructs or organizes citizens, molds events, and thwarts or guides trends to bring about the changes in city design which it contemplates.[31]

The essential conclusion of planning is the comprehensive plan.[32] Although comprehensive plans will differ according to the varying values and geographies of particular communities,[33] the comprehensive plan provides a vision of community, both at present and into the future.[34]

To accomplish this feat, the comprehensive plan acts as a guide or a blueprint for development.[35] In 1922, the Standard Zoning and Enabling Act contained a provision that land use actions be done "in accordance with a comprehensive plan."[36] The Standard City Planning Enabling Act, finalized in 1928, set out a process for comprehensive planning.[37] The comprehensive plan was envisioned under the idea that designed communities will better serve the community than piecemeal, individual land use choices.[38]

The comprehensive plan has evolved from an amorphous concept into something more substantial that is envisioned as encouraging a community to value locally driven and ever-changing lifestyles and goals.[39] The comprehensive planning process has come to be idealized as an inclusive, public, and participatory dialogue about sustainable visions for community that include transportation, housing, environmental quality, economic growth, and community

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31. John R. Nolon, *Comparative Land Use Law: Patterns of Sustainability*, 37 URB. LAW. 807, 818–19 (2005).

32. *See id.* at 816–17.

33. Keith Aoki has noted, "[t]he world is increasingly the same, yet the world is increasingly filled with difference." Keith Aoki, *Spaced Invaders: Critical Geography, the 'Third World' in International Law and Critical Race Theory*, 45 VILL. L. REV. 913, 915 (2000).

34. *See* Edward J. Sullivan & Matthew J. Michel, Ramapo *Plus Thirty: The Changing Role of the Plan in Land Use Regulations*, 35 URB. LAW. 75, 82–83 (2003).

35. Daniel J. Curtin, Jr., Ramapo*'s Impact on the Comprehensive Plan*, 35 URB. LAW. 135, 135–36 (2003).

36. U.S. DEP'T OF COM., A STANDARD STATE ZONING ENABLING ACT UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS, § 3 (1922).

37. *See* Stuart Meck, *Model Planning and Zoning Enabling Legislation: A Short History*, *in* AM. PLANNING ASS'N, MODERNIZING STATE PLANNING STATUTES: THE GROWING SMART WORKING PAPERS, VOL. 1, 7 (1996).

38. *See* Huff v. Bd. of Zoning of Balt. Cnty., 133 A.2d 83, 93 (1957) (Henderson, J., dissenting); Charles M. Haar, *In Accordance with a Comprehensive Plan*, 68 HARV. L. REV. 1154, 1174 (1955); Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 MICH. L. REV. 899, 909–10 (1976).

39. *See, e.g.*, Curtin, *supra* note 35, at 135–36; Sullivan & Michel, *supra* note 34, at 82–83.

resiliency.[40] Most importantly, the comprehensive plan is seen as the community's opportunity to declare its own identity.[41]

Despite such lofty goals, comprehensive plans often fall short of unifying communities.[42] Over the last century, racism in planning and zoning was widespread,[43] despite admonition by the Supreme Court.[44] Indeed, in addition to committing overt acts of racial violence,[45] many communities focused their community-building efforts in the 20th century on innovating around unfavorable judicial decisions to produce segregated, homogenous communities under the various flags of "community character," historic preservation, blight removal, or even outright fear of Black people.[46] Even the trial court reviewing the zoning ordinance from the Village of Euclid more than a century ago found that the scheme merely served as another tool of segregation.[47]

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40. *See* Nolon, *supra* note 31, at 816–17.

41. Whitney Stohr describes the formation of local identity formation as a process driven by pride and public participation:

> Identifying local cultural values and successfully incorporating the sociocultural element into the planning framework creates a sense of place and civic pride among residents, increasing public support for future planning strategies and land use regulations. Regional "cultural indicators"—those commonly held community ideals and values—thus serve as a catalyst from which other land use and community development decisions evolve.

Whitney G. Stohr, *The Local Identity of Smart Growth: How Species Preservation Efforts Promote Culturally Relevant Comprehensive Planning*, 43 ENV'T L. REP. NEWS & ANALYSIS 10024, 10028 (2013).

42. *See, e.g.*, Christopher Silver, *The Racial Origins of Zoning in American Cities*, *in* URBAN PLANNING AND THE AFRICAN AMERICAN COMMUNITY: IN THE SHADOWS (June Manning Thomas & Marsha Ritzdorf eds., 1997).

43. *See id.* (noting that the malleability of zoning to social agendas, particularly racist ones, and attributes the rise of racial zoning schemes to efforts to block social interaction between Black and white residents, control Black migration, and control neighborhood deterioration).

44. *See* Buchanan v. Warley, 245 U.S. 60, 81 (1917); Shannon Roesler, *Landscapes of Inequality: Racial Segregation and Environmental Injustice*, *in* ENVIRONMENTAL LAW AND CONTRASTING IDEAS OF NATURE 230, 230 (Keith H. Hirokawa ed., 2014) (discussing strategies to formalize segregation by land use planners).

45. *See* JEANNINE BELL, HATE THY NEIGHBOR: MOVE-IN VIOLENCE AND THE PERSISTENCE OF RACIAL SEGREGATION IN AMERICAN HOUSING 2 (2013) (discussing the prevalence of anti-integration violence by white residents to protect their neighborhoods from incoming residents of color).

46. *See, e.g.*, ROTHSTEIN, *supra* note 14, at 48.

47. Judge Westernhaver, who presided over the trial, stated: "The purpose to be accomplished is really to regulate the mode of living of persons who may hereafter inhabit it. In the last analysis, the result to be accomplished is to classify the population and segregate them according to their income or situation in life." Ambler Realty Co. v. Village of Euclid, 297 F. 307, 316 (N.D. Ohio 1924), *reversed*, 272 U.S. 365, 388 (1926). *See also* David Ray Papke, *Keeping the Underclass in Its Place: Zoning, the Poor, and Residential Segregation*, 41 URB. LAW. 787, 788 (2009) (arguing that "[r]ich people can see other rich people on the far side of their large suburban lots, and the poor live snugly next door to the poor.").

The tainted history of zoning and planning may simply reflect professional standards and practices among land use planners. Where communities were repeatedly faced with the reality that "local government officials may enact an ill-considered change,"[48] Daniel Selmi notes that, to those engaged in community building, "[i]t gradually became clear that the supporters of Euclidean zoning had placed too much confidence in the ability of experts to plan in a manner that would require only minimal later adjustments."[49] Historically, land use planners focused on designing the "ideal city": "good planning was assumed to be simultaneously in the general interest and guided by experts."[50] As Robert Beauregard diagnosed in 1990, "[planning] [t]heorists delved more and more into an abstract process isolated from social conditions and planning practice. . . . Few planning theorists concern themselves with the physical city . . . ."[51] The difficulties abounding in the planning process may be the training and amount of deference given to professional planners.[52] Planners, and especially outside consultants, have been tasked with understanding the values and practices that reflect a sense of place. Professionals are not always able to capture those values and practices, at least not with the detail and appreciation that might be accessed by a resident.[53]

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48. Daniel P. Selmi, *The Contract Transformation in Land Use Regulation*, 63 STAN. L. REV. 591, 618 (2011).

49. *Id.* at 601. As Frug likewise has noted of U.S. cities:

> [T]here is a widespread belief that although cities are supposed to protect the public interest, they cannot really be trusted to do so. This distrust engenders support for state and federal control of cities to prevent local abuse of power, curb local selfishness, or correct the inefficiencies resulting from "balkanized" local decision making. City discretion of any kind evokes images of corruption, patronage, and even foolishness. This sense of necessity and desirability has made local powerlessness part of our definition of modern society, so that decentralization of power appears to be a nostalgic memory of an era gone forever or a dream of romantics who fail to understand the world as it really is.

Gerald E. Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1059, 1067 (1980).

50. Susan S. Fainstein, *Planning Theory & the City*, 25 J. PLAN. ED. AND RSCH. 121, 122 (2005) (discussing evolution in planning theory away from the ideal city to better utilize democratic principles).

51. Robert A. Beauregard, *Bringing the City Back In*, 56 J. AM. PL. ASS'N 210, 213 (1990).

52. *See* Timothy Luke, *Eco-Managerialism: Environmental Studies as a Power/Knowledge Formation*, A Lecture at York University (2002), http://aurora.icaap.org/index.php/aurora/article/view/79/91 (arguing that the training of natural resource professionals effectively creates a limited construct within which such professionals operate to the exclusion of progressive values). Keith H. Hirokawa, *Environmental Law from the Inside: Local Perspective, Local Potential*, 47 ENV'T L. REP. NEWS & ANALYSIS 11048, 11052–53 (2017).

53. Thomas Delman & Rune Nielsen, *Seeing Beyond—Using Utopiatyping as a Strategy for Building Capacity in Urban Development Processes*, KOLLISION (2008), https://kollision.dk/pdf/seeingbeyond.pdf [https://perma.cc/7677-H23Y].

Planners are especially aloof to local values when they do not seek the input of local residents.[54]

Yet such lived-experience input is readily accessible.[55] It is in this vein that Whitney Stohr challenges planners who work to design communities from an "objective" perspective, a perspective that seeks values that come from outside of the community itself:

> Traditional strategies designed to promote city livability, for example, reduce suburban sprawl, improve public transportation options, enhance the aesthetic appearance of the city, and increase social interaction among residents by providing, inter alia, walkable down towns, urban parks and green space, and civic institutions. While certainly vital to the planning process, such strategies alone fail to capture the inherent identity of the local people and the culture unique to the region. Stated another way, by promoting urban livability in an isolated manner, divorced from cultural relevancy, city planners fail to create a desired sense of place.[56]

The problem is that the planner, as a professional, may not approach a place as an insider (through lived experience with a place)[57] but as a visitor.[58] Tuan states "The visitor's evaluation of environment is

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54. YI-FU TUAN, SPACE AND PLACE: THE PERSPECTIVE OF EXPERIENCE 7 (1977); RICHARD F. BABCOCK, THE ZONING GAME 123–24 (1966) ("If, when we speak of planning, we postulate objective standards for physical environment and let the social chips fall where they may, then zoning as an implement of planning has not merely failed but has been instrumental in the failure of planning. This failure is pernicious. Like another Noble Experiment with about the same birthdate as zoning, it erodes the civic conscience by permitting us to wrap our selfish anti-democratic aims in a garment of public interest.").

55. Keith Basso explains:

> [A]s any seasoned traveler can readily attest, locally significant places get depicted and appraised by established local citizens almost as often as suspicious marital upheavals, bad weather, and the shortcomings of other people's children. Surrounded by places, and always in one place or another, men and women talk about them constantly . . . . [I]t is from listening in on such exchanges and then trying to ascertain what has been said that interested outsiders can begin to appreciate what the encompassing landscape is really all about.

Keith H. Basso, *Wisdom Sits in Places: Notes on a Western Apache Landscape*, *in* STEVEN FELD & KEITH H. BASSO, SENSES OF PLACE 53, 56 (1996); *see also* TUAN, *supra* note 54, at 7 ("[I]t is possible to articulate subtle human experiences.").

56. Stohr, *supra* note 41, at 10024–25.

57. For a more thorough discussion on the problem with insiders and outsiders in understanding community circumstances, see Hirokawa, *supra* note 52.

58. If we are not insiders ourselves, in this project we seek to be "the outsider or stranger who seeks to experience places as openly as possible, to respond to their unique identities." EDWARD RELPH, PLACE AND PLACELESSNESS 66 (1976) (2016 ed.). Although perfect authenticity may be out of reach, with an "open and honest" effort to grasp the meaning of place, we can "attempt to experience all the qualities and meanings of a place both as the people living there might experience them and also in terms of their functional, aesthetic, or other qualities that might not be apparent to existential insiders."

essentially aesthetic. It is an outsider's view. The outsider judges by appearance, by some formal canon of beauty. A special effort is required to empathize with the lives and values of the inhabitants."[59] Of course, in the process of making such observations, values are illuminated for the outsider. The task of the outsider is to look closely at the circumstances so that the "there" description is overcome by the priority and meaning of "here."[60] The land use planner may struggle to think in this insider's context.[61]

Disentangling local practices from their place would be to misunderstand a community, at least because communities are not monolithic.[62] Local narrative typically includes "moments of tension, displacement, and deferral"[63] and describes a sense of place that "includes the relation of sensation to emplacement; the experiential and expressive ways places are known, imagined, yearned for, held, remembered, voiced, lived, contested, and struggled over; and the multiple ways places are metonymically and metaphorically tied to

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Id. The effort is to avoid what Relph calls "objective outsideness," "the deliberate adoption of a dispassionate attitude towards places in order to consider them selectively in terms of their locations or as spaces were objects and activities are located." *Id.* at 51.

59. YI-FU TUAN, TOPOPHILIA 64 (1974).

60. *See* Basso, *supra* note 55 ("[T]he outsider must attempt to come to grips with the indigenous cultural forms with which the landscape is experienced, the shared symbolic vehicles that give shape to geographical experience and facilitate its communication—its re-creation and re-presentation—in interpersonal settings.").

61. Even terms like "neighborhood" can illustrate the local from outsider's perspective:

> The planner's idea of neighborhood rarely coincides with that of the resident. A district well defined by its physical characteristics and given a prominent name on the city plan may have no reality for the local people. The words "neighborhood" and "district" tend to evoke in the outsider's mind images of simple geometrical shape, when in fact the channels of neighborly act that define neighborhood may be extremely intricate and vary from small group to small group living in close proximity.

TUAN, *supra* note 59, at 210 ("'Neighborhood' would seem to be a construct of the mind that is not essential to neighborly life; its recognition and acceptance depend on knowledge of the outside world.").

62. Communities are not, on the whole, monolithic. Karen I. Blu, *"Where Do You Stay At?" Home Place and Community Among the Lumbee*, *in* STEVEN FELD & KEITH H. BASSO, SENSES OF PLACE 197, 217 (1996) (acknowledging a "multiplicity of outlooks" illustrates that the "possibilities, exemplified by the local areas, allow for variety without threatening to deconstruct a more encompassing version of Indianness."); Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470, 507 (1976) (emphasizing that the Black community is not monolithic and class distinctions matter); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–42 (1991) (discussing the ways that many social constructs have influenced the lived experiences in the Black community).

63. Kathleen C. Stewart, *An Occupied Place*, *in* SENSES OF PLACE 137, 139 (Steven Feld & Keith H. Basso eds., 1996) (describing that place is "made up of narrativized moments of encounter, shock, description, digression, and lyrical, ruminative aporias that give pause.").

identities."[64] History, events and moments, must be understood: "struggles arising from loss and desires for control are always placed."[65] Failure to account for such local struggles perpetuates agony by ousting folks from where they live.[66]

Land use law has developed in a complicated, nonlinear manner that illustrates the dangers of leaving local governments to decide their own priorities.[67] However, the comprehensive plan remains a vital source of information about local identity and community priorities, while providing evidence of the character of the community that it describes. How we read such statements of identity determines whether we see inclusivity or racism[68] in a community's vision. For example, consider Amherst, Massachusetts.

B. Amherst, Massachusetts

The Town of Amherst, Massachusetts, currently hosts a population of approximately 35,000 residents and covers approximately twenty-eight miles in the Connecticut River Valley of Western Massachusetts.[69] Today, following a rise and fall of industry, the town appears largely as a quintessential college town, supported by its three superb institutions of higher learning (Amherst College, Hampshire College, and the University of Massachusetts Amherst).[70] Amherst has been identified as one of the ten most charming cities

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64. Basso, *supra* note 55, at 11. Hence, "[m]eaning attached to the landscape unfolds in language, names, stories, myths, and rituals. These meanings crystalize into shared symbols and ultimately link people to a sense of common history and individual identity." Miriam Kahn, *Your Place and Mine: Sharing Emotional Landscapes in Wamira, Papua New Guinea*, *in* SENSES OF PLACE 168 (Steven Feld & Keith H. Basso eds., 1996).

65. Basso, *supra* note 55, at 11.

66. "There is no greater agony than bearing an untold story inside you." ZORA NEALE HURSTON, DUST TRACKS ON A ROAD 97 (Lippincot, Inc., HarperCollins 1995) (1942).

67. Jerusalem Demsas, *America's Racist Housing Rules Really Can Be Fixed*, VOX (Feb. 17, 2021), https://www.vox.com/22252625/america-racist-housing-rules-how-to-fix [https://perma.cc/F8NL-2RQ6].

68. Of course, we may find the appearance of both, particularly in instances where policies of inclusivity are understood as examples of racial capitalism, defined by Nancy Leong as "the process of deriving economic and social value from the racial identity of another person . . . ." Leong, *supra* note 29, at 2152.

69. The area now comprising Amherst was first occupied by the Norwottucks of the Pocumtuck confederation of tribes. The Norwottucks traveled the area primarily for hunting, fishing, ingathering of nature's products. A purchase of lands from the Norwottucks in 1658 that included Amherst, known as the Norwottuck Plantation, facilitated British colonial settlement. *See* TOWN OF AMHERST, MASS. HIST. COMM'N, AMHERST PRESERVATION PLAN, 25 (2005) [hereinafter MASS. HIST. COMM'N], https://www.amherstma.gov/DocumentCenter/View/1125/Amherst-Preservation-Plan-2005?bidId= [https://perma.cc/V7SP-RJ7D].

70. *See 2022–2023 Best Colleges in Massachusetts*, U.S. NEWS & WORLD REP. (Sept. 22, 2022), https://www.usnews.com/best-colleges/ma.

in Massachusetts for its "lush green setting," and because it "is known for its political activism and left-wing preferences and downtown Amherst is full of students and fun locales, ranging from organic restaurants to bakeries to liberal bookstores."[71] The University of Massachusetts advertises Amherst's charming character as a product of access to nature and culture:

> Hiking, biking, museums, music, theater, history, food, and farms—all just outside your front door. . . . Located in the picturesque Pioneer Valley, Amherst offers endless opportunities for cultural events, miles of hiking and biking trails, and is the birthplace of literary and artistic giants. But the hidden gems, the spots that take years to uncover, truly make our little corner of the world special. . . . Discover new forms of expression in the art museums rich with famed collections or in the underground storytelling nights that happen in a tiny restaurant somewhere near campus.[72]

How did Amherst acquire its charm? In part, it was due to land use planning.

In 1971, Amherst established the "Select Committee on Goals for Amherst (SCOG)" to address questions and challenges to the quality of life of the town's residents, examine accelerating patterns of growth, and propose goals to guide future development.[73] At that time, the town was enforcing a moratorium on apartment construction, pending further development of the zoning code.[74] A review of the major components of the 1973 goals statement reveals the legacy of redlining practices and the creation of segregated, racialized communities: The 1973 goals statement included a prohibition on all land uses except single-family housing on large lots outside of the village centers, continuation of a moratorium on apartment construction, suspension of new infrastructure, and a request for a study to consider rehabilitation of the "older rundown areas within the town center."[75] The charming quality of life that SCOG sought to protect

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71. Alyssa Erspamer, *The 10 Most Charming Cities in Massachusetts*, CULTURE TRIP (Mar. 1, 2018), https://theculturetrip.com/north-america/usa/massachusetts/articles/the-charm-of-massachusetts-the-bay-state-s-top-10-cities-towns [https://perma.cc/R3E3-AGPH].

72. *Meet Amherst*!, UNIV. OF MASS. AMHERST, https://www.umass.edu/admissions/undergraduate-admissions/visit/meet-amherst [https://perma.cc/YK52-SBDM] (last visited Jan. 27, 2023).

73. SELECT COMMITTEE ON GOALS FOR AMHERST, SUMMARY OF THE REPORT OF THE SELECT COMMITTEE ON GOALS FOR AMHERST 3 (1973), https://www.amherstma.gov/DocumentCenter/View/24482/1973-SCOG-Report-2?bidId= [https://perma.cc/MC8M-EMEY].

74. *Id.* at 10.

75. *Id.* at 11.

was that of either the rural resident or the affluent subdivision dweller in a quaint village setting.

In 2004, the Town of Amherst (led by the Amherst Historical Commission) launched an investigation into the town's character and historic assets.[76] The Preservation Plan details an architectural and economic history of the town that includes dozens of structures, organizations and individual characters, including industrialists, merchants, educators, politicians, and even the father of poet Emily Dickinson, Edward Dickinson.[77] The plan describes the process through which Amherst became a distinct town, the construction of churches and cemeteries, the prevalence and persistence of the farming community, the introduction of industry to the town, the establishment of schools and institutions of higher learning, and the public and private efforts to beautify the town (including seeking this assistance of Frederick Law Olmsted).[78]

The Amherst Historical Commission held two public meetings to present the plan.[79] The overwhelming majority of positive responses referred to the "quaintness" of the town (in particular, historic buildings) as well as open spaces and farmlands.[80] The report states that, when asked "what defines Amherst's historic character?":

> Citizens believe that of the many historic resources in Amherst, open spaces and farmlands, dotted with historic village clusters are what define the town's historic character. Citizens are drawn to the character of Amherst, with its large central common in surrounding historic mercantile buildings. They value the vistas and open spaces stretching between the village clusters.[81]

Participants consistently voiced their fears of "uncontrolled residential development and commercial growth" as the major threats to the town's character over the next fifty years.[82] Specifically, residents

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76. *See* Hilda Greenbaum, *Local Historic District Commission Plans Update Of 2005 Preservation Plan*, AMHERST INDY (June 22, 2022), https://www.amherstindy.org/2022/06/10/local-historic-district-commission-plans-update-of-2005-preservation-plan [https://perma.cc/GCW7-6JWK].

77. For instance, the Preservation Plan tells the story of Mr. Foote and his "Foote's Folly Swamp": At some time before 1703, a Mr. Foote built a shanty in a swampy area (now built up in the community) for purposes of hunting and trapping, but later abandoned the dwelling for lack of success in his endeavors. *See* MASS. HIST. COMM'N, *supra* note 69, at 6.

78. *Id.* at 11.

79. *Id.* at Introduction.

80. *Id.* at Appendix B-2.

81. *Id.* at 24 (emphases removed).

82. TOWN OF AMHERST, MASS., MASTER PLAN at Appendix, Supporting Document D (2010) [hereinafter TOWN OF AMHERST], https://www.amherstma.gov/DocumentCenter/View/3092/Master-Plan---Online-Version?bidId= [https://perma.cc/2J5V-W6VQ].

were concerned that new residential and commercial construction would undermine the "picturesque viewsheds" and "village center" character of the community.[83] The Preservation Plan identifies space as the "fabric of Amherst's history—the village centers, buildings, landscapes, cemeteries, commons, roads and streets, parks, and other resources . . . is what tells its story to residents and visitors today."[84]

Energized by the Amherst Preservation Plan, in 2006, the Town of Amherst authorized funds to create a Master Plan.[85] The Town appointed a planning committee which worked with an external consulting firm to draft the "community's 'blueprint' for its future."[86] The process produced a Master Plan through a reputedly public and inclusive process, the "best effort" of the community's input and participation:

> This Plan—the first in nearly 40 years—was based on significant public input throughout the planning process. This input was integrated with research on the community's existing conditions and anticipated trends for the future. It was the charge of the Comprehensive Planning Committee (CPC) to understand these findings and deliberate on appropriate recommendations for the future. This Master Plan represents the community's best effort to balance competing interests and complex and intertwined issues.[87]

To accomplish such aspirations, the Master Plan was based on a public planning process dubbed *Planning Amherst Together*.[88] The process:

> encouraged a high level of public participation in the *Planning Amherst Together* master planning process in an effort to develop a community consensus on hopes and expectations for the future of Amherst. *Planning Amherst Together* was a multi-step open community-based planning process involving hundreds of Amherst citizens taking advantage of multiple opportunities to share and discuss their ideas about how to maintain and build on Amherst's best qualities. *Planning Amherst Together* considered the crucial issues confronting Amherst. It built upon past planning efforts, provided new technical information, and created multiple opportunities for public input and guidance.[89]

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83. MASS. HIST. COMM'N, *supra* note 69, at 25.
84. *Id.* at 13.
85. TOWN OF AMHERST, *supra* note 82, at 1.1.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* at 2.2, 2.5 ("The policy foundation of the Plan was shaped by an extensive community involvement and planning process.").

The appendices to the Master Plan detail ideas generated at four *Planning Amherst Together* meetings.[90] The process was used to develop priorities for the Town.[91] Responding residents gave high scores for developing village centers, preserving the rural character of the area, and affordable single-family homes, but provision of new affordable rental units was strongly disfavored.[92]

Key findings in the Master Plan revolve around an enormous sense of pride. The Master Plan is intended to save the best of Amherst: "this Plan . . . seeks to preserve and enhance the character of Amherst community life—fundamental civility, access to public resources and decision-making, cohesive neighborhoods, ongoing cultural activities, and the preservation of longstanding community-defining traditions in the face of the change and fluidity imposed by a highly transient population."[93] The Master Plan seeks to avoid development of big box stores and heavy industry as inconsistent with the community character.[94] The Master Plan also seeks to take advantage of Amherst's vibrant intellectual history: "The Town is internationally renown [sic] for its literary heritage, as it has been home to numerous artists and intellectuals including Emily Dickinson, Robert Frost, Noah Webster, Henry Ward Beecher, David Grayson, Howard and Lillian Garis, and Robert Francis, among others."[95]

The first goal of the Amherst Master Plan is to maintain Amherst's "existing community character":

> The preservation of Amherst's community character will require a variety of different approaches, including protecting and promoting adaptive reuse of historic buildings and landscapes, focusing development in already-developed areas, creating design standards that ensure new development is in accord with existing neighborhood character, protecting critical conservation lands and farmland, and promoting the local agricultural economy. The residents of Amherst have a strong interest in maintaining the character of their community for years to come. . . .[96]

Other priorities emerging from the planning process included maintenance of the existing rural community character, enhancing downtown economic vitality, enforcing environmentally sustainable land use practices, finding a balance of land preservation with development,

90. *Id.* at 2.2.
91. TOWN OF AMHERST, *supra* note 82, at 2.2.
92. *Id.* at Supporting Document D.
93. *Id.* at 2.1.
94. *Id.* at 3.12–3.13.
95. *Id.* at Supporting Document A.
96. *Id.* at 2.3.

providing adequate housing and community services for all, development of a better economic base, and building relationships between the town and the local colleges and universities.[97]

The Master Plan concludes that "Amherst is a highly desirable community in which to live, work, study, and play."[98] We should ask, desirable to whom?

C. What's Wrong with Amherst?

To begin an analysis of the racial justice principles that may be illustrated in (or absent from) a comprehensive plan, we might ask about the identities reflected in the plan's goals, values, and histories. This means we ask *who* is represented[99] in the plan. Having viewed Amherst's self-assessment, together with its celebration of people and places, inventory of assets and statement of challenges, we re-read the Master Plan—and underneath the plan—to evaluate how accurately the plan captures the history and identity of the Town. We pay particular attention to coded language that illustrates inclusive or exclusive policies and practices, practices that create or support segregation, policies that embed racialized tropes,[100] and policies that prioritize privilege over equity.[101] We read generously to understand the vision of a community, but then we read critically to identify the ways in which a planning approach creates Otherness, ignores inequities, or otherwise fails to present an accurate portrayal of a town's values.[102] This type of reading is what Bennett Capers refers to as "reading back, reading black."[103]

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97. TOWN OF AMHERST, *supra* note 82, at 2.6–2.8.

98. *Id.* at 2.1.

99. It also means asking whether the participatory process garnered the participation of a diversity of residents.

100. *See generally* CAROLYN FINNEY, BLACK FACES, WHITE SPACES 101–02 (2014) (discussing the prevalence of the view of African Americans as unsophisticated, unintelligent, and uncivilized).

101. Angela Harris notes, "[R]acism is not only a matter of individual prejudice and everyday practice; rather, race is deeply embedded in language, perceptions, and perhaps even 'reason' itself." Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CAL. L. REV. 741, 743 (1994).

102. *See* EDWARD W. SAID, CULTURE AND IMPERIALISM 66 (1993) (suggesting reading "the great canonical texts . . . with an effort to draw out, extend, give emphasis and voice to what is silent or marginally present or ideologically represented . . . in such works."). Likewise, I. Bennett Capers illustrates, by "reading back" cases that appear free of racialized thinking, the manner in which judicial opinions "participate[] in forming racial identity and promulgating a type of racial hierarchy," and insight carries particular weight when reading text that function "as an authorizing discourse on race." I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9, 13 (2006).

103. Capers, *supra* note 102, at 9 (suggesting "a reading practice . . . that attends to the way judicial opinions function as cultural productions that create and re-create race," that Bennett refers to as "reading back, reading black.").

We then turn to the manner in which the comprehensive plan portrays itself through its history. Local proclamations of identity that typically sound in togetherness, unity and collective ownership, using inclusive-sounding terms like "us" and "we," can disguise[104] exclusionary practices and the creation of Otherness.[105] Of course, local identity should be about "us."[106] The danger is that the comprehensive plan could be used, intentionally or otherwise, to further the legacy of the racist practices of segregation, redlining, and other forms of racist land use violence.[107] Here, it is not that Amherst planners misunderstood the idea of local identity, but it is clear that the Amherst planners sought evidence of community values from a narrow and particularly white point of view. Vagueness in the manner in which we view a place invites implicit bias.[108] It results in the prioritization of certain data and perspectives, to the exclusion of other values, histories, and relevant information.[109]

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104. *See* Harris, Lin & Selbin, *supra* note 19, at 2106–09 (describing manipulation of community interests to produce lateral violence among otherwise aligned community groups).

105. Yi-Fu Tuan has suggested that some claims of identity might be better understood as grasping at the remnants of community strength, rather than an assertion of pride:

> The illusion of superiority and centrality is probably necessary to the sustenance of culture. When rude encounters with reality shatter that illusion the culture itself is liable to decline. . . . City fathers and town counselors appear to recognize this fact, and validly tried to maintain a sense of centrality by proclaiming their town to be, for example, the "Bratwurst Capital of the World" (Sheboygan, Wisconsin) or even, rather desperately, "The Largest City for Its Size" (Tuanton, Massachusetts).

TUAN, *supra* note 59, at 31–32.

106. Indeed, in other places, I have touted the ability to unfurl "we" and "us" as the distinctive characteristic of local governance. This Article does not diverge from the importance of collective values or the focus on the use of terms such as "we" and "us." *See* Hirokawa, *supra* note 52, at 11050 ("This is an important observation. 'We' is important to how the environment is governed. 'We' can emerge from communities—as it pertains to people, ecology, industry or other. 'We' means something different when it comes from the federal government. There is no 'here' in the federal 'there.'"). However, this Article focuses on the performative uses of such terms. Many issues span beyond the scope of this Article, including the temporal limitations on statements of community identity. In such research, particular attention should be given to the appearance of collective identity from the critique of racial capitalism, where the commodification of racial identity "fractures identity, creates pressure for nonwhite people to engage in particular identity performances, and inflicts economic harm by placing nonwhite people at the greater mercy of the market." Leong, *supra* note 29, at 2204.

107. Capers describes "reading for the lapses in logic, the inconsistencies, the self-delusions, the self-interests, the coded language, the moments of blindness, the moments of site, and the policing, sometimes stated, more often not, of race." This is a "reading through and around, a reading of both the said and the unsaid." Capers, *supra* note 102, at 21.

108. As Rick Su states, "although it is easy to generalize about space at an abstract level, there is no substitute for close analysis of a specific community at a particular point in time." Rick Su, *Locating Keith Aoki: Space, Geography, and Local Government Law*, 45 U.C. DAVIS L. REV. 1637, 1647 (2012).

109. *Id.*

It is noteworthy that the Preservation Plan, albeit quite brief on identifying any racial history in the Town of Amherst, announces an inclusive history: "While small in size, Amherst has fostered a diverse population and an array of business enterprises, housing several socioeconomic and ethnic groups. Its history provides a snapshot of the changes that typified many towns across America."[110] In contrast, the Amherst Town Council recently (after publication of its Master Plan) recognized that Town residents are not equally situated:

> [I]n 2019 in Amherst the median family income for white families was 2.4 times greater than the median family income for Black families, 51% of the Black population in Amherst was reported as being below the poverty line, compared with 30% for the white population, and white residents in Amherst were four times more likely to own a home than Black residents . . . .[111]

That admission, by itself, causes alarm. That the participants in the planning process opposed apartments and prioritized maintaining the status quo is problematic.[112] That the circumstances were neither reported nor addressed in the plan is racism, perhaps exactly the type that "typified many towns across America."[113]

1. Who Is Represented in the Master Plan?

As a preliminary matter, the Master Plan touts the very thorough amount of research conducted in the planning process.[114] The Perspective component of the plan complements the process: "The plans and studies reviewed represent an impressive body of work. The vast majority was developed by Town committees with the support of consultants, Town staff, and/or University resources."[115] As further explored below, the failure of the planning process to engage any information on Amherst's racial history throws some shade on the results of the effort.[116]

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110. MASS. HIST. COMM'N, *supra* note 69, at 13.

111. AMHERST TOWN COUNCIL, *A Resolution Affirming the Town of Amherst's Commitment to End Structural Racism and Achieve Racial Equity for Black Residents* (Dec. 7, 2020), https://www.amherstma.gov/DocumentCenter/View/54310/2020-12-07-Resolution-Affirming-Commitment-to-End-Structural-Racism-and-Achieve-Racial-Equity-for-Black-Residents?bidId= [https://perma.cc/AZ6Q-4N6P].

112. *See* LIPSITZ, *supra* note 3, at 34 ("Whites generally endorse the spatial arrangements that provide them with unfair gains and unjust enrichment.").

113. MASS. HIST. COMM'N, *supra* note 69, at 13.

114. *See* TOWN OF AMHERST, *supra* note 82, at 1.1.

115. *Id.* at 2.1.

116. *Id.*

As Lea VanderVelde notes, "The process by which the city decides which icons it will save and how it will save them is a process in community self-searching and self-knowledge."[117] The Master Plan celebrates famous people and moments in its history.[118] As noted above, Amherst has been home to several notable authors, the list of which serves to create an entirely white Amherst history.[119] Although the Amherst Historical Society notes the first African American residents arrived as slaves, it also notes that Black families were living independently by 1820 and were purchasing homes and creating neighborhoods by 1860.[120] The Historical Society has worked diligently to identify historic properties for listing on the National Register, the vast majority of which are white places.[121] Amherst, through its Master Plan, celebrates its white history, but not the histories of its people of color.[122]

For the Amherst Preservation Plan, the Historical Commission relied on its consultants to gather information about public perceptions of the town's strengths and historic values.[123] In its outreach, "[t]he consultants determined citizens' sense of the town's 'historic character,' and what citizens thought about how the town should go about preserving it."[124] The consultants mailed over 500 surveys to a particular group of recipients: "all Town board and committee members, and Town Meeting members, as well as representatives from Amherst and Hampshire Colleges and the University of Massachusetts, and other preservation enthusiasts and interested persons."[125] The consultants received seventy-three completed questionnaires.[126] The consultants then conducted interviews with representatives from various Amherst staff, boards, and committees, as well as representatives from organizations involved in historic preservation (for example, representatives from schools, museums, and the library).[127] Although the Preservation Plan does not offer specific information

117. Lea S. VanderVelde, *Local Knowledge, Legal Knowledge, and Zoning Law*, 75 IOWA L. REV. 1057, 1075 (1990).

118. *See* TOWN OF AMHERST, *supra* note 82, at 3.8.

119. The Appendix does contain a marginal note referring to a library collection at UMASS containing W.E.B. Dubois literature. *See* TOWN OF AMHERST, *supra* note 82, at Appendix, Supporting Document A: Existing Trends and Conditions.

120. MASS. HIST. COMM'N, *supra* note 69, at 9.

121. There are two individual listings of importance for African American local history (the segregated West Cemetery and the Goodwin Memorial African Methodist Episcopal Zion Church). *Id.* at Appendix A-1.

122. *See* TOWN OF AMHERST, *supra* note 82, at 6.5.

123. *See* MASS. HIST. COMM'N, *supra* note 69, at Appendix B-1.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at Appendix B-1 to -2.

about the identities of participants,[128] as pointed out by one interested community organization: "In Amherst, the Black population is not proportionately represented in local government bodies, and representation is often absent entirely."[129] It appears that the Preservation Plan investigation was not driven by an affirmative effort to capture diverse populations in the Town.

To gather information for the Master Plan in the *Planning Amherst Together* process, Amherst convened the Comprehensive Planning Committee and retained ACP-Visioning and Planning.[130] The so-called, "At Random" survey generated 665 responses.[131] In the survey responses, participants expressed concern for a lack of representative public participation[132] and asked whether any provision will be made for "housing for the poor."[133] The most popular housing types for future development identified as single-family homes on small lots and retirement housing.[134] Of course, single family homes on small lots were identified as making housing more affordable for moderate income households.[135] Survey participants were asked about priorities for public investment: affordable housing barely beat historical preservation and a new public works building for the bottom of the list.[136] Perhaps unsurprisingly, fewer than twenty percent of the survey responses were returned by residents who rent, and the majority of responders were college graduates earning in excess of $75,000 per year.[137] Survey responses came from approximately eighty-three percent white, three percent Black, and three percent Latinx residents.[138]

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128. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, REPORT ON ANTI-BLACK RACISM AND BLACK/WHITE DISPARITIES IN THE TOWN OF AMHERST 20 (2021), https://www.amherstma.gov/DocumentCenter/View/56040/7a-20210513-DRAFT-Reparations-Report [https://perma.cc/CGN7-WUGJ].

129. *Id.*

130. TOWN OF AMHERST, *supra* note 82, at 2.2.

131. *Id.*

132. DAVID K. LOOMIS, PLANNING AMHERST TOGETHER, COMMENTS ON THE LAST CALL SURVEY 7 (2007), https://www.amherstma.gov/DocumentCenter/View/1812/CPC_LastCallResponse?bidId= [https://perma.cc/UJ72-XKWJ].

133. DAVID K. LOOMIS, PLANNING AMHERST TOGETHER, RELATED COMMENTS FROM THE AT-RANDOM PARTICIPANTS 2 (2007), https://www.amherstma.gov/DocumentCenter/View/1651/CPC_SurveyOtherComments?bidId= [https://perma.cc/7UPN-449X].

134. DAVID K. LOOMIS, PLANNING AMHERST TOGETHER: A COMMUNITY SURVEY 21 (Aug. 14, 2007), https://www.amherstma.gov/DocumentCenter/View/1647/CPC_PATSurveyResultsPresentation?bidId= [https://perma.cc/4CNL-XXDM].

135. *See* TOWN OF AMHERST, *supra* note 82, at 4.1 (describing the justification for including "moderately priced" housing together with "affordable housing," even though "moderately priced" housing would not be affordable for low-income residents).

136. LOOMIS, *supra* note 134.

137. *Id.*

138. *Id.*

In the bulk of the resulting Master Plan, a great deal of attention was given to traditional land use policies that keep dense and affordable housing from intruding into suburban areas, maintaining agricultural lands and the rural areas of the town,[139] and the further development of functional downtown areas.[140] Notably, although the Amherst population in poverty circumstances exceeds thirty percent of its residents, the Master Plan notes that affordable housing makes up only ten percent of the town's housing stock,[141] while property values in Amherst continue to rise.[142] For the many folks whose voices were *not* heard from or accounted for in the *Planning Amherst Together* sessions, Amherst is unaffordable and growing in the wrong direction.[143] Indeed, the Master Plan may be designed to avoid providing affordable housing: in a neat trick, the Master Plan groups "moderately priced" housing in its policies for affordable housing, which has the expected result of allowing development to comply with the Master Plan by providing such moderately priced housing as a proxy for affordable housing.[144] In particular, the effect of such policies is punctuated by the continuing NIMBYism of Amherst's more affluent residents: "Since people of color are disproportionately in need of affordable housing due to historic economic exclusion, town residents' opposition to affordable housing serves as a proxy for racial discrimination and effectively reduces the number of African Americans and other racial minorities who can live in Amherst."[145] In the meantime, policies in the Master Plan that avoid development of big box stores and heavy industry[146] present an obstacle to living wage jobs and prevent Amherst from reversing the effect of Amherst's status as a "food desert": "Local supermarkets are outside population centers, and the few year-round sources of fresh food are within walking distance for few Amherst residents."[147]

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139. *See* TOWN OF AMHERST, *supra* note 82, at 3.9–3.10.

140. *Id.* at 3.7.

141. *Id.* at 4.1–4.2. *See also id.* at Appendix, Supporting Document A: Existing Trends and Conditions at 7.2 ("Eighteen percent of homeowner households and 53 percent of renting households were financially stressed by housing costs."); Data USA, *Amherst Center, MA*, https://datausa.io/profile/geo/amherst-center-ma [https://perma.cc/86GQ-R5VW] (last visited Jan. 27, 2023).

142. TOWN OF AMHERST, *supra* note 82, at 3.2.

143. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 26 (suggesting, based on anecdotal evidence, that there is currently a Black exodus from the Town of Amherst).

144. *See, e.g.*, TOWN OF AMHERST, *supra* note 82, at Strategies H.2.A–B ("Objective H.2—Preserve and expand the number of affordable and moderately priced rental units and housing stock." This objective can be met without building new affordable housing at all. For instance, the Master Plan discusses increasing "affordable and/or moderately priced units," and suggests incentivizing "affordable and moderately priced units.").

145. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 11.

146. TOWN OF AMHERST, *supra* note 82, at 3.12–3.13.

147. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 22.

This all seems intentional; as noted above, Amherst's first Master Plan specifically called for remediation of the "older rundown areas within the town center," which smacks of the legacy of "blight removal" and gentrification of low-income neighborhoods and diverse communities.[148] Here, we recognize with James Loewen that the problem is not the blight that a community seeks to avoid:

> The ghetto—with all its pathologies—isn't the problem; the elite sundown suburb—seemingly devoid of social difficulties—is the problem. As soon as we realize that the problem in America is white supremacy, rather than black existence or black inferiority, then it becomes clear that sundown towns and suburbs are an intensification of the problem, not a solution to it.[149]

The natural and cultural resources element of the plan likewise fails to reflect inclusivity. The Master Plan suggests that the Town should "[p]reserve the town's historic fabric and agrarian and academic heritage, and protect the quality of our natural resources, to ensure a vibrant, diverse, sustainable community."[150] Nature and culture provide the basis for the Amherst community's pride and identity: "[t]he town's character is defined by a rural landscape with high aesthetic value that accommodates natural, wildlife, and recreational areas as well as agricultural activities."[151] Furthermore, Amherst is "home to a rich cultural environment, with three institutions of higher learning, as well as numerous historically significant structures."[152] To protect this community character, the Master Plan focuses on historic structures, conservation areas, and the cultural benefits of being associated with institutions of higher learning, which typically contribute artistic opportunities such as museums

148. SELECT COMMITTEE ON GOALS FOR AMHERST, *supra* note 73, at 11.

149. LOEWEN, *supra* note 19, at 17. *See also* PARK & PELLOW, *supra* note 2, at 179 (quoting an interview with Jessica Dove) ("[I]t's kind of curious to me that you're focused on Latinos when it's really Anglos who are the problem—they're the ones who have created this discourse of blame and should be studied. You should focus on white folks because it's about them, because they're generating the discourse" (emphasis removed)); *see also* LIPSITZ, *supra* note 3, at 40 ("When the white self-congratulatory racist complains that blacks are uncouth, unlettered; that our areas are run down, not maintained; that we dress with loud tastelessness (a thing they now also say about their own children), he forgets that he governs. He forgets that he built the schools that are inadequate, that he has abused his responsibility to use taxes paid by blacks to improve their living conditions, that he manufactured the loud pants and pointed shoes that destroy and deformed the feet. If we are not enough like him to suit his tastes, it's because he planned it that way.").

150. TOWN OF AMHERST, *supra* note 82, at 6.1.

151. *Id.*

152. *Id.*

and performance venues.[153] Despite the quaint and charming narrative presented in the Town's vision, we read into this vision the express valuation of rural values that have entirely excluded people of color and reliance on educational institutions that were built upon wealth generated from slavery.[154]

Likewise, other championed values in the Master Plan illustrate a narrow view of Amherst's residents. Amherst's stated Open Space and Recreation Goal identifies a key element of the community character: "[p]rotect and enhance our rural character and agricultural viability, and provide and develop multi-use and multi-generational recreational opportunities that bring townspeople together."[155] Protecting and enhancing "rural character" in the context of a white, rural history should be read to suggest the preservation of "white character," meaning white land use practices, supported by white educational institutions, and famous white literary figures.[156]

For instance, in the Town's more than eighty miles of maintained trails and other protected open space, Amherst offers "a great variety of natural recreational activities including fishing, hunting, hiking, skiing, boating, and cycling."[157] This suggests each person can seek (and find) a place where they feel very comfortable and very free; a place that is safe to explore. Yet, this policy appeals in a personal way only to those who value a particular kind of outdoor recreation; not everyone explores the outdoors freely in this way. Consider the satirical look at this difference from the blog Stuff White People Like: "If you find yourself trapped in the middle of the woods without electricity, running water, or a car, you would likely describe that situation as a 'nightmare' or 'a worse [sic] case scenario like after plane crash or something.' White people refer to it as 'camping.'"[158] Many people of color may not feel comfortable in the woods, especially in areas that have historically been dominated by white, rural communities.[159] People of color have been shot while

153. *See id.* at 6.2.

154. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 24.

155. TOWN OF AMHERST, *supra* note 82, at 2.7. Although over 27 percent of the land area in Amherst has been permanently protected from development, the Master plan impresses upon the reader the need to convince residents that the Town offers substandard open space opportunities for its residents. *See id.* at 7.1, 7.6–7.7.

156. *See id.* at 2.7–2.8.

157. *Id.* at 7.2.

158. *Blog Post #128 Camping*, STUFF WHITE PEOPLE LIKE (Aug. 14, 2009), https://stuffwhitepeoplelike.com/2009/08/14/128-camping [https://perma.cc/PSJ6-6D5E].

159. *See* Cassandra Johnson, J.M. Bowker & Ken Cordell, *Outdoor Recreation Constraints: An Examination of Race, Gender, and Rural Dwelling*, 17 S. RURAL SOCIO. 111, 127–28 (2001) ("Personal safety among nonparticipants was the only constraint in this study for which race was statistically significant and positive, meaning that black nonparticipants were more likely than their white counterparts to perceive safety as a

jogging[160] and threatened while birdwatching.[161] People self-emancipating from the horrors of slavery ran through and hid in the woods from violent pursuers.[162] There is a history that must be acknowledged, especially because that history tells so much about the present. Uplifting traditionally white, rural recreational activities and equating them with the town's "moral character" commits the dual sin of devaluing (and making immoral) activities preferred by people of color, while forcing people of color to navigate white spaces at their peril, a phenomenon Elija Anderson summarizes: "[w]hile white people usually avoid black space, black people are required to navigate the white space as a condition of their existence."[163]

Although communities typically announce "who we are" through a comprehensive plan, it is essential to read through and underneath the comprehensive plan. We identify race-specific language, as well as non-race-specific and race-neutral terms. This means we ask who is not being represented, based on economic, recreational, employment, educational, and housing strategies. It means we pay attention to the traditions that are celebrated, while keeping an eye on what people, moments, and buildings are not celebrated. It means we account for the histories that have been omitted or ignored and view a community's character also in terms of racial diversity as well as violence.

Keith Aoki asks, "[W]hat might the ways that the spaces we live and recreate in, and traverse daily from the home to the workplace, tell us about our sense of self and our place in social hierarchies of nation, class, race and gender?"[164] What we find in Amherst's Master Plan is the celebration of white Amherst moments, people, and accomplishments. We find a white place. Uncovering such a disposition is critical to understanding a place.

2. Forgotten Racial Histories

A decade after the Amherst Master Plan was published, a group called Reparations for Amherst, Massachusetts, released a report entitled, "Report on Anti-Black Racism and Black/White Disparities

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factor keeping them from participating in their favorite outdoor recreation activity. This appears to be an important finding.").

160. *See* Mitchell S. Jackson, *Twelve Minutes and a Life: Ahmaud Arbery went out for a jog and was gunned down in the street. How running fails Black America*, RUNNER'S WORLD (June 18, 2020), https://www.runnersworld.com/runners-stories/a32883923/ahmaud-arbery-death-running-and-racism/ [https://perma.cc/QXC3-HE9V].

161. *See* Josephine Harvey, *White Women Calls Cops on Black Man Over Dog Leash Dispute in Viral Footage*, HUFFINGTON POST (May 26, 2020), https://www.huffpost.com/entry/black-man-white-woman-central-park-dog-leash-incident_n_5ecc6da0c5b6d6fc7b7f3118 [https://perma.cc/7JN3-N7XK].

162. Johnson, Bowker & Cordell, *supra* note 159, at 130.

163. Anderson, *supra* note 1, at 11.

164. Aoki, *supra* note 33, at 919.

in the Town of Amherst" ("Reparations Report").[165] Underlying the report is the most insightful element of a sense of place inquiry: whose history is reflected in local statements of identity?[166] Because the histories we are taught are dominated by white American moments, accomplishments, and values, it is not surprising to find that the omitted histories, people, and places are overwhelmingly those of people of color. In this vein, and for purposes of this Article, it is important to note that the Master Plan emphasizes the importance of building "public awareness about Town history," which includes the town's community forests and historic buildings.[167] Little else is said about the town's selective social history in the Master Plan, suggesting the marginalization of omitted histories.[168] Selective historical narratives used to symbolize a collective sense of place may intentionally produce the Othering of marginalized people by describing them as threats to the community. Such selective histories engage in "coding for social others—poor people, the homeless, black people."[169]

The Reparations Report is intended to provide a more authentic picture of the historical and present-day circumstances in Amherst.[170] The authors report on anti-Black racism.[171] The authors begin by announcing the conclusion of the study:

> The information provided in this report describes a present-day and historical Amherst that is not the progressive, equitable place that many white residents imagine. Instead, research in key areas—housing, education, health, income and employment, transportation, and policing—reveals systemic racism and classism that marginalizes Black residents and inflicts harm.[172]

As noted above, the Amherst Preservation Plan employs language that suggests Amherst is an intentionally diverse town. The Preservation Plan declared that "Amherst has fostered a diverse population and an array of business enterprises, housing several socioeconomic

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165. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 1.

166. *See id.* at 24 ("The very first goal listed in Amherst's Master Plan is to 'Maintain Amherst's existing community character.' . . . But to which character does this refer? Black residents have been historically marginalized in Amherst and in the town's economy, and such marginalization continues today.").

167. TOWN OF AMHERST, *supra* note 82, at 6.5.

168. *See id.* at 6.6–6.8. However, the Master Plan does look to the future cultural opportunities, and specifically focuses on creating attractive streetscapes and public art. Nevertheless, the absence of an accurate racial history suggests that Amherst is simply ignoring its past; *see* LIPSITZ, *supra* note 3, at 251 ("The white spatial imaginary encourages whites to believe that hiding social problems is the same in solving them.").

169. TIM CRESSWELL, PLACE: AN INTRODUCTION 138 (2015).

170. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 3.

171. *Id.* at 7.

172. *Id.* at 3.

and ethnic groups."[173] In stark contrast, the Reparations Report provides examples of local white perspectives on the diversity of the town, describing Amherst's Black community as "invisible."[174]

> There was a small number of black families here in town, and I believe that most of them came as servants in some category or another. And we didn't—I think we were like everybody else. We didn't dislike Negroes, but we didn't associate with them. I'm sure these people were just about 100 percent ignored, although this brings to mind there were on the football team at least two blacks and maybe three. I don't think we disliked them, we kind of admired them, but after they got off the football field, I don't believe we had one iota to do with them.[175]

Of course, the term "invisible" fails to capture the Black Amherst residents described, unless by "invisible" the speaker meant that they "did not belong here" and were treated as such. Black folks in Amherst "came as servants"—they were not *from* Amherst. Moreover, the reference to Black folks who were "admired" while they "were on the football field" suggests the white speaker was willing to temporarily lift the White Space restrictions for Black people willing to "dance";[176] as Anderson notes, in the White Space, "in effect, they perform to be accepted."[177] The speaker continued:

> They were treated with, I think stiff kindness, but they stayed in their place. I'm afraid in Amherst there was a bit of a barway there. It wasn't violence really, it was just a bit of indifference to hobnob. Just as we didn't hobnob with the Slavic people. They never worked in stores except, perhaps, as janitors. They rode the trolley, of course, but I don't know that we would sit with them, though we should have for we went to school with them.[178]

This story of avoidance, "stiff kindness" that "wasn't violence really," appears to be a special category of treatment for those Black folks who "stay in their place," perhaps by working as a servant or janitor.[179]

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173. MASS. HIST. COMM'N, *supra* note 69, at 13. This may have been a typographical error: The Merriam-Webster Dictionary defines the term "foster" to mean, "to give parental care to: nurture; to promote the growth or development of." *Foster*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/fostered#:~:text=Definition%20of%20foster&text=1%20%3A%20to%20give%20parental%20care,are%20considering%20fostering%20a%20child [https://perma.cc/TD2C-U627] (last visited Jan. 27, 2023).

174. Anderson, *supra* note 1, at 11.

175. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 7.

176. Anderson, *supra* note 1, at 13.

177. *Id.*

178. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 7.

179. Anderson, *supra* note 1, at 13 ("[T]he most easily tolerated black person in the

Such express and overt anti-Black attitudes also prevailed: one white resident recalls, "[w]e weren't scared of coloreds. They were just different, you know? We never had any trouble with the colored people, down Northampton Road and Snell Street. That used to be called N----- Heaven [slur omitted]."[180]

The Reparations Report details the growth of the Black residential population in Amherst from the mid-18th century to the present and identifies practices and policies that led to the subjugation and dehumanization of the town's Black residents.[181] Black community members could only find labor intensive, low-paying jobs and were prevented from purchasing homes and land—land that was advertised as being for "men of high character and principles."[182] The Reparations Report details the use of racial covenants and the emergence of slurs that white people used to describe Black neighborhoods.[183] The Reparations Report points out the problematic circumstance of housing in Amherst, referred to above, in which fifty-one percent of the Black population in Amherst lives below the poverty line, 1.8 percent of owner-occupied housing is occupied by Black people (compared to white ownership of eighty-four percent of owner-occupied housing), where the median home price is exceptionally high for the region in the United States.[184] The Reparations Report cites housing reports that identify "an unmet need for a total of 4,730 extremely low- to moderate-income housing units."[185] The Reparations Report tells stories of local affluent residents challenging the development of affordable housing in town, signaling the town's distaste for low-income and rent-burdened people.[186]

In what remains of the report, the authors identify racial tensions that produced additional inequitable impacts, including struggle and fear in education,[187] public health,[188] public

white space is often one who is 'in his place'—that is, one who is working as a janitor or a service person or one who has been vouched for by white people in good standing.").

180. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 7.

181. *See id.* at 6–7.

182. *Id.* at 8.

183. *See id.* at 7 (detailing the nickname of "beehive" to describe a tenement house that housed poor families and African Americans as well as newspaper reports referring to the residence of the beehive as the "swarm.").

184. *See id.* at 10.

185. *Id.*

186. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 3.

187. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 13 (detailing inequities in educational opportunities, including disciplinary actions against Black students, that led the NAACP to file suit against the local school system over a long list of unfair and unequal treatment).

188. *See, e.g.*, *id.* at 19–20 (stating that "Within Hampshire County and by implication

transportation,[189] and public safety[190] programs in the town. In each of these categories, the Reparations Report indicates that serious inequities pervade the public and private areas of the town, both through the town's history and the priorities the town has identified for the future.[191] For instance, pervasive race-based discriminatory practices have caused severe psychological trauma: "The cumulative effects of surviving everyday under vulnerable conditions, with messages on multiple levels that your needs are not important or respected, is the harmful reality for many Black residents."[192] It has been noted "'how hard it was for an unskilled black person to secure a job above subsistence level' in Amherst," a problem that continues in the present, at least in part because economic opportunities for Black residents in Amherst were not prioritized in the Master Plan.[193] The Reparations Report identifies the harassment of school teachers of color,[194] instances of violence and harassment toward college students of color,[195] disparate health care choices[196] and real estate opportunities.[197] The Reparations Report tells a more critical story of the town than that reflected in the town's Master Plan: it illustrates the manner in which "African-American and other communities of color are often victims of land-use decision making that mirrors the power arrangements of the dominant society."[198] The Reparations Report concludes that the current circumstances of people of color in Amherst are the result of a "Racist Amherst."[199]

3. Where to Go from Here?

The narrative in Amherst's Master Plan tells a story of accomplishment. However, although Amherst might be a nice place to live

in Amherst, Black residents suffer higher rates of cardiovascular disease, asthma, and diabetes. . . . Mental health hospital rates in Hampshire County are 1.7 times higher for Black residents than white residents.").

189. *E.g.*, *id.* at 27 (noting that the transit system serving college students is superior to full-year residents).

190. *See, e.g.*, *id.* at 31 (noting significant inequities in policing activities, including that "Black drivers stopped by police were 1.45 times more likely to be searched, and 1.5 times more likely to be arrested, than white drivers.").

191. *See id.* at 3.

192. *Id.* at 19.

193. REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 24.

194. *E.g.*, *id.* at 14.

195. *See, e.g.*, *id.* at 17.

196. *See, e.g.*, *id.* at 20.

197. *See id.* at 9.

198. Robert D. Bullard, *Building Just, Safe, and Healthy Communities*, 12 TUL. ENV'T L.J. 373, 394 (1999).

199. *See* REPARATIONS FOR AMHERST, MASSACHUSETTS, *supra* note 128, at 7.

for its white residents, an interrogation of the Master Plan reveals that the benefits of this place are not enjoyed by people of color.[200] Taking ownership of this history provides a path to reconciliation. Indeed, after hearing a presentation by Reparations for Amherst on the racial circumstances of the Town, the Amherst Town Council passed a resolution apologizing for the forgotten history of racial violence and committing to reversing patterns of overt and systemic racism.[201]

The future of Amherst is uncertain. The project of revising the Town's Master Plan to reflect anti-racist community engagement and representation will be a difficult one. Moreover, an embedded sense of place can be difficult to dislodge. As Edward Relph notes:

> Once it has been developed, whether by an individual, a group, or the mass, an identity of a place will be maintained so long as it allows acceptable social interaction and has plausibility—that is, so long as it can be legitimated within society. . . . Where an identity has developed through experience in communion or in community it will endure for so long as the symbols and significances of that place retain their meanings.[202]

Yet it is the process of interrogating a community's vision that challenges the symbols of a place and undermines the passive persistence of racialized tropes in a community's identity.[203] As noted by the Durham Racial Equity Task Force, "If we want to have a tale of *one* city, a [city] for *all of us*, then it is high time to seriously address

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200. *See id.* at 24.

201. AMHERST TOWN COUNCIL, A RESOLUTION AFFIRMING THE TOWN OF AMHERST'S COMMITMENT TO END STRUCTURAL RACISM AND ACHIEVE RACIAL EQUITY FOR BLACK RESIDENTS 1, 1–3 (Dec. 7, 2020), https://www.amherstma.gov/DocumentCenter/View/54310/2020-12-07-Resolution-Affirming-Commitment-to-End-Structural-Racism-and-Achieve-Racial-Equity-for-Black-Residents?bidId= [https://perma.cc/2AM9-3K6P] (stating the Resolution further admits that slave ownership and support for the slave trade was prevalent among prominent Amherst families and spiritual leaders; that, in 1762, the first free Black people in Amherst were ordered to leave town, that the first Black faculty member at University of Massachusetts at Amherst was unable to secure housing in town in 1948; that properties in Amherst were encumbered with racially restrictive covenants; and, among other things, that the Amherst educational system failed to provide students with teachers who reflected the students' racial and ethnic makeup. The Resolution acknowledges the Town's history of racially motivated practices and policies and the trauma caused, commits to "eradicating the effects of systemically racist practices of Town government," and declares that it is "engaging in a path of remedy" for past practices of racism) (citation omitted).

202. RELPH, *supra* note 58, at 60 (citing PETER L. BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE 92–108 (1967)).

203. *See id.* at 71 (explaining that the identity of place can be made and manipulated through "attempts to create places that reflect a clear and complete conception of man as well as a sensitivity to the significance of place in everyday life.").

problems of racial inequity."[204] And this can be done through an examination of race, space, and place.

II. RACE, SPACE, AND PLACE

Race, space, and place provide a framework for understanding land use as a tool for a racialized social agenda. It allows us to dissect community identity to see underneath whiteness and privilege, to see gaps in dominant historical narratives, and to find the cabinets into which information about a racialized community has been filed away and forgotten. Here, these concepts are analyzed in turn, but on a cumulative basis to illustrate how they work together in this critical analysis.

A. Race

City Council hearings are white spaces where racism typically goes unchecked.[205] The following is my account of a recent hearing in Troy, New York:

> A few weeks ago, Sachem Hawkstorm, the hereditary sachem (chief) of the Schaghticoke People, testified to the City Council about the importance of his ancestral lands that were being considered for development. Several studies have confirmed the site contains a 5,000-year-old history and heritage of the people who lived here before European colonial occupation.
>
> He asked the council to recognize the significance of the proposed transformation of the site, a transformation intended to be so complete that it could only be considered an erasure of Native American heritage and history. For many people in the audience, it was an honor to learn about this history and witness his sharing.
>
> However, those in attendance watched as members of the City Council toyed with their cellphones during Sachem Hawkstorm's testimony. It seems unlikely the council could hear or pay attention to his pleas over whatever was so important on their phones. Then, at a public hearing last week, a member of

204. DURHAM RACIAL EQUITY TASK FORCE, REPORT OF THE DURHAM RACIAL EQUITY TASK FORCE: AN URGENT AND LOVING CALL TO ACTION (2020), https://durhamnc.gov/DocumentCenter/View/32853/FINAL-REPORT-Durham-Racial-Equity-Task-Force-72220 [https://perma.cc/BGZ5-HVE4] (emphases added).

205. *See* Keith H. Hirokawa, *Commentary: City of Troy has to want to fix its problem with institutional racism*, TIMES UNION (June 30, 2022), https://www.timesunion.com/opinion/article/Commentary-City-of-Troy-has-to-want-to-fix-its-17275471.php [https://perma.cc/B4AQ-BRHH].

the council announced that if any Native Americans had truly been interested in the property, they would have tried to buy it.

Troy has a racism problem.

The council member's statement is not a new kind of racism. For decades we have heard that environmental and racial justice concerns—place-based inequities resulting from, among other things, the concentration of environmental hazards in low-income, racialized and otherwise disadvantaged neighborhoods—are not sincere concerns because if the residents wanted to live free of pollution in their playgrounds, homes, schools, and places of business, they would simply relocate to another neighborhood. This dismissive response ignores the reality that folks who find themselves disadvantaged as the result of historic oppression, prevented from acquiring intergenerational wealth, excluded from both public and private spaces, and victimized by patterns of racial injustice, dispossession, and displacement, are not likely to have the financial capacity to relocate at will. In many, if not most, cases, such persons may also lack the financial resources to purchase property, no matter how special or sacred the land might be.

Troy has a racism problem.

Last week, the Troy City Council doubled down. During an otherwise respectful exchange about the pronunciation of my name, Hirokawa, one of the council members blurted out, with a smirk on his face, "Think Kawasaki."

Assuming that many microaggressions are explainable as ignorance, it might have been enough to simply name it. However, what followed was a bit more complicated: After I called out the act as racist, he responded, "Only to you."

Troy has a racism problem.

The irritation on the council member's face showed he was insulted at being called out. The injury, to him, was in being called a racist. To him, this was especially unjust, given that he was oblivious to the harm caused. It didn't offend him, so it wasn't racist.

Troy has a racism problem.

But that is not all. The confrontation that ensued was intercepted and shut down. The president of the City Council silenced me (not the council member). My words were not appropriate. Calling out racism is inappropriate. Making racist remarks is appropriate.

Troy definitely has a racism problem.

Addressing racism in governmental operations means identifying practices and institutional norms that create categories of Others and devalue the presence and contribution of historically disadvantaged people and communities. It means being humbled by the power that comes with privilege and recognizing that creating spaces that are comfortable for those with privilege

> often results in creating white spaces, or spaces where Others feel they do not belong. It means recognizing that those with privilege are not competent to judge the severity of their own racist behaviors. It means that we have to raise issues about the use and misuse of racialized social constructs, and it means that city governments (most of which are overwhelmingly white) must learn to listen.
>
> Troy's racism problem is not inevitable. But Troy has to want to fix it.[206]

Race is often discussed as a social construct.[207] Social constructions underlie and filter the kinds of information that can become a form of knowledge.[208] They are the assumptions, the stereotypes, and the epitomes that we use to understand the world around us.[209] We regularly communicate and think under the confines of social constructs, yet such constructs become real by the damage they do.[210] Take, for instance, signs intended to communicate a race-exclusive space, such as those in the gateways to "Sundown Towns" or ones that read, "Whites Only."[211] Such a sign constitutes an overt, expressive statement that illustrates the ways that race can be the basis for exclusion: using such words constitutes the very claim to power. As an expression of power, the act of classification communicates in constructivist terms who is valuable, who is entitled, and who is dangerous.[212] One of the most illustrative acts of aggression that can be exercised by a particular group, is the original act of racial violence.[213] Merely naming a racial classification *as a relevant distinction* can be an act of racial violence.[214]

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206. *Id.*

207. Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 27 (1994).

208. *See* PETER BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE 16 (1966).

209. Creating categories to process information allows humans to digest enormous amounts of information. *See* Jody Armour, *Stereotypes and Prejudice: Helping Legal Decisionmakers Break the Prejudice Habit*, 83 CAL. L. REV. 733, 733–34 (1995) (defining stereotypes "as well-learned internal associations about social groups that are governed by automatic cognitive processes."); *see also* Donald N. Bersoff, *Judicial Deference to Nonlegal Decisionmakers: Imposing Simplistic Solutions on Problems of Cognitive Complexity in Mental Disability Law*, 46 S.M.U. L. REV. 329, 338 (1992) ("Information is processed through beliefs, theories, propositions, and schemas. These knowledge structures enable us to label and categorize objects rapidly and, in most cases, correctly.").

210. *See* López, *supra* note 207, at 3.

211. Wiecek, *supra* note 20, at 12–13, 17–18.

212. *See* VICKY OSTERWEIL, IN DEFENSE OF LOOTING: A RIOTOUS HISTORY OF UNCIVIL ACTION 78 (2020) (discussing the depiction of Black people as "criminals").

213. *See, e.g.*, *id.* at 6.

214. *See* Jason A. Gillmer, *Base Wretches and Black Wenches: A Story of Sex and Race, Violence and Compassion, During Slavery Times*, 59 ALA. L. REV. 1501, 1539 (2008)

Acknowledging race as a social construct means realizing that how these constructs are *used* is relevant in every discussion about discrimination. Francisco Valdez explains that a constructivist approach facilitates a critical inquiry:

> Generally speaking, social constructionism seeks to show that the human condition, though perhaps depicted and defended as simply resulting from natural circumstances, actually is shaped by society and its ruling forces. Nothing about the human condition, therefore, is necessarily natural, normal, moral, or justifiable simply because it presently exists. Social constructionism thus invites, if not necessitates, critical and comparative discussions of current arrangements that test any *status quo* against potential alternative arrangements.[215]

Hence, acknowledging social constructs allows us to grasp that racism is not natural. It allows us to recognize that, as unchecked assumptions, social constructs that portray Others in a negative light are dangerous. Consider the murder of Ahmaud Arbery. When Mr. Arbery was running through a suburban neighborhood in Glynn County, Georgia, his murderers looked at him and thought, this man is Black and running, so he must have stolen something.[216] Mr. Arbery's murderers were trained to see Mr. Arbery, a Black man, as a thief, an intruder, as someone to fear.[217]

Acknowledging social constructs is especially relevant to those discussions that concern less overt exercises of racial power. There is "increasing evidence [implicit biases] may 'be responsible for many

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(discussing racial classifications, including those of white and Black, for purposes of access to social institutions); *see also* Kyle P. White, *Indigenous science (fiction) for the Anthropocene: Ancestral dystopias and fantasies of climate change crises*, 1 ENVIRONMENT AND PLANNING E: NATURE AND SPACE 224, 224 (2018) (explaining that, in much of the literature on climate change and the Anthropocene, Indigenous peoples are identified in historical categories that have been constructed by non-Indigenous persons. Such categories prop up non-Indigenous narratives of foreigners as saviors of Indigenous communities from colonial and climate crises).

215. Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CALIF. L. REV. 1, 114–15 (1995) (emphasis in original).

216. Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, N.Y. TIMES 1, 1–2, 4 (2022), https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html [https://perma.cc/ST6Q-87ZM]; *e.g.*, Kurt Streeter, *Running While Black: Our Readers Respond*, N.Y. TIMES (2020), https://www.nytimes.com/2020/05/18/sports/running-while-black-ahmaud-arbery.html [https://perma.cc/U9JA-K6R6] (explaining the similar experiences many African American runners face).

217. Fausset, *supra* note 216, at 2–4, 6–7; *see* Anderson, *supra* note 1, at 13 ("whites and others often stigmatize anonymous black persons by associating them with the putative danger, crime, and poverty of the iconic ghetto, typically leaving blacks with much to prove before being able to establish trusting relationships with them.").

of the continuing racial disparities in society.'"[218] Linda Hamilton Krieger suggests that such constructs operate in sinister ways:

> [O]nce in place, stereotypes bias intergroup judgment and decisionmaking. According to this view, stereotypes operate as "person prototypes" or "social schemas." As such, they function as implicit theories, biasing in predictable ways the perception, interpretation, encoding, retention, and recall of information about other people.[219]

Furthermore, "[e]mpirical evidence indicates that people's access to their own cognitive processes is in fact poor."[220] As such, "cognitive bias may well be both unintentional and unconscious."[221]

Implicit biases typically emerge apart from the actor's awareness[222] and can even produce beliefs that are contrary to an actor's

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218. Douglas Rice, Jesse H. Rhodes & Tatishe Nteta, *Racial bias in legal language*, RSCH. AND POL., 1, 1 (2019) (citing Anthony Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 1197 (2006)). *See* Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1187 (1995) ("that cognitive structures and processes involved in categorization and information processing can in and of themselves result in stereotyping and other forms of biased intergroup judgment previously attributed to motivational processes."); *see also* Park, *supra* note 19, at 2018 (explaining that framing subordinated persons "reinforces the erasure of their humanity and capacities; this is the legacy of . . . harmful stereotyping.").

219. Krieger, *supra* note 218, at 1188.

220. *Id.*

221. *Id.* Likewise, Charles Lawrence states:

> Traditional notions of intent do not reflect the fact that decisions about racial matters are influenced in large part by factors that can be characterized as neither intentional—in the sense that certain outcomes are self-consciously sought—nor unintentional—in the sense that the outcomes are random, fortuitous, and uninfluenced by the decisionmaker's beliefs, desires, and wishes.

Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 322 (1987). Implicit racial bias pervades colorblind laws: studies of criminal sentencing, the use of force in law enforcement, and decisionmaking in the courts have illustrated the vulnerability of public officials to subconscious racial bias. *See* Rice, Rhodes & Nteta, *supra* note 218, at 1; *see also* Crystal S. Yang, *Free at Last? Judicial Discretion and Racial Disparities in Federal Sentencing*, 44 J. LEGAL STUD. 75, 77 (2015); *see* Jeffrey J. Rachlinski, Sheri Lynn Johnson, Andrew J. Wistrich & Chris Guthrie, *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1195 (2009). Similarly, unchecked assumptions about race have produced evidence that are referenced in judicial opinions like "African-American names are more frequently associated with unpleasant or negative concepts, whereas European-American names are more frequently associated with pleasant or positive concepts." Rice, Rhodes & Nteta, *supra* note 218, at 1; *see* MARTHA CHAMALLAS & JENNIFER B. WRIGGINS, THE MEASURE OF INJURY: RACE, GENDER, AND TORT LAW 1 (2010) (discussing the ways that stereotyping influenced lead paint litigation).

222. *See* Jennifer L. Eberhardt, Phillip Atiba Goff, Valerie J. Purdie & Paul G. Davies, *Seeing Black: Race, Crime, and Visual Processing*, 87 J. PERSONALITY & SOC. PSYCH. 876, 881 (2004) (stating implicit biases evade awareness); *see also* Efrén O. Pérez, *Implicit*

expressed intention.[223] Yet the exercise of such biases, particularly to exercise the privileges of whiteness, keeps those in dominant positions from grasping that such dominance produces victims.[224]

As the overt use of racial constructs has become more covert, the focus has turned to implicit bias.[225] Efforts to "interrogate whiteness" and identify the manner in which unseen privilege determines social structures has illustrated the ways that whiteness surfaces as the assertion of privilege and feeling of entitlement among white persons.[226] Whiteness is being free from the categories that determine the value of others, while being free to impose those categories on others.[227] Whiteness is pervasive, so much so that it is typically invisible,[228] even to the point of influencing what *constitutes* violence and trauma: as bell hooks notes, "[t]here is no psychological practice that specifically focuses on recovery from racist victimization."[229] Whiteness does not allow it.

Attitudes: Meaning, Measurement, and Synergy with Political Science, 1 POL., GRPS. & IDENTITIES 275, 277 (2013).

223. *See* Rice, Rhodes & Nteta, *supra* note 218, at 1 ("Implicit racial biases are affective evaluations of racial groups that are pre-cognitive, involuntary, and resistant to social desirability pressures."); *see also* Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 951 (2006) ("Implicit biases are especially intriguing, and also especially problematic, because they can produce behavior that diverges from a person's avowed or endorsed beliefs or principles.").

224. *See* LANI GUINIER & GERALD TORRES, THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY 65 (2003) ("colorblindness disables the individual from understanding more fully appreciating the structural nature of inequality" that "guards oligarchies from moral reproach and promotes a popular disengagement from politics."); *see also* GEORGE LIPSITZ, THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS vii (2006) (discussing the ways that white people and politics guard whiteness "to remain true to an identity that provides them with resources, power, and opportunity.").

225. *See* Barbara J. Flagg, *"Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 958 (1993).

226. BELL HOOKS, YEARNING: RACE, GENDER, AND CULTURAL POLITICS 54 (1990).

227. *See* Derrick Bell, *Xerces and the Affirmative Action Mystique*, 57 GEO. WASH. L. REV. 1595, 1608 (1989) (portraying the pervasiveness of whiteness as an indicator that whiteness is a "right"); *see also* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1745–46 (1993) (discussing whiteness as a property interest).

228. *See* Flagg, *supra* note 225, at 969 ("[I]n this society, the white person has an everyday option not to think of herself in racial terms at all. In fact, whites appear to pursue that option so habitually that it may be a defining characteristic of whiteness."); *see also* Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1666 (1995) ("Among other whites, white people generally perceive that no race at all is present. 'Race' itself comes to mean 'Other' or 'Black.' In the context of housing and urban development, terms like 'racially identifiable' are generally used to refer to locations that are racially identifiably black. Similarly, 'impacted' or 'racially impacted' are terms that refer to black neighborhoods—not white neighborhoods. There is no 'impact' to whiteness because it defines the norm. Dominant culture remains transparent to those inside it.").

229. HOOKS, *supra* note 22, at 71.

The focus on implicit bias has cracked open the counterproductive legacy of civil rights and equal protection jurisprudence, particularly the notion that facially and racially neutral laws can facilitate equity and equality.[230] The premise of race-neutral laws is that racism—in particular, individual acts of racism—are the most dangerous (and perhaps the only) form of racial aggression that law can or should prevent.[231] A neutral law prevents one from abusing the power of law by institutionalizing difference as a basis for reward or other legal protection.[232] Yet it has been repeatedly and persuasively demonstrated that color blindness[233] in law only perpetuates the myth that racial subordination is a lifestyle choice, or worse, that subordination is a choice of how to perceive the circumstances: the effect of neutrality has had the opposite of the stated intention.[234] Instead, "[t]oday, subordination is maintained through neutrality."[235]

In the context of land use planning, excavating and uprooting racism means addressing the ways racial constructs are being employed in comprehensive plans and local zoning codes, both knowingly and unconsciously, underneath racially neutral language. This means acknowledging the role that racial constructs play in confirming and enforcing segregation.[236] It means recognizing that "[t]he appearance that this is 'the way things are' in turn tends to make prevailing patterns of race, ethnicity, power, and the distribution of privilege appear as features of the natural world."[237] It means recognizing that "urban renewal" really meant "Black removal" and that

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230. Flagg, *supra* note 225, at 962.

231. *See id.* at 988.

232. *See id.* at 958–59, 996.

233. As Anthony Paul Farley notes,

> Dialectical thinking allows us to see even life and death—Long Friday and Easter—as containers for an ever-unruly reality. Metaphysical thinking prevents us from understanding ways in which concepts like *colorblindness* and *rule of law* can be presented as the end of racism and yet serve as vehicles for racism's return.

Anthony Paul Farley, *When the Stars Begin to Fall: Introduction to Critical Race Theory & Marxism*, 1 COLUM. J. RACE & L. 226, 239 (2012) (emphases in original).

234. Cedric Merlin Powell, *Rhetorical Neutrality: Colorblindness, Frederick Douglass, and Inverted Critical Race Theory*, 56 CLEV. ST. L. REV. 823, 840 (2008) ("Colorblind constitutionalism and the rhetorical device of neutrality literally define discrimination out of existence.").

235. *Id.* at 837; *see, e.g.*, Plessy v. Ferguson, 163 U.S. 537, 551 (1896) ("We consider the underlying fallacy of the plaintiff's argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it.").

236. Peter Jackson, *The Idea of "Race" and the Geography of Racism*, RACE AND RACISM: ESSAYS IN SOCIAL GEOGRAPHY 3, 6 (Peter Jackson ed., 1987) (explaining that race is not a "natural division of humankind").

237. Mahoney, *supra* note 228, at 1662.

urban planning and development was used as an effective tool to disempower communities of color.[238] We read this way to see who is omitted from a community's vision, especially where "the legal system has perpetuated environmental injustice by misreading or disregarding [a] community's history."[239]

In this vein, the importance of interrogating the comprehensive plan follows recognition of the role of the plan: the comprehensive plan does not tell *a* story of a place, but *the* story of a place. Comprehensive plans "function as grand narratives, as master texts that contribute to an ideology of race and racial hierarchy."[240] Accessing that ideology means, in Bennett Capers' terms, that we engage in "a reading practice that is not only critical, but particularly attuned to the frequencies and registers of race."[241] Reading in this way "seeks to decode the coded, to say the unsaid, and to render visible the gaps, the fissures, and the solecisms."[242] Reading in this way transcends the privileged solipsism that props up claims that race-neutral language speaks equally to all people[243] and that color blind laws produce equitable results.[244] In this vein, a comprehensive plan that hides or ignores its racial history succeeds in communicating to Others with a familiar tone: you are not welcome; you do not belong; you are dangerous to us; you are not one of us.[245] A comprehensive plan

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238. Richard T. Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1843, 1844–45 (1994) (illustrating the manner in which urban development patterns have solidified privilege for white communities and the subordination of Black communities).

239. Charles P. Lord & William A. Shutkin, *Environmental Justice and the Use of History*, 22 B.C. ENV'T AFF. L. REV. 1, 1 (1994); *see also* Eric K. Yamamoto & Jen-L W. Lyman, *Racializing Environmental Justice*, 72 U. COLO. L. REV. 311, 348–49 (2001) (discussing the "need to unpack whiteness in the environmental movement").

240. Capers, *supra* note 102, at 11.

241. *Id.* at 12.

242. *Id.*

243. Adewale A. Maye, *The myth of race-neutral policy*, ECON. POL'Y INST., https://www.epi.org/anti-racist-policy-research/the-myth-of-race-neutral-policy [https://perma.cc/Z7HJ-EJB4].

244. *RACE—The Power of an Illusion*, PBS (2003), https://www.pbs.org/race/000_About/002_04-experts-03-01.htm [https://perma.cc/ET3Y-YDTJ].

245. Lawrence M. Thomas, *Moral Deference*, *in* THEORIZING MULTICULTURALISM: A GUIDE TO THE CURRENT DEBATE 359, 367–68 (Cynthia Willett ed., 1998) (discussing the "sense of otherness that inescapably comes with being a person belonging to a diminished social category, the sense of what it means to be socially constitutes as such a person" (emphasis removed)). As an example, in *Jamison v. McClendon*, a case involving the mistreatment of a Black man who was, in an important sense, driving while Black, Judge Reeves noted:

> Clarence Jamison wasn't jaywalking. He wasn't outside playing with a toy gun. He didn't look like a "suspicious person." He wasn't suspected of "selling loose, untaxed cigarettes." He wasn't suspected of passing a counterfeit $20 bill. He didn't look like anyone suspected of a crime. He wasn't mentally ill

that envisions the future successes and growth of only its white residents likewise says to Others: you have no future here.

B. Space

I was excited for college. I had visions of pursuing knowledge and understanding, gaining insight into the inner workings of natural and built things. I planned to touch wisdom from a broad spectrum of disciplines and ideas. I also wanted to go to college parties.

Before leaving for college, I received a letter that gave me instructions for my arrival. I was told I would have a roommate, and that I would live in a dormitory. I was invited to share space with other college students who I imagined were pursuing their own ideas and goals. The invitation was to share space, and in that space find a place of my own.

When I arrived on campus, the resident assistant (RA) met me at the door. He did not shake my hand. He did not welcome me: no welcome package with pages of helpful information, no hats bearing the school's logo to build school spirit. Instead, he held up his hand and told me not to enter.

I do not believe the RA intended to exclude me. Yet, the experience was confusing. "There is a problem," he said. "We will have to work this out."

> and in need of help. He wasn't assisting an autistic patient who had wandered away from a group home. He wasn't walking home after an after-school job. He wasn't walking back from a restaurant. He wasn't hanging out on a college campus. He wasn't standing outside of his apartment. He wasn't inside his apartment eating ice cream. He wasn't sleeping in his bed. He wasn't sleeping in his car. He didn't make an "improper lane change." He didn't have a broken tail light. He wasn't driving over the speed limit. He wasn't driving under the speed limit.

476 F. Supp. 3d 386, 390–91 (S.D. Miss. 2020) (citation omitted). Although the Judge's internal citations were omitted for purposes of brevity, each of the distinguished circumstances describes an event in which a Black person was subjected to the brutal use of force by police officers. We might add to Judge Reeves' list many things, but for purposes of this Article, we should add the recent arrest of Marc Peeples, who was arrested for gardening while Black. Katelyn Kavel, *This Michigan Man Was Arrested for Gardening While Black. Gov. Whitmer Would Make That 911 Call a Hate Crime*, THE GANDER (July 9, 2020), https://gandernewsroom.com/2020/07/09/gardening-black-911-hate-crime [https://perma.cc/UME4-G6J8]. Judge Reeves noted that the court was bound by precedent that extends the shield of qualified immunity to even brutal law enforcement actions. "This has to stop," *Jamison*, 476 F. Supp. 3d at 392 (quoting the Fourth Circuit in Estate of Jones v. City of Martinsburg, W. Virginia, 961 F.3d 661, 673 (4th Cir. 2020), as amended on June 10, 2020, giving some context for Mitchell Jackson's words: "Check the books—slave passes, vagrancy laws, Harvard's Skip Gates arrested outside his own crib—Blacks ain't never owned the same freedom of movement as whites"); Mitchell S. Jackson, *Twelve Minutes and a Life*, RUNNER'S WORLD (June 18, 2020), https://www.runnersworld.com/runners-stories/a32883923/ahmaud-arbery-death-running-and-racism [https://perma.cc/QXC3-HE9V].

I inquired about the problem. He was noticeably uncomfortable and tried to avoid my question. "We need to find you a different room." I eventually coerced the answer from him. "Your roommate said, 'I'm not going to live with a fucking Jap.' He will not be your roommate." My RA did apologize to me in an effort to accommodate my vulnerabilities. But he threw up his hands, as if to say, "what can you do?"

I was led to the parking lot and told to remain there. I sat there, in this semi-public space, a shared space, sitting on my bags of clothes, bed-sheets, pillows, and a radio for four hours. I waited in that hot sun for the administration to do me the *favor* of finding a new dorm room. A different space.

What made this situation absurd was not that I was not offered the opportunity to choose my own roommate, or that the aggressor did not lose any power from his overt racism, or the length of time it took to get me situated, or the institutional inaction against my would-be roommate, or the soft and nonchalant way I was told that I was not wanted. What made this absurd was the idea that the parking lot would be a safe space, a space that I would *want* to occupy during this experience. What made this absurd was the idea that I would be protected from the hostility by moving ten feet away from the dormitory doorway—ten feet away from a space that was openly acknowledged by the school to be an unsafe space for me. For me, the parking lot was a space that I could *only* occupy with all those who had leveled that violence against me in the first place. This supposedly safe space was surrounded by the hostile world, and was clearly part of that hostile world.

At one point or another, *all* American spaces have been used to perpetuate racism.[246] Space, never being "an empty void,"[247] is always racialized. People of color have never had spaces of their own.[248]

Space in American land use policy is often characterized by the practices of segregation that created and sustains them.[249] Racially homogenous neighborhoods, which not coincidentally map onto class

246. For an insightful discussion of racialized space, *see* Anderson, *supra* note 1, at 10.

247. EDWARD W. SOJA, SEEKING SPACIAL JUSTICE 19 (2010) ("It is always filled with politics, ideology, and other forces shaping our lives and challenging us to engage in struggles over geography.").

248. *See* Morison v. Rawlinson, 7 S.E.2d 635, 638 (S.C. 1940) (enjoining a Black church in a white neighborhood as a public nuisance on grounds that "the plaintiffs dance in the church, and, in the course of the meeting, give forth weird and unearthly outcries"). Of course, people of color have had their own spaces. When some parks and resorts, such as Shenandoah National Park and Lincoln Hills, Colorado were opened to Black visitors, it was in segregated and posted "Negro Area" spaces. Katheryn Miles, *Shenandoah National Park Is Confronting Its History*, OUTSIDE (Sept. 23, 2019), https://www.outsideonline.com/outdoor-adventure/hiking-and-backpacking/shenandoah-national-park-segregation-history [https://perma.cc/6R42-UTX8].

249. *See id.*

disparities, have plagued communities for centuries.[250] With the creation of segregated neighborhoods came entitlement and privilege, the feeling from those enjoying power that their circumstance was earned and that the plight of Others was deserved: "Government-sponsored segregation helped inscribe in American culture the equation of 'good neighborhoods' with white neighborhoods."[251]

Shared spaces were never made to serve the interests of people of color. American history involves a history of removing indigenous people from national parks and other public lands, as well as from their homes.[252] The overwhelming majority of public art and monuments in public spaces celebrate white history.[253] Shared spaces have been dominated by white people (white men in particular), white values, and white history, creating what Elijah Anderson refers to as "The White Space":

> The Civil Rights Movement is long past, yet segregation persists. The wider society is still replete with overwhelmingly white neighborhoods, restaurants, schools, universities, workplaces, churches and other associations, courthouses, and cemeteries, a situation that reinforces a normative sensibility in settings in which black people are typically absent, not expected, or marginalized when present.[254]

Enjoyment of shared spaces has served as both a white opportunity[255] and a symbol of wealth. Yet, those enjoying privilege, for whom

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250. Shannon Roesler, *Landscapes of Inequality: Racial Segregation and Environmental Injustice*, *in* ENVIRONMENTAL LAW AND CONTRASTING IDEAS OF NATURE 33 (Keith H. Hirokawa ed., 2014) (discussing the "reality that healthcare and well-being correlate strongly with zip code").

251. Mahoney, *supra* note 228, at 1674 ("The close correlation between employment opportunity and residential segregation meant that 'black' was increasingly linked with 'inner-city' and with 'unemployed or unemployable' in white consciousness; whiteness was identified with 'employed or employable,' stability and self-sufficiency. In this way, residential segregation was both product and cause of racial constructions that tended to promote further preferences for whites and further exclusion for black communities and individuals. White neighborhoods in this process of racial construction increasingly seem to be suitable sites for investment, while black neighborhoods seem unsuitable"); LIPSITZ, *supra* note 3, at 245 ("If whites live in wealthy suburbs and Blacks live in impoverished ghettos, the white spatial imaginary says, it is because whites have worked hard and succeeded while Blacks have exerted too little effort and failed.").

252. Nicolas Brulliard, *This Land Is Their Land*, NAT'L PARKS CONSERVATION ASS'N, https://www.npca.org/articles/2742-this-land-is-their-land [https://perma.cc/B3BQ-Q96V].

253. *See Statement on the Intersection of the Arts, History, and Community Dialogue*, AMERICANS FOR THE ARTS (Aug. 18, 2017) [hereinafter AMERICANS FOR THE ARTS], https://www.americansforthearts.org/news-room/arts-mobilization-center/statement-on-the-intersection-of-the-arts-history-and-community-dialogue [https://perma.cc/H53W-L4V2].

254. Anderson, *supra* note 1, at 10.

255. *See* Leong, *supra* note 29, at 2153–54 (describing "racial capitalism" as "the process of deriving economic and social value from the racial identity of another person").

exclusion from spaces is not experienced, are so easily convinced that opening space to all as shared space (such as a park, a street, a school, or a restaurant) obviates the damage of racism.[256] Indeed, an oft-heard sentiment in dialogues about inclusivity is confusion about the lack of people of color in shared spaces such as parks and forests.[257] The common question is: "we have created the space, why don't people of color come?"[258] The confusion is typically bolstered by broad statements that everyone enjoys nature, everyone benefits by being in nature.[259] If you build it, they will come, and everyone is welcome. The question is often answered in some version of the unreflective refrain: "Black people don't like to be outdoors."[260]

Oddly, the question is actually presented as a difficult conundrum, an elusive hitch in the effort to be open to all. And the refrain is invoked in many contexts, including to explain why people of color do not run for office, attend public hearings, vote, or otherwise participate in the happenings of white American life.[261] But if the question is considered difficult, it is only because whiteness fails to

256. Annah Mackenzie, *Black Lives and the (Broken) Promise of Public Space*, PPS (July 13, 2016), https://www.pps.org/article/black-lives-broken-promise-public-space [https://perma.cc/7FJ9-P8ZG].

257. Naomi Humphrey, *Breaking Down the Lack of Diversity in Outdoor Spaces*, NAT'L HEALTH FOUND. (July 20, 2020), https://nationalhealthfoundation.org/breaking-down-lack-diversity-outdoor-spaces [https://perma.cc/U8L2-PW8H].

258. *See id.*

259. Edward O. Wilson, *Biophilia and the Conservation Ethic*, *in* THE BIOPHILIA HYPOTHESIS 31, 31–32 (Stephen R. Kellert & Edward O. Wilson, eds., 1993) (providing support for the notion that humans have an innate connection to nature).

260. In her review of the history of racism at Shenandoah National Park, Katheryn Miles quotes an anonymous letter to the Park Service: "Many of us look to the parks as an escape from the problems ethnic minorities create. Please don't modify our parks to destroy our oasis." Miles, *supra* note 248.

261. A judgment that Black people are unwilling or unable to participate in democracy or determine their own future "depends upon fervent denial of the realities of racialized space. It evades the ways in which discriminatory land use and lending policies impede asset accumulation by Blacks. It confuses the impact of racism with the nature of race." LIPSITZ, *supra* note 3, at 243–44 (identifying the argument that history "proves that Black people are different and deficient, that the problems they face are of their own making, that having been 'given' equal rights they have shown themselves to be unfit for freedom"). *See also* HOOKS, *supra* note 22, at 213 ("One of the great tools of colonization has been pushing the assumption that poor people (especially black people) have neither the inclination nor the time to be concerned about the substantive quality of their lives. Of course, this is one of the assumptions that would prove to be totally erroneous if there were more available information about our agrarian history."); *id.* at 69 ("When the civil rights struggle first brought national attention to the issue of racial integration, individual racist white folks would often share their 'intimate' knowledge of black folks by telling the public that the 'colored people like to keep to themselves.' Yet no one ever raised the issue of trauma, that maybe black folks stayed together they wanted to stay away from white folks because of the suffering white folks caused us to feel through unrelenting exploitation and oppression.").

reveal the defect in reasoning.[262] At best, the question misses the problem of cause and effect, of cultural biases in the White Space, and of racial history and presence.[263] The refrain can only be understood as racial violence, as explained by a blogger of color: "Black people do not have a natural aversion to camping or the great outdoors; we have a natural aversion to racism and abuse. We don't go camping because we hate mosquitoes, need heated rooms, or hate campfires, we don't go camping because the industry has not been welcoming."[264]

Moreover, the refrain does not capture the experience of Christian Cooper—a Black man who unsuspectingly found himself guilty of birdwatching while Black.[265] It may be that Mr. Cooper's injury is more striking in the Northeast[266]—a place that has largely neglected its racial history, past practices of aggression, exclusion and hate towards people of color.[267] It may be that incidents of racial violence, both physically and conceptually, remain commonplace and normalized in private and public spaces. They also illustrate that public spaces remain White Space, even if only conceptually.

In this incident, Mr. Cooper was enjoying a day in Central Park on a Monday morning.[268] He carried his binoculars and curiosities about the some 230 bird species that occupied the Ramble area of Central Park.[269] He noticed an unleashed dog in an area that was clearly marked to notify visitors to leash their dogs—a requirement,

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262. Anderson, *supra* note 1, at 10 ("When present in the white space, blacks reflexively note the proportion of whites to blacks, or may look around for other blacks with whom to commune if not bond, and then may adjust their comfort level accordingly; when judging a setting as too white, they can feel uneasy and consider it to be informally 'off limits.' For whites, however, the same settings are generally regarded as unremarkable, or as normal, taken-for-granted reflections of civil society.").

263. *See* Michelle Wilde Anderson & Victoria C. Plaut, *Property Law: Implicit Bias and the Resilience of Spatial Colorlines*, *in* IMPLICIT BIAS ACROSS THE LAW 34, 35 (Justin D. Levinson & Robert J. Smith eds., 2012) (discussing the assumptions that accompany racialized space).

264. Nikki, *Why Black People Don't Go Camping*, AN INJUSTICE! (Aug. 10, 2020), https://aninjusticemag.com/why-black-people-don't-go-camping-a564dd47e5a8 [https://perma.cc/VKH8-2B48].

265. Sarah M. Nir, *How 2 Lives Collided in Central Park, Rattling the Nation*, N.Y. TIMES (June 14, 2020), https://www.nytimes.com/2020/06/14/nyregion/central-park-amy-cooper-christian-racism.html [https://perma.cc/FA5N-XV3H].

266. Most Americans believe that racist practices of exclusion concern exclusively Southern state histories. LOEWEN, *supra* note 19, at 5 (discussing the absence of literature "about the making of all-white towns" and the problem that "most Americans have no idea that such towns or counties exist, or they think such things happened mainly in the Deep South").

267. *Historian Illustrates Racial Intolerance In The Northeast In Post-War U.S.*, NPR (Dec. 1, 2014), https://www.npr.org/2014/12/01/367769675/historian-illustrates-racial-intolerance-in-the-northeast-in-post-war-u-s [https://perma.cc/A39V-3LC8].

268. Nir, *supra* note 265.

269. *Id.*

not a recommendation or suggestion.[270] When Mr. Cooper asked the dog owner (Amy Cooper) to leash her dog, he was met with an exercise of power.[271] Amy Cooper, who later proclaimed that she is not a racist, was not ashamed of breaking the rules.[272] Instead, she made clear that no Black man could speak to her that way, call her out for breaking rules, or share space with her.[273] Perhaps we should emphasize, especially a Black man. Many have seen the video in which Amy Cooper said, "I am taking a picture and calling the cops. I'm going to tell them there's an African American man threatening my life."[274]

The tone in her voice strongly suggested she was not feeling threatened. She was perfectly aware that she was capitalizing on the history of police brutality against Black men. She clearly assumed he would be seized with fear. In this act, a threat to call the police, the fabrication of a story in which Mr. Cooper was portrayed as the aggressor, we see the way space can be weaponized against people of color.[275] Amy Cooper did not need to wonder whether the space was open to her. Amy Cooper exhibited a feeling of entitlement to use space as leverage, perhaps based on a belief that everyone else wants what she has or that Others want to occupy her spaces.[276] Amy Cooper did not think to ask whether that is true.[277]

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270. *Id.*

271. *Id.*

272. Amir Vera, *White woman who called police on a Black man bird-watching in Central Park has been fired*, CNN (May 26, 2020), https://www.cnn.com/2020/05/26/us/central-park-video-dog-video-african-american-trnd/index.html [https://perma.cc/J8WM-AH4L].

273. *Id.*

274. Josephine Harvey, *White Woman Calls Cops On Black Man Over Dog Leash Dispute In Viral Footage*, HUFFINGTON POST (May 26, 2020), https://www.huffpost.com/entry/black-man-white-woman-central-park-dog-leash-incident_n_5ecc6da0c5b6d6fc7b7f3118 [https://perma.cc/7JN3-N7XK].

275. Brentin Mock, a staff writer for CityLab, describes the problem:

> White people can weaponize the police against people who aren't white, and that power only flows in one direction. The way Amy Cooper reacted in the video shows that she was aware of that power dynamic. All it took was for a white person to send a bat signal—or in Amy Cooper's case, a racial dog whistle—to make a garden unsafe for a black person. So long as people of color, and black men in particular, are seen as a potential danger, the issue of racial equity in parks and other open and public spaces goes unresolved.

Brentin Mock, *Watch: A Conversation About Racism in the Outdoors*, AUDUBON (June 3, 2020), https://www.audubon.org/news/watch-conversation-about-racism-outdoors [https://perma.cc/U5L2-YC27]; *see also* Kavel, *supra* note 245.

276. Mahoney, *supra* note 228, at 1666 ("Whites fail to see ourselves clearly, and we also fail to see the way white privilege appears to those defined into the category of 'Other.'").

277. Whiteness is not seeing the suffering of others. As Mary Annaïse Helgar invites, "Dear Climate Movement: I love y'all, but I need you to quit acting like climate change is the FIRST existential crisis." Mary Annaïse Helgar, *Climate Change Ain't the First Existential Threat*, DISCARD STUD. (Apr. 8, 2019), https://discardstudies.com/2019/04/08/sorry-yall-but-climate-change-aint-the-first-existential-threat [https://perma.cc/238J-HQCH].

Space is often characterized through occupation, decoration, celebration, use, and exclusion. Because space comes with a history, space is always racialized.[278] Yet, from a privileged perspective, shared spaces are thought of as safe spaces.[279] Shared spaces are promoted and characterized as open to all, for the benefit of all, and for the enjoyment of all.[280] Words like "we" and "us" and "our" characterize shared spaces.[281] But these words are often used without acknowledging that the very act of using the words "we" and "us" and "our" refers to a select few and delivers the same type of racial violence as a "whites only" sign. The contemporary absence of "whites only" signs in public spaces has not erased the exclusion and other inequitable treatment of people of color. There may have been a shift, but not a meaningful one.[282] Shared spaces (forests, parks, playgrounds, streets, sidewalks, government buildings, and hearings) are not now seen as open and safe spaces any more than when it was legal and convenient to hang "whites only" signs at the entrances to parks and on drinking fountains.[283] Inclusive communities do more than celebrate parks in their comprehensive plans, and they think beyond what a shared

278. For example, see Elise C. Boddie, *Racial Territoriality*, 58 UCLA L. REV. 401, 420–23 (2010) (discussing the manner in which law fails to grasp the significance of territorial behavior to racial harm). Consider also the "hallowed ground" of burial sites, particularly where racial difference carries into the treatment of such sites. *See* Mary L. Clark, *Treading on Hallowed Ground: Implications for Property Law and Critical Theory of Land Associated with Human Death and Burial*, 94 KY. L. J. 487, 526 (2006).

279. Anderson, *supra* note 1, at 15 ("[T]he black person moves through the larger society in a vulnerable state, which is particularly so when navigating the white space—a world in which she typically has limited social standing, and thus limited respect.").

280. Mackenzie, *supra* note 256.

281. *Id.*

282. *See* Anthony Paul Farley, *Perfecting Slavery*, 36 LOY. U. CHI. L.J. 225, 225–26 (2004) ("The movement from slavery to segregation to neosegregation to whatever form of white-over-black it is that may come with post-modernity or after is not toward freedom.").

283. For instance, when a white campground representative of a national chain of commercial campground managers accuses a black family of trespassing at the campground while holding them at gunpoint, or where campground owners tell biracial families that "their kind" is not welcome, open spaces are not shared spaces. Antonia Noori Farzan, *A black couple were having a picnic. Then a white campground manager pulled out her gun*, WASH. POST (May 29, 2019), https://www.washingtonpost.com/nation/2019/05/29/black-couple-white-woman-gun-picnic [https://perma.cc/5AF7-C47P]; Justina Coronel & Kelsi Anderson, *'Is it because my children are black?' Biracial family feels discriminated against at Missouri campgrounds*, KSDK (June 15, 2020), https://www.ksdk.com/article/news/local/biracial-family-discrimination-missouri-campgrounds/63-e4dfbde1-bc02-412c-8d22-7ecec558cee7 [https://perma.cc/RCB8-MALZ] (reporting the campground manager as saying "I don't want them running around here. I don't want them in the showers. I don't want nobody having to shower after their kind"). *See also* Randy J. Virden & Gordon J. Walker, *Ethnic/Racial and Gender Variations Among Meanings Given To, and Preferences For, the Natural Environment*, 21 LEISURE SCI. 219, 233 (1999), wherein Black and Hispanic participants in the study identified forests as "threatening" and "annoying," but white participants identified forests as "pleasing" and "safe."

space looks and feels like for "all."[284] Rather, inclusive communities think about—and act on—who would look at the community's comprehensive plan and say that the plan (and by extension, the community):

> does not look like me,
> does not sound like me,
> didn't grow up like me,
> doesn't include me,
> excludes me,
> doesn't interest me,
> is not what I need,
> cannot get there,
> cannot go there,
> or would not go there.

This means being aware of how many Trump signs or Confederate flags are visible on the way into town.[285] One may agree or disagree with such signs and symbols. However, to Others, such signs communicate something very different—something hostile, unwanted and unsafe.[286] Those signs prevent a sense of place and belonging. Inclusive communities create spaces[287] that are actively anti-racist, not passively race-neutral.

As most comprehensive plans demonstrate, communities have not yet accomplished this feat.[288] In this exercise, communities must be open to imagine how words, institutions and spaces appear to Others. Just building a shared space does not appear as an invitation to everyone: merely invoking the words, "we" and "us" does not

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284. LIPSITZ, *supra* note 3, at 50 ("But disavowing whiteness will not be enough. Merely removing negative obstacles in the way of democracy will not produce a democratic society.").

285. *See* HOOKS, *supra* note 22, at 10 ("White folks who mask their denial of white supremacy by mouthing slogans like 'heritage not hate' to support their continued allegiance to this flag fail to see that their refusal to acknowledge what this 'heritage' means for black folks is itself an expression of white racist power and privilege.").

286. *See* AMERICANS FOR THE ARTS, *supra* note 253.

287. It is critical to recognize that space is not simply "there," unaffected by history and ideology. As Edward Soja states,

> We make our geographies, for good or bad, just or unjust, in much the same way it can be said that we make our histories, under conditions not of our own choosing but in real-world contexts already shaped by socio-spatial processes in the past and the enveloping historically and socially constituted geographies of the present.

SOJA, *supra* note 247, at 103.

288. *See* Carolyn G. Loh & Rose Kim, *Are We Planning for Equity?: Equity Goals and Recommendations in Local Comprehensive Plans*, 87 J. AM. PLANNING ASS'N 181, 183–84 (2021).

transform an exclusionary statement into an inclusive one. As Ibram Kendi writes, "one either allows racial inequities to persevere, as a racist, or confronts racial inequalities, as an antiracist."[289] The goal must be to shift *away* from the open arms approach to land use planning, *toward* an approach that is actively anti-racist, that favors critical self-awareness, and that exercises acknowledgment and listening.

C. Place

I am sitting on a couch, flipping through the pages of an old (for me) yearbook, looking for pictures of my grandparents. I see the eager faces of high schoolers, the celebration of accomplishment, the exclusive cliques and clubs, the starry-eyed couples, the embarrassing moments, as well as the competition and community and indifference that seems always to characterize high school. I see images of place, of belonging. And it is absurd that I should feel that way.

This space was racialized. In the space I observed in the yearbook, the Poston War Relocation Center, where over 17,000 Japanese Americans were interned during World War II,[290] the idea of racialized space is at once obvious and ironic. I am first struck by the absurdity of the moments in time frozen on these pages, of people denied their Americanness and imprisoned behind barbed wire and fences and rifles. I am struck by the will it must have taken to monument the experience in a high school yearbook. I am then struck by the fact that the planners and builders of the Poston internment camp had no intention of creating more than a racialized space: they did not intend to provide the inhabitants with the luxury of place. And, I was struck by my absolute and total inability to understand that sense of place that the residents created, that sense of belonging on which their lives depended.

It took me some time, staring at the happy and hopeful faces, reading the words of belonging and sense of purpose, before realizing how artificial the yearbook was. I suppose I saw what the publishers and War Relocation officials wanted me to see. I saw an outsider's view. And it was so easy for me to fall prey to the illusion.[291] It was so

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289. IBRAM X. KENDI, HOW TO BE AN ANTI-RACIST 9 (2019). Kendi observes that the idea of middle ground in the face of racism is illusory—one can be anti-racist, or one can sustain and uphold personal and institutionalized racism. We do not get a pass by holding a middle ground. Failing to identify and reverse racism is an act of racism. It is an act of violence.

290. *See Poston Preservation*, POSTON CMTY. ALLIANCE (2022), https://www.poston preservation.org/visit [https://perma.cc/HPE8-4TT7].

291. *See* HOOKS, *supra* note 22, at 163 ("Time and time again stories are told about the

easy in that moment for this objective, race-neutral portrayal of the high school experience to erase the racial violence and horror that I was witnessing, a trauma that caused anguish and shame and isolation that came to characterize a generation of Japanese Americans.

Having discussed race and space, we now turn to place. Space is not synonymous with place.[292] Spaces can become places.[293] They do not always become places, but they can.[294] The notion of "sense of place" occupies a firm footing in literature concerning local government and land use, natural resources regulation, cultural resource protection, and others.[295] Place is not one thing, or sense, feeling or conclusion.[296] Rather, place is a moving target.[297] But place reveals the interactions and relationships that create the communities in which we wish to reside.[298]

When we think about spaces that do become places, we see that the difference between the two is the attachment that one feels in the space—this attachment, known as sense of place,[299] is what bell

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survival strategies folks use to maintain a sense of hope and desperate life-threatening situations of oppression, dehumanization, and violence. We tell stories about the ways we maintain a sense of worth and dignity in intolerable situations.").

292. *See* TUAN, *supra* note 54, at 7 (differentiating between the concepts of space and place).

293. *See, e.g.*, *id.* at 166.

294. Melissa M. Berry, *Thinking Like a City: Grounding Social-Ecological Resilience in an Urban Land Ethic*, 50 IDAHO L. REV. 117, 141 (2014) (suggesting that residing in urban spaces can lead to loss of sense of place).

295. *See, e.g.*, *id.* at 118, 121.

296. Basso, *supra* note 55, at 55 (The premise that place-based values and perspective are initiated in personal and physical experiences with landscapes and interactions with the local environment might suggest too much of a relativistic approach, or in the alternative, a general inaccessibility of the values at issue. Self-reflection, inspiring thoughts and memories seem to present a significant challenge in objective thinking about governance: "When places are actively sensed, the physical landscape becomes wedded to the landscape of the mind, to the roving imagination, and where the mind may lead is anybody's guess.").

297. Kahn, *supra* note 64, at 168 ("Because place is many things and speaks in many voices—individual biography, shared history, meaningful memory, and moral lesson, as well as euphemism—it is constantly shifting, emerging or receding, being accentuated or veiled."); CRESSWELL, *supra* note 169, at 116 ("[P]laces are not like shoes or automobiles—they do not come out of a factory as finished products. Places . . . are very much in process.").

298. Basso, *supra* note 55, at 57 ("[I]t is simply not the case . . . that relationships to places are lived exclusively or predominantly in contemplative moments of isolation. On the contrary, relationships to places are lived most often in the company of other people."); *see also id.* at 54 ("[T]he concept of dwelling assigns importance to the forms of consciousness with which individuals perceive and apprehend geographical space." (emphasis removed)).

299. Tuan explains,

> "Space" and "place" are familiar words denoting common experiences. We live in space. There is no space for another building on the lot. The Great Plains look spacious. Place is security, space is freedom: we are attached to the one and long for the other. There is no place like home.

hooks calls "belonging."[300] Belonging, a potentially anti-racist term that can shed light on policies leading to recovery from racial discrimination, should be the goal of inclusivity in matters involving land. As Edward Relph says in *Place and Placelessness*,

> Place, both as a concept and as phenomenon of experience, . . . has a remarkable capacity to make connections between self, community, and earth, between what is local and particular and what is regional and worldwide. It is the intimate and specific basis for how each of us connects with the world, and how the world connects with us.[301]

Communities can acknowledge and express this intimacy. One can read the generous histories and values that communities write about in their vision statements and comprehensive plans.[302] These statements are expressions of self-worth and perseverance. They detail a vision and offer it as strength, the kind of strength that makes such a place a grand place to live. And, simply the process of imagining people and events in a space can alter—and enrich—one's connection to a place, one's experience of that place, and perhaps even a more authentic way of being in that place.[303]

TUAN, *supra* note 54, at 3. Tuan explains the relationship between the two: "When space feels thoroughly familiar to us, it has become place." *Id.* at 7.

300. HOOKS, *supra* note 22, at 3.

301. RELPH, *supra* note 58, at Preface.

302. *See, e.g.*, JAMES CITY COUNTY COMPREHENSIVE PLAN, TOWARD 2035: LEADING THE WAY 11 (June 23, 2015).

303. One objection to sense of place literature suggests that by giving so much attention and importance to the locational dependency of ecological and cultural knowledge, sense of place advocates award a privilege to local norms, practices, and (in particular) biases. The argument goes that such a privilege protects bad local decisions from outside reviewer criticism. Another way of casting this objection is that if we prize sense of place and elevate local knowledge, it is more difficult to challenge the town that claims its heritage in a history of discrimination, segregation, and apartheid. The objection concludes that universal goals (such as equity, equality, and environmental protection) are not achievable without top-down mandates.

This criticism appears on its face as persuasive, at least in so far as it magnifies local circumstances and elevates the role of local knowledge and its influence informing local values. However, the critique seems to make too much of what we can do with local knowledge. In essence, the critique is shallow at best, failing to allow local knowledge to have a future (as well as a past), assuming static values, and ignoring the role that information plays in self-reflection, both in individuals and at the community level. In contrast, Edward Relph stated (in his Foreword to the republication of PLACE AND PLACELESSNESS), that sense of place is exactly the vehicle that will be most effective in creating self-reflective and inclusive communities. *See* RELPH, *supra* note 58, at Preface. Taking on the critique means illustrating how we might use sense of place by exploring how injustice might surface in a sense of place analysis, as well as what we hope to gain by employing the framework. To think that local values are static is a bit dishonest: individual and community norms and values are always under construction, and local is always becoming.

The process begins at perception.[304] Sense of place comes from lived experience and is context-dependent.[305] As humans come to belong in a space, "so, too, do they fashion themselves."[306] Sense of place signals that a community has intentionally created itself in a specific space.[307] Hence, a sense of place signals a locationally dependent experience—one of belonging, or of realizing that one's identity is bound together with the space.[308] It is built upon the positive and negative memories of experience, the suffering and celebrating that occurs in and about that space. People,[309] and the communities in which they reside, face, submit to, or conquer their environmental challenges. They learn to live and thrive in a space. Space, in essence, becomes place from stories and experience of survival.[310] Due

304. Kahn, *supra* note 64, at 11 ("People don't just dwell in comfort or misery, in centers or margins, in place or out of place, empowered or disempowered.").

305. *See* Timothy Beatley & Richard Collins, *Americanizing Sustainability: Place-Based Approaches to the Global Challenge*, 27 WM. & MARY ENV'T L. & POL'Y REV. 193, 213 (2002).

306. Kahn, *supra* note 64, at 11.

307. HOOKS, *supra* note 22, at 2 ("Searching for a place to belong I make a list of what I will need to create firm ground. At the top of the list I write: 'I need to live where I can walk. I need to be able to walk to work, to the store, to a place where I can sit and drink tea and fellowship. Walking, I will establish my presence, as one who is claiming the earth, creating a sense of belonging, a culture of place.'").

308. TUAN, *supra* note 54, at 166 ("To the local people sense of place is promoted not only by their settlement's physical circumscription in space; an awareness of other settlements and rivalry with them significantly enhance the feeling of uniqueness and of identity.").

309. There are places where an understanding of the geographic situatedness of the people relies not on understanding the topography or geographical relativity, but the people themselves—their stories or survival, togetherness, growth, loss, and sense of wealth. *See* Blu, *supra* note 62, at 217 (illustrating that, in some communities and cultures such as many Native American places, "sense of place" refers more poignantly to the connectedness of the people, rather than the land). This is particularly relevant to people surviving displacement and diaspora.

310. Of course, negative circumstances such as strife, harassment, and other forms of displacement can prevent people from feeling belonging in a particular space; for these people, space does not become place. As bell hooks notes, "[m]any folks feel no sense of place. What they know, what they have is a sense of crisis, of impending doom." HOOKS, *supra* note 22, at 1; *see also id.* at 8–9 ("Living in the city I learned the depths of white subordination of black folks. While we were not placed on reservations, black folks were forced to live within boundaries in the city, ones that were not formally demarcated, but boundaries marked by white supremacist violence against black people if lines were crossed."). This lack of attachment, of intentional and systemic efforts to displace, can exist in all shared spaces.

> While Shenandoah [National Park] experimented with desegregation, segregated gas stations, restaurants, and hotels made it difficult to get to the parks. . . . The history of antagonism and wilderness spaces made it so that African American visitors had no way to know if they would be safe once they got there. For many African Americans . . . the message was clear: parks and wild spaces were off-limits. And that . . . has been passed down in some families. "There are a lot of people who, for very valid reasons, can't walk into a grove of trees without feeling terrified."

Miles, *supra* note 248.

to the pervasiveness and importance of place in individual and collective identity, but especially because of the self-reflective triggers that often accompany self-awareness, many have proposed the idea of place as the mechanism through which communities can root out hostilities and ugliness, including racism and exclusion and privilege.[311] Place, in this sense, might be thought of as a normative tool. Hence, Relph states:

> I have come to think that sense of place has the potential to serve as a pragmatic foundation for addressing the profound local and global challenges, such as megacity growth, climate change, and economic disparity, that are emerging in the present century. Indeed, effective resolution of these challenges may be possible only through a firm grasp of their simultaneously grounded and yet boundless characteristics, which is the very quintessence of understanding place.[312]

In the story at the beginning of this section, of my musings over the yearbook from a Japanese American internment camp, it was through the idea of place that I could simultaneously see the place-based survival tactics employed by the inhabitants of the camps where they resided and (in a way that is absurd yet not contradictory) the suffering and trauma of being imprisoned in that space.[313] As Keith Basso states, "places possess a marked capacity for triggering acts of self-reflection, inspiring thoughts about who one presently is, or memories of who one used to be, or musings on who one might become."[314] Place can be all of these things, although we should avoid

311. *See, e.g.*, DURHAM RACIAL EQUITY TASK FORCE, *supra* note 204.

312. RELPH, *supra* note 58, at Preface to Reprint (citation omitted).

313. CRESSWELL, *supra* note 169, at 55 ("It would be wrong to romanticize this sense of place as always rosy and 'homelike' . . . . Some places are evil, oppressive, and exploitative. But they are still the way we experience the world—through and in place. And perhaps it is because place is so primal to human existence that it becomes such a powerful political force in its socially constructed forms. It is impossible, after all, to think of a world without place."). In other essays, I have suggested that the self-expression place and identity should be taken at face value as an expression of a community's struggles and successes, collective feelings and values. Hirokawa, *supra* note 52, at 11049. This Article looks underneath community self-expression to identify not just the ideals expressed, but also for what is omitted. Omissions, particularly where they are based on a self-reflective expression of self, can provide the basis for productive excavation of history and suffering and, of course, the moments that we you may want to forget. It is on this ground that I believe sense of place is the most appropriate vehicle for an honest and sincere self-evaluation of shared meanings in a particular community.

314. BASSO, *supra* note 55, at 55; *see also* FELD, *Waterfalls of Song: An Acoustemology of Place Resounding in Bosavi, Papua New Guinea*, *in* STEVEN FELD & KEITH H. BASSO, SENSES OF PLACE 91, 134 (1996) ("Places may come into presence through the experience of bodily sensation, but it is through expression that they reach heightened emotional and aesthetic dimensions of sensual inspiration.").

collapsing the distinctions to draw the wrong conclusion; the fact that some Japanese Americans made the best of the internment space by creating belonging together[315] should obviously not be read to mean they wanted to occupy that space.

Authenticity is required for a unique and honest sense of place. Authenticity requires taking ownership of history,[316] of looking back to our histories to find our sense of self. A place-based self-assessment means challenging the dehumanization of Others[317] and acknowledging histories of dehumanizing actions, including actions that characterize spaces as racialized: it is about taking ownership of a place's identity as racist.[318] Identifying a place as racist is a first step in becoming an anti-racist community. As noted by the Racial Equity Task Force in Durham, "we must come to terms with who we are. This may not be a comfortable process, but it can be a liberating one, especially for white people. If we are to authentically engage in anti-racist work, we must name 'whiteness' in every system."[319]

Yet because so many communities ignore their racial histories,[320] everywhere there are spaces that are not yet complete as places. Such spaces remain incomplete because they are not completed with a showing of their history. Some folks try very hard to avoid history.[321] Such people tend to think of history as a burden, something to be ignored, or hidden, and in many cases escaped.[322] Without a moment of repentance,[323] such people avoid facing a city's mistakes and missteps, instances of poor judgment and, as is relevant here,

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315. Hirokawa, *supra* Section II.C.

316. As Tuan states, "What can the past mean to us? People look back for various reasons, but shared by all is the need to acquire a sense of self and of identity." TUAN, *supra* note 54, at 186. He continues, "To strengthen our sense of self the past needs to be rescued and made accessible." *Id.* at 187.

317. HOOKS, *supra* note 22, at 30–31 ("To truly create a social ethical context wherein masses of American citizens can empathize with the life experiences of Appalachians we must consistently challenge dehumanizing public representations of poverty and the poor. Restoring to our nation the understanding that people can be materially poor yet have abundant lives rich in engagement with nature, with local culture, with spiritual values, is essential to any progressive struggle to halt mountaintop removal.").

318. RELPH, *supra* note 58, at 59 ("[T]here are no places that have no identity.").

319. DURHAM RACIAL EQUITY TASK FORCE, *supra* note 204, at 7.

320. *See, e.g.*, Katie Nodjimbadem, *History of Now: The Racial Segregation of American Cities Was Anything but Accidental*, SMITHSONIAN MAG. (May 30, 2017), https://www.smithsonianmag.com/history/how-federal-government-intentionally-racially-segregated-american-cities-180963494 [https://perma.cc/L3KN-ADD6].

321. Tuan notes that such people tend to think of history as a burden. TUAN, *supra* note 54, at 188 ("Some people try hard to recapture the past. Others, on the contrary, try to efface it, thinking it a burden like material possessions.").

322. *Id.*

323. Tuan discusses the problem faced by city authorities: "What facets of the city's past should be preserved? Not the evidences of societal failure, such as old prisons, mental hospitals, and workhouses. These are removed with no regret or second thought on the inviolate nature of history." *Id.* at 196.

racism.[324] Whiteness comes with the power to create categories of Others and to ignore the injuries that come from treating Others as less than human.[325]

Worse, efforts in the land use planning process go to masking history through an appeal to objective standards, scientific methods, and impersonal and place-neutral language. Manufacturing an "authentic history" to create a feeling of stability and community bonding—the appearance of a space that is a "good place to live"[326]—is accomplished through the production of place by professional "planners in order to give the place a sense of identity" and silence alternative views and other histories.[327] After the production of such place, "there is little room left for stories from the perspectives of other individuals, including those of women, children, and/or gays from various cultural, ethnic, and socioeconomic backgrounds."[328] From such a place, it is easy to forget a history that does not fit the language.[329] As Tuan states, "A large body of experiential data is consigned to oblivion because we cannot fit the data to concepts that are taken over uncritically from the physical sciences."[330] From here, it is a short step to the belief that such a history did not exist at all.[331]

Rejecting the process of forgetting is to address one's history and its relationship to a sense of place.[332] Building a sense of place, a sense of belonging, means acknowledging a history that can be an obstacle to creating truly shared spaces. It means reconsidering the training of land use professionals and city administrators and paying

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324. *Id.*

325. HOOKS, *supra* note 22, at 71; Anderson & Plaut, *supra* note 263, at 36–38.

326. CRESSWELL, *supra* note 169, at 136 (discussing the removal of "undesirables" to make a "nicer place to live."); DORCETA TAYLOR, THE ENVIRONMENT AND THE PEOPLE IN AMERICAN CITIES, 1600S–1900S: DISORDER, INEQUALITY, AND SOCIAL CHANGE 117–21 (2009) (detailing the exclusion of people of color to create more desirable spaces); *see* PARK & PELLOW, *supra* note 2, at 145–46 (detailing a nativist history of Aspen, Colorado, as a place manufactured to preserve and affluence and white playground, accomplished by preventing the residency of the immigrant population and people of color who work to maintain the town).

327. *See* Karen Till, *Neotraditional Towns and Urban Villages*: *The Cultural Production of a Geography of "Otherness,"* 11 ENV'T & PLAN. D: SOC'Y & SPACE 709, 710 (1993).

328. *Id.* at 717–18 ("[T]he promotion of a narrow perspective—one which attempts to silence alternative readings and interpretations of familiar texts and symbols—not only enhances the status of the corporate planners as the community 'experts' who construct 'good places to live,' it also imparts social values.").

329. TUAN, *supra* note 54, at 200 ("What we cannot say in an acceptable scientific language we tend to deny or forget.").

330. *Id.* at 201.

331. *Id.* ("We know far more than what we can tell, yet we almost come to believe that what we can tell is all we know.").

332. PATRICIA NELSON LIMERICK, THE LEGACY OF CONQUEST: THE UNBROKEN PAST OF THE AMERICAN WEST 181 (1987) (when reading American history, "[r]emember to look both ways.").

close attention to the words that we use to determine whether we are being inclusive. To this point, Yi-Fu Tuan has detailed the manner in which ethnocentrism drives communities to distinguish between "we" and "they."[333] As he notes, "'We' are at the center. Human beings lose human attributes in proportion as they are removed from the center." In this process, people who define "we" prop themselves up as human. Others who are not "we" "are not fully human."[334] Communities, through their comprehensive plans, can engage in this kind of reading, the kind that decenters whiteness and engages a sense of belonging with the land. Through their comprehensive plans, communities can engage in the kind of reasoning that identifies Others as "fully human."[335] Comprehensive plans should be based on "a more complete history that incorporates not only a view of the past, present, and future, but also the question of justice."[336] Through their comprehensive plans, communities can strive to make sure that people of color can make intimate connections with the land and can do so in a way that reverses discrimination.

III. MAKING BETTER SPACES TO CREATE BELONGING IN PLACES

The lenses of race, space, and place—perhaps when taken on an individual basis, but particularly when read together—provide critical insights into the community-building process that develops in a community's comprehensive plan. Through these lenses, oppressive and inequitable circumstances can be laid bare, and the project of accountability can become a bit more honest. In the meantime, "it becomes evident and challenging that these socially produced geographies, because they are created by human actions, can be changed or transformed through human agency."[337] In what follows, this Article offers examples of five specific actions that can improve inclusivity in land use planning.

A. Recovering Racial Histories

Without a clear view of a place's history,[338] there can be no authentic sense of place or belonging. Communities can be informed

333. TUAN, *supra* note 59, at 30–32.

334. *Id.*

335. Lord & Shutkin, *supra* note 239, at 4.

336. *See id.*

337. SOJA, *supra* note 247, at 104 ("Human geographies are not merely external containers, given and immutable. Their changeability is crucial, for it makes our geographies the targets for social and political action seeking justice and democratic human rights by increasing their positive and/or decreasing their negative effects on our lives and livelihoods.").

338. LIPSITZ, *supra* note 3, at 20 ("When history takes place, it does so in actual places.").

and commit to a racial justice audit of a locality's history, including identifying the roles that slogans, elected officials, streets and parks, neighborhoods and other spaces have played in supporting the culture of American oppression.[339] Communities can recognize that the histories taught in schools are not everybody's histories, and that the moments and people celebrated in American history are overwhelmingly white moments and people.[340] Communities must recognize that a real American history includes the suffering and the successes of people of color, the contributions made to our collective benefits and the ways that power has been used to erase those contributions.[341]

The way race is addressed in a comprehensive plan often illustrates whether a community is anti-racist or perpetuating past practices of racial violence.[342] Communities can engage in recovery from racist victimization.[343] This should be the first objective as communities work towards becoming more inclusive. The path to recovery may not follow a line from past progress in civil rights or equity.[344] And here, the idea is not to challenge the progress of civil rights, but to recognize that recovery pushes in a different direction. Recovery, which might be emotionally challenging for individuals and communities alike,[345] is essential to the creation of anti-racist places. It requires a great deal of critical self-awareness and of examining privilege so that communities are not continuing to support racial constructs. This is the responsibility of white citizens and the self-perpetuating culture that they maintain.[346]

An unreflective pride of place can mask coded language as natural, neutral, or objective, and this occurs even where those values are more aspirational than actual.[347] In the context of racial justice, it is alarmingly common to find communities confident in their

339. *See infra* notes 373–77 and accompanying text.

340. *See infra* note 351 and accompanying text.

341. *See id.*

342. KENDI, *supra* note 289, at 9.

343. *See infra* note 344.

344. For example, in 2020 the New York City Human Rights Commission released a report on contemporary persistence of racism in New York City. The report, drawing from the experiences of city residents, specifically calls out anti-Black racism in the city as an existential threat. N.Y.C. H.R. COMM'N, BLACK NEW YORKERS ON THEIR EXPERIENCES WITH ANTI-BLACK RACISM vi (2020), https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/AntiBlackRacism_Report.pdf ("Overcoming the challenges described in these pages—themselves only a small slice of the challenges confronted by Black communities in New York City—will require commitments that cut across populations and operate at the individual, institutional and structural levels.").

345. *Id.*

346. HOOKS, *supra* note 22, at 85 ("Of course it remains the responsibility of white citizens of this nation to work at unlearning and challenging the patterns of racist thought and behavior that are still a norm in our society.").

347. TUAN, *supra* note 59, at 239 ("When people seek a 'way of life' in a community, their image of it may be so strong as to be quite out of step with the actual way men behave.").

commitment to diversity and inclusion, while being ignorant of (or in denial of) the racial histories of their communities, the suffering of both their past and existing neighbors, or their own biases as they are played out in everyday life and codified in comprehensive plans.[348] Indeed, "[m]an's capacity for self-delusion is great."[349] Pride can make communities blind to the injustice that they both commit and suffer.[350]

A movement toward "real histories" or "truth-telling" is proving to be an essential component of the local effort to capture the actual circumstances in a community and to study potential for reparations.[351] At the least, uncovering a racial history is a first step in taking ownership of past practices of racism[352] and catalyzing transformation in white ideology.[353] Racial histories can (and should) be undertaken from the "bottom-up"[354] to illustrate the role of the

348. *See* DAVID SIBLEY, GEOGRAPHIES OF EXCLUSION: SOCIETY AND DIFFERENCE IN THE WEST xv (1997) (examining the "curious practices" of the majority "who consider themselves to be normal or mainstream" to better understand "the oddness of the ordinary.").

349. TUAN, *supra* note 59, at 239.

350. *Id.* at 65–66 ("Consider an example from the past. Smoke and crime badly polluted the industrial towns of northern England. This the visitor could easily see; but local residents tended to shunt unpleasant reality out of mind, turning a blind eye to what they could not effectively control.").

351. *See* Seth Rockman, *The Dialectics of Racism and Repair*, *in* BROWN UNIV.'S SLAVERY AND JUSTICE REPORT (2d. ed., 2021), https://slaveryandjusticereport.brown.edu ("Certain modes of doing history can provide legitimacy to the status quo and serve to make present-day inequalities appear incontestable. Other modes of doing history are predicated on recovering resistance, dissent, and struggle as a testament to the fact that the past was full of paths not taken to the present, the knowledge of which emboldens us to jettison a paralyzing fatalism and recognize our present as something other than inevitable. And yet other modes of history sit at the intersection of reckoning and healing—a faith that if we tell the truth about the past in all its deromanticized, demystified complexity (warts and all, as the saying goes), we can move beyond trauma, shame, and denial toward a world in which everyone can thrive and prosper. This would position historical truth-telling as a form of repair, first by ceasing to do any additional harm in the form of incomplete and misleading accounts of what happened in the past, and then by providing the basis for a substantive transformation of society on the premise that the truth will set all of us—the descendants of survivors, victims, perpetrators, beneficiaries, bystanders, witnesses, and innocents—free." Rockman goes on to recognize that, although such a history is an essential element of repair, a history alone "cannot create that future.").

352. LOEWEN, *supra* note 19, at 15 (responding to the question of why we should pay attention to the racist histories of towns, Loewen states, "First—and most basically—it happened. Our country did do that. . . . It is also true that the powers that be don't want us to learn about their policy of exclusion and have sometimes tried to suppress the knowledge." (emphasis removed)).

353. *Id.* at 17 ("If Americans understood the origins of overwhelmingly white communities, they might see that such neighborhoods are nothing to be proud of."); *id.* at viii (discussing changing white ideology as a cause for decline in sundown towns); CASHIN, *supra* note 19 (discussing the challenges of integration and identifying the sea change in race consciousness as a starting place for producing anti-racist communities).

354. Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 387 (1987) (arguing that advocacy for subordinated populations begins with recognizing the value of self-determination); Lani Guinier &

otherwise ignored perspective[355] of the oppressed in naming[356]—the very power that people of color have been unable to exercise or even access. In communities that engage in such anti-racist restructuring, "its racist minority may still exist but can no longer assume it has license to target the 'racial other.'"[357] By requiring an accounting for a more accurate, racialized history, racial awareness can serve as an essential component of place.[358]

For instance, the administration of Lansing, Michigan, has engaged its racial history head-on.[359] In early 2020, in the wake of the murder of George Floyd, the successful Black Lives Matter movement, and the disparate impacts of the COVID-19 pandemic, Lansing Mayor Andy Schor issued Executive Directive 2020-03, entitled, "The City of Lansing's Commitment to Fair and Bias-Free Treatment of All People."[360] In recognition of the "responsibility as a city government to marshal policies and procedures that root out, expose, dislodge, and ultimately correct implicit biases and structural racism," the Mayor called for the preparation of a Racial Justice & Equity Community Action Plan.[361] The Mayor's initiative was intended to build upon the work of the Government Alliance on Race and Equity, and specifically relied on the equity initiatives exemplified in the City of Grand Rapids.[362] The efforts convened the Mayor's Racial Justice and Equity Alliance, which produced the Mayor's Report on Racial Justice and Equity, a searching analysis of the historically driven circumstances of racial justice in the city.[363] In cooperation with

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Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2755 (2014) (describing the bottom-up approach to law and lawyering).

355. PARK & PELLOW, *supra* note 2, at 207 (calling for a new narrative of America "because so many people have been written out of the dominant national narrative that has been so full of half truths [sic], omissions, and distortions.").

356. Yi-Fu Tuan, *Language and the Making of Place: A Narrative-Description Approach*, 81 ANNALS ASS'N AM. GEOGRAPHERS 684, 688 (Dec. 1991) ("Naming is power—the creative power to call something into being, to render the invisible visible, to impart a certain character to things."); PARK & PELLOW, *supra* note 2, at 209–10 ("We look forward to the future in which people work to create something as outrageous as social justice and ecological sustainability. A good place to start might be to name the social forces that obstruct this vision. Let us name these forces out loud.").

357. LOEWEN, *supra* note 19, at xvii (suggesting his "three-step program, which includes 'Admit it: we did this.' Apologize: 'It was wrong, and we apologize.' Renounce: 'And we don't do it anymore.'").

358. However, *see* LIPSITZ, *supra* note 3, at 254 (calling for decoupling race and place).

359. *See* OFF. OF THE MAYOR, CITY OF LANSING, MICH., EXECUTIVE DIRECTIVE: THE CITY OF LANSING'S COMMITMENT TO FAIR AND BIAS-FREE TREATMENT OF ALL PEOPLE 2020-03 (Dec. 22, 2020), https://content.civicplus.com/api/assets/1b75d589-bfc5-4e47-950b-fa2c224c02a5?cache=1800 [https://perma.cc/FZF9-TMAM].

360. *Id.*

361. *Id.* at 1.

362. *Id.* at 2.

363. CITY OF LANSING, MICH., MAYOR'S REPORT ON RACIAL JUSTICE AND EQUITY 42

community partners and the National Park Service, the Alliance also recorded more than 100 oral histories, which will serve as the basis for a documentary on the impacts of highway I-496 construction, which bisected Lansing's largest African-American neighborhood, displacing residents from over 600 homes and 100 businesses.[364]

Another example is found in Glendale, California, a City of over 200,000 residents and the fourth largest city in Los Angeles County, California.[365] In 2014, the City approved an Historic Context Statement for its comprehensive plan.[366] That statement traced the development history of the city from the late 1700s to the present.[367] Besides a brief introduction to Japanese American farmers, the statement contains no indication of a racial history.[368] However, on September 15, 2020, staff for the City of Glendale presented a report[369] detailing evidence of the city's history of racist practices, requesting that the City seek preparation of a racial history, and requesting the City's acknowledgment of its history as a "Sundown Town."[370] Staff's plea recognized the importance of looking back to understand how to look forward:

> By understanding and acknowledging the past and confronting the present, the City of Glendale will be better equipped to move forward towards a future that is an antiracist Glendale, and work alongside the community to gain a better understanding of what a safe, just, and inclusive community looks like for everyone who does (and does not) live in Glendale.[371]

On January 19, 2021, the City Council issued a Request for Proposals, seeking consultants with expertise to prepare a Historic Context Statement addressing the City's racial history.[372] Although there is

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(Aug. 2021), https://content.civicplus.com/api/assets/fa4000b1-f3af-4b01-bb35-abfbb421d2ec [https://perma.cc/3ADY-XXAT].

364. *Id.*

365. CITY OF GLENDALE, CAL., SOUTH GLENDALE HISTORIC CONTEXT STATEMENT Appendix J (Sept. 30, 2014), https://www.glendaleca.gov/home/showpublisheddocument/45661/636651702317500000 [https://perma.cc/C9WR-7VHV].

366. *Id.*

367. *Id.*

368. *Id.* at 20–21.

369. CITY OF GLENDALE, CAL., REPORT: ACKNOWLEDGEMENT OF THE CITY OF GLENDALE'S HISTORICAL CONTRIBUTIONS TO RACISM (Sept. 15, 2020) [hereinafter CITY OF GLENDALE, CAL.], https://sundown.tougaloo.edu/content/GlendaleReport.pdf [https://perma.cc/228Y-TBJR].

370. *See* LOEWEN, *supra* note 19 (describing "sundown towns" as towns that are white on purpose and as a result of decades of exclusionary practices).

371. CITY OF GLENDALE, CAL., *supra* note 369.

372. CITY OF GLENDALE, CAL., REQUEST FOR PROPOSALS FOR HISTORIC CONTEXT STATEMENT 4 (2021), https://www.glendaleca.gov/home/showpublisheddocument/60234/637462456608470000 [https://perma.cc/P2KS-P3RZ].

yet little information on progress for the racial history of Glendale,[373] other cities are setting the stage for what a more inclusive racial history would address,[374] including the comprehensive racial history report entitled, *A Matter of Truth*, prepared by the Rhode Island Black Heritage Society and 1696 Heritage Group in Providence, Rhode Island[375] and the Racial Equity Task Force's report in Durham, North Carolina entitled, *An Urgent and Loving Call to Action*.[376] And, as noted above, the Town of Amherst confronted an ignorance of a racial history by taking ownership of its past, declaring its history of a racist past, and creating an African Heritage Reparations Assembly to study and develop recommendations for financial and other reparations to repair past harms, including an allocation plan that will be approved by the Amherst Black community.[377]

B. Racial Impact Statements

As noted by Yxta Maya Murray, "The critique is old but durable: The wealthy cannot see the poor clearly, if at all."[378] Impacts to racialized and socio-economically disadvantaged communities have been ignored.[379] Several cities and towns are seeking more competent grasp of the impacts of their development and social services decisions on race.[380] Oakland, California, has developed Equity Indicators

373. One might be skeptical. Although the RFP clearly identified the need for consultants with experience in historic research regarding racial, ethnic and socio-economic issues, the RFP submittal requirements contained no such regard. *Id.* at 8–9.

374. For instance, Los Angeles, California, has prepared a historic context statement specific to Black history. *See* SURVEYLA, LOS ANGELES CITYWIDE HISTORIC CONTEXT STATEMENT (Feb. 2018), https://planning.lacity.org/odocument/7db8747f-87fb-4c6f-bb95-5482be050683/SurveyLA_AfricanAmericanHCS_05242019.pdf [https://perma.cc/YS26-KVSJ].

375. R.I. BLACK HERITAGE SOC'Y & 1696 HERITAGE GRP., A MATTER OF TRUTH: THE STRUGGLE FOR AFRICAN HERITAGE & INDIGENOUS PEOPLE EQUAL RIGHTS IN PROVIDENCE, RHODE ISLAND (1620–2020) (2021), https://www.providenceri.gov/wp-content/uploads/2021/06/Matter-of-Truth2.pdf [https://perma.cc/4Q6A-FDB5].

376. In October 2018, City of Durham Mayor Pro Tempore Jillian Johnson formed its first racial equity task force with 17 volunteer members from across the City. The Task Force spent 21 months meeting with community members, pouring over city records, and story gathering/telling, analyzing patterns and trends, and visioning an anti-racist Durham. DURHAM RACIAL EQUITY TASK FORCE, *supra* note 204.

377. Creating an African Heritage Reparations Assembly to study and develop recommendations for financial and other reparations to repair past harms, including an allocation plan that will be approved by the Amherst Black community. TOWN OF AMHERST, UNOFFICIAL RECORD OF VOTES ON THE TOWN COUNCIL (June 2, 2021), https://www.amherstma.gov/ArchiveCenter/ViewFile/Item/13498 [https://perma.cc/B2SH-GDGN].

378. Yxta Maya Murray, *Peering*, 22 GEO. J. ON POVERTY L. & POL'Y 249, 255 (2015).

379. *See id.* at 293.

380. See, for instance, a bill recently approved by the City Council for New York City (but yet unsigned by the Mayor). N.Y.C., N.Y., Requiring a citywide equitable development data tool and racial equity reports on housing and opportunity (July 18, 2021). The bill requires a racial impact analysis for "land use changes that propose residential

that will help measure the impacts of economic, educational, housing, public health and land use decisions across the range of residents in the city.[381] Seattle has convened a Racial Equity Lab to increase visibility and public awareness of the implementation of the equity indicators in governmental decision-making.[382] King County, Washington adopted Ordinance 16948, referred to as King County's Equity and Social Justice Ordinance, which identifies ways to implement the "fair and just" principle adopted in the county's 2010–2014 countywide strategic plan.[383] The Equity and Social Justice Ordinance identified 14 indicators of equity (early childhood development, education, jobs and job training, health and human services, food systems, parks and natural resources, built environmental and natural environment, transportation, community economic development, neighborhoods, housing, community and public safety, law and justice, and equity in County practices), provides structure for the County's annual self-reporting on equity and social justice, and led to the recent Determinants of Equity report, which additionally identifies 67 community-level indicators of equity.[384]

A less comprehensive, but nonetheless far-reaching strategy is being employed by Montgomery County, Maryland, in its establishment of the Office of Racial Equity and Social Justice and use of racial equity and social justice impact statements.[385] Montgomery

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projects 50,000 sq[uare] [feet] or larger, non-residential projects 200,000 sq[uare] [feet] or larger, citywide zoning text amendments affecting five or more community districts, or certain downzonings or historic districts." N.Y. CITY COUNCIL, MINUTES OF THE PROCEEDINGS FOR THE STATED MEETING 1689 (2021), https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3963886&GUID=D2C9A25B-0036-416E-87CD-C3AED208AE1B [https://perma.cc/H5HX-MWMY]. The bill also proposes development of an "Equitable Development Data Tool" that will result in the systematic collection of demographic and economic data on a variety of issues relevant to urban life (e.g., housing security and displacement, neighborhood circumstances, opportunity, and others). *Id.*

381. CITY OF OAKLAND, OAKLAND EQUITY INDICATORS: MEASURING CHANGE TOWARD GREATER EQUITY IN OAKLAND 8 (2018). The development of such indicators is supported by Oakland's self-assessment as an historically activist city. *See Oakland's History of Resistance to Racism*, CITY OF OAKLAND, https://www.oaklandca.gov/topics/oaklands-history-of-resistance-to-racism [https://perma.cc/2WAS-F2RV].

382. *Racial Equity Lab*, SEATTLE INNOVATION ADVISORY COUNCIL, https://www.seattle.gov/innovation-advisory-council/projects/racial-equity-lab [https://perma.cc/PM87-PTCX] (last updated 2022).

383. King County, Wash., Ordinance 16948 (Oct. 11, 2010).

384. *Id.*; *see* KING CNTY., THE DETERMINANTS OF EQUITY (2015).

385. Montgomery Cnty., Md., Bill 27-19 (Nov. 19, 2019). The idea of a racial impact statement, both in process and substance, is supported in the literature on anti-racism in land use practices. Martha R. Mahoney has explained:

> Land-use decisions affect the development of jobs and housing and the racialized allocation of resources and economic access—even when those decisions appear to have nothing to do with race. Decisions like highway planning, industrial-park location, bridge development, and other decisions should all be evaluated for their impact on the perpetuation of current

County Bill 27-19 (Ordinance) establishes a racial equity and social justice program that includes staff positions to manage the responsibilities under the Ordinance and a requirement that each agency, including the executive, develop a racial equity and social justice action plan.[386] Importantly, the operative provisions in the Ordinance require the director of the Office of Legislative Oversight (OLO) to prepare racial impact statements for every legislative proposal.[387] The action plan must include a process for effective community engagement, include racial and equity training for county employees, identification of race-space considerations for new and existing programs, as well as goals and metrics to measure progress towards equitable County operations.[388] The Ordinance defines race as "a social construct that artificially divides people into distinct groups based on characteristics such as physical appearance (including color), ancestral heritage, cultural affiliation, cultural history, ethnic classification, and the social, economic and political needs of a society at a given period."[389]

In this program, the County Council is required to consider the racial equity and social justice impact statement for every legislative bill under consideration.[390] The statements must be available a week before consideration of any bill, and within three weeks after the bill is proposed.[391] The information required in an impact statement includes:

1) the sources of information, assumptions, and methodologies used;

> patterns of racial segregation in housing and employment. All decisions should then be scrutinized for their effect on the racial reproduction of power and access in employment and on residence as well. Reports evaluating potential decisions would project the impact of any development on residential and employment segregation.

Mahoney, *supra* note 228, at 1678. *See also* AM. BAR ASS'N JUSTICE KENNEDY COMM'N, RECOMMENDATIONS ON RACIAL AND ETHNIC DISPARITY IN THE CRIMINAL JUSTICE SYSTEM 4 (2004) ("Requiring the legislature to conduct racial and ethnic disparity impact analyses, evaluate the potential disparate effects on racial and ethnic groups of existing statutes and proposed legislation, and propose legislative alternatives intended to eliminate predicted racial and ethnic disparity at each stage of the criminal justice process.").

386. Montgomery Cnty., Md., Bill 27-19 (Nov. 19, 2019).

387. *Id.* In contrast to the New York City bill, the Montgomery County ordinance does not require a racial impact statement for each development project but is limited to legislative proposals. The county will bear the cost of preparing these impact statements.

388. *Id.*

389. *Id.* The ordinance defines racial equity and social justice as "changes in policy, practice and allocation of County resources so that race or social justice constructs do . . . not predict one's success, while also improving opportunities and outcomes for all people."

390. *Id.*

391. *Id.*

> 2) an estimate of both positive and negative changes in racial equity and social justice [equity] in the County as a result of the implementation of the bill;
> 3) recommended amendments that may promote racial equity and social justice [equity]; and
> 4) if a bill is likely to have no racial equity or social justice [equity] impact, why that is the case.[392]

The Ordinance also includes sections relating to greenhouse gas emissions and the relationship to racial justice.[393]

To date, the OLO has prepared and submitted dozens[394] of racial impact statements to accompany legislative bills.[395] Each statement provides a summary and background for the legislative proposal, identifies demographic data for the affected areas of the county, identifies methodologies used, and makes a statement of anticipated impacts (and recommended amendments, if applicable).[396] It is anticipated that this process, which has no substantive effect on the Council's discretion to legislate, will develop in a similar way to environmental impact review under the National Environmental Policy Act (NEPA) and its state counterparts: it does not demand a different result, but it raises the level of awareness and sensitivity to the likely impacts from governmental action.[397]

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392. Montgomery Cnty., Md., Bill 27-19 (Nov. 19, 2019).

393. *Id.*

394. As of October 10, 2021, the County listed 44 racial impact statements on its website. *See Racial Equity and Social Justice Impact Statements*, OFF. OF LEGIS. OVERSIGHT, https://www.montgomerycountymd.gov/OLO/resjis.html [https://perma.cc/5RL9-H7ZN].

395. Not surprisingly, given the program's youth, each statement comes with caveats. For example, one statement instructed:

> Two caveats to this racial equity and social justice [RESJ] impact statement should be noted. First, predicting the impact of legislation on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement is intended to inform the legislative process rather than determine whether the Council should enact legislation. Thus, any conclusion made in this statement does not represent [the Office of Legislative Oversight's] endorsement of, or objection to, the bill under consideration.

See OFF. OF LEGIS. OVERSIGHT, BILL 9-21 RACIAL EQUITY AND SOCIAL JUSTICE IMPACT STATEMENT 3 (2021) [hereinafter OFF. OF LEGIS. OVERSIGHT]. The caveat might seem benign, but it does raise questions about whether the impact statements are being subjected to a rigorous process. Most of the impact statements find only positive impacts on race and communities of color. However, in some cases, the OLO has recommended amendments to particular bills to align the proposals with the County's racial justice mission. *See, e.g.*, OFF. OF LEGIS. OVERSIGHT, EXPEDITED BILL 50-20 RACIAL EQUITY AND SOCIAL JUSTICE IMPACT STATEMENT 2 (2020).

396. *See* OFF. OF LEGIS. OVERSIGHT, *supra* note 395, at 1–2.

397. *National Environmental Policy Act (NEPA)*, ENV'T L. INST., https://www.eli.org/land-biodiversity/national-environmental-policy-act-nepa [https://perma.cc/EZ4E-6WNZ].

C. Enhanced Public Participation

Although "public participation" is a value and goal that finds itself expressed in almost every comprehensive plan, it is clear that communities can be more engaging.[398] The planning process should engage people of color residents and neighbors, document conversations, and take note of how residents participate. Is the planning process designed to distribute or gather information? Are planners talking or listening?[399] People of color should be represented *as* decisionmakers in the community and sources of information based on the principle that "those closest to the pain should be closest to the power."[400] As Lawrence Thomas suggests, "a presumption in favor of the person's account of his experiences . . . is warranted because the individual is speaking from a vantage point to which someone not belonging to his diminished social category group does not have access."[401]

In 1999, in response to calls for action on environmental equity, the New York Department of Environmental Conservation (DEC) initiated a process to consider environmental justice in a meaningful way.[402] DEC created positions to develop an environmental justice program, including an Environmental Justice Advisory Group that was tasked with making policy recommendations.[403] Under the resulting DEC policy, environmental justice areas are identified based

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398. Carol M. Rose, *Planning and Dealing: Piecemeal Land Controls as a Problem of Local Legitimacy*, 71 CAL. L. REV. 837, 911 (1983) (land use controversies "are decisions where quality matters especially, and we want them made where we have voice—or the ultimate possibility of exit.").

399. *See* John Forester, *Planning in the Face of Power*, 48 J. AM. PLAN. ASS'N 67, 69 (1982).

400. DURHAM RACIAL EQUITY TASK FORCE, *supra* note 204. Until that occurs, planners must refrain from being offended if people of color are not ready to engage in questions about race. They should recognize that when questions of race come to the floor, it can be seen as aggressive, isolating, performative and even manipulative. In the meantime, communities must challenge moments that express racist ideas or that mask systemic racism and address the ways that a community's vision illustrates privilege.

401. Thomas, *supra* note 245, at 374.

402. N.Y. STATE DEP'T OF ENV'T CONSERVATION, COMMISSIONER POLICY 29, ENVIRONMENTAL JUSTICE AND PERMITTING (2003), https://www.dec.ny.gov/regulations/36951.html [https://perma.cc/3TFB-5U82].

403. *Id.* At present, the New York Office of Environmental Justice manages four distinct environmental justice programs: Indian Nation Consultation (requiring consultation with Indian Nation representatives on matters affecting indigenous interests); Green Infrastructure (encouraging nature-based stormwater control to improve resiliency); Operation ECO Quality (establishing outreach, consultation and compliance mechanisms for small to mid-size regulated facilities in Environmental Justice areas); and Grant Opportunities (offering competitive grants to empower community development of solutions for environmental harms, and health hazards). *Environmental Justice*, N.Y. STATE DEP'T OF ENV'T CONSERVATION, https://www.dec.ny.gov/public/333.html [https://perma.cc/6F64-CZUX].

on racial and socio-economic criteria.[404] Environmental justice mapping is maintained by the DEC and is accessible by the public.[405] For certain permitting processes for regulated industries, the policy requires DEC to confirm that an environmental justice area is likely to be affected, then requires the applicant at the earliest possible time to prepare a written "enhanced public participation plan" to insure the engagement of affected communities.[406] Applicants are required to:

> 1. Identify stakeholders to the proposed action, including residents adjacent to the proposed action site, local elected officials, community-based organizations and community residents located in a potential environmental justice area;
> 2. Distribute and post written information on the proposed action and permit review process. Information shall be presented in an easy-to-read, understandable format, using plain language and, when appropriate, public notice materials shall be translated into languages other than English for comprehension by non-English speaking stakeholders;
> 3. Hold public information meetings to keep the public informed about the proposed action and permit review status. Meetings should be held throughout the permit review process at locations and times convenient to the stakeholders to the project;
> 4. Establish easily accessible document repositories in or near the potential environmental justice area to make available pertinent project information, including but not limited to: application material, studies, reports, meeting presentation materials and media releases. The applicant may also establish a repository on the internet.[407]

Applicants must then certify compliance with the enhanced participation plan.[408]

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404. *See Maps and Geospatial Information System (GIS) Tools for Environmental Justice*, N.Y. STATE DEP'T OF ENV'T CONSERVATION, https://www.dec.ny.gov/public/911.html [https://perma.cc/NZ49-L52E]. An area qualifies as an environmental justice where at least 52.42% of the population in an urban area reported themselves to be members of minority groups; or at least 26.28% of the population in a rural area reported themselves to be members of minority groups; or at least 22.82% of the population in an urban or rural area had household incomes below the federal poverty level.

405. *See Potential Environmental Justice Areas (PEJA)*, N.Y. DEP'T OF ENV'T CONSERVATION, https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential_Environmental_Justice_Area__PEJA__Communities/FeatureServer&source=sd [https://perma.cc/SU92-E5SN] (last visited Jan. 27, 2023).

406. N.Y. STATE DEP'T OF ENV'T CONSERVATION, *supra* note 402.

407. *Id.*

408. *Id.*

By itself, enhanced participation is not likely to break the back of a racist history, segregation practices, or economic disparities. Indeed, procedural improvements only go so far. However, a shift in the engagement process can be empowering, can illustrate the cracks and crevices of economic power, and can channel community building[409] by symbolizing the advent of a moral reckoning.[410] An inclusive and participatory process can reflect the importance of deferring to the insights from lived experience, particularly of those who are disfavored or ignored, much more than we might get from an outside or unexperienced vantage point.

D. Reparations

The idea of reparations[411] for the atrocities committed against African Americans since the nation was founded is emerging in city halls and other government buildings.[412] Groups such as the Mayors Organized for Reparations and Equity (MORE)[413] are driving communities

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409. Thomas, *supra* note 245, at 377 ("To have such insight into another's moral pain will not be tantamount to having that person's fears or being haunted by his memories, but it will entail having a sense of the kinds of things and circumstances that will trigger his fears and memories. It will not entail being vulnerable when he is downwardly constituted on account of his diminished social category, but it will entail a sense of the kinds of social circumstances that will give rise to such vulnerability. Moreover, it will entail being appropriately moved on account of these things. To have such insight is to be in as good a position as one can be to understand, while lacking a complete grasp of another's moral pain.").

410. *Id.* at 378 ("[E]arning the trust of another, especially someone who is weary of trusting anyone from a different social category (diminished or privileged), is an act of great moral responsibility—something not to be taken lightly.").

411. *See* ROY L. BROOKS, ATONEMENT AND FORGIVENESS: A NEW MODEL FOR BLACK REPARATIONS ix (2004). Some have debated the social meanings of reparations. *See, e.g.*, Eric K. Yamamoto, *Friend, Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DENV. J. INTL. L. & POL'Y 223, 223 (1992); Tyron J. Sheppard & Richard Nevins, *Constitutional Equality—Reparations at Last*, 22 U. WEST L.A. L. REV. 105, 106 (1991).

412. *See Our Coalition*, MAYORS ORGANIZED FOR REPARATIONS AND EQUITY (MORE), https://moremayors.org/mayors [https://perma.cc/BML3-D2YE] (last updated 2021).

413. *See id.* The members of MORE have committed to the following pledge:

> 1. Commit to supporting H.R. 40 (Commission to Study and Develop Reparation Proposals for African-Americans Act).
> 2. Form an advisory committee/commission composed of members of local, Black-led organizations to formally advise the Mayor on an approach to reparations—including strategies and opportunities to seek public and/or private dollars to fund pilot programs.
> 3. When funding is identified, and in consultation with the committee/commission, lead development and implementation of a pilot reparations program targeted at a cohort of Black residents. Though these local programs would vary in style and scope and be considered very modest in the context of the $12 trillion in federal spending that is estimated to be required to close the Black/White wealth gap, they would serve as high-profile demonstrations for how the country can more quickly move from conversation to action on reparations for Black Americans.

Id.

towards recognizing the need to address the persistent effects of racial inequities as they pervade community governance.[414] As Ta-Nehisi Coates notes, taking ownership of America's past is a sign of maturity, of humanity, and wisdom:

> An America that asks what it owes its most vulnerable citizens is improved and humane. An America that looks away is ignoring not just the sins of the past but the sins of the present and the certain sins of the future. More important than any single check cut to any African American, the payment of reparations would represent America's maturation out of the childhood myth of its innocence into a wisdom worthy of its founders.[415]

Although we have seen inconsistent political support for reparations,[416] a demonstration of such maturity is a critical step in mending social relations[417] and targeting barriers to freedom and equality.[418]

Communities are beginning to address this need for justice.[419] One approach is to target urban renewal displacements.[420] Before 1960, the neighborhood known as Linnentown was a middle-class Black community located in Athens–Clarke County, Georgia.[421] The residents of Linnentown—some fifty hard-working Black families—held jobs as brick masons, janitors or nurses.[422] They traveled the dirt roads in the neighborhood that had been approved for paving and streetlights, but for which no public investments had been made.[423]

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414. *See id.*

415. Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631 [https://perma.cc/JCD2-G8FZ].

416. Eric K. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 40 B.C. L. REV. 477, 480 (1998) (discussing efforts and failures in providing reparations for slavery (40 acres and a mule), the 1923 Rosewood massacre, and the Tuskegee syphilis experiment).

417. *Id.* at 519 ("Reparations for African Americans, conceived as repair, can help mend this larger tear in the social fabric for the benefit of both blacks and mainstream America.").

418. Matsuda, *supra* note 354, at 391 (explaining that reparations can target barriers to freedom and equality).

419. ATHENS-CLARKE CNTY., GA., RESOLUTION IN SUPPORT OF RECOGNITION AND REDRESS FOR LINNENTOWN (Jan. 19, 2021).

420. *Id.*

421. LINNENTOWN JUST. AND MEMORY COMM., REDRESS FOR LINNENTOWN, https://www.redressforlinnentown.com/removal [https://perma.cc/9XUQ-WYPD].

422. *Id.*; Grant Blankenship, *Reparations For 'Terrorism,' 'White Supremacy' In Athens Mark A Georgia First*, GPD NEWS ONLINE (Apr. 14, 2021, 8:30 AM), https://www.gpb.org/news/2021/04/14/reparations-for-terrorism-white-supremacy-in-athens-mark-georgia-first [https://perma.cc/8TJ3-Y5XH].

423. ATHENS–CLARKE CNTY., GA., RESOLUTION IN SUPPORT OF RECOGNITION AND REDRESS FOR LINNENTOWN (Jan. 19, 2021).

By all accounts, they were decent folks and citizens who were trying to accumulate wealth, like everyone else.[424] However, following the establishment of the Federal Urban Renewal Program,[425] Linnentown was targeted by the University of Georgia.[426]

The county and University engaged in deplorable tactics to remove the residents, including (among others) intimidation, code enforcement, collection of personal financial information, and even burning the houses of acquired properties (while other residents were present in the neighborhood), depriving the residents of any sense of empowerment or access to justice.[427] The University and local government's stated purpose for condemning the properties in Linnentown was "slum clearance," although the pretextual reason for the university's project was construction of "luxury" dormitories for its predominately white student body.[428] The compensation offered (and eventually received) was pitiful.[429] Today, the cumulative value of the confiscated properties totals approximately $76 million (a return on investment of 35,000%), wealth that might have accumulated in these residents absent the acquisition.[430]

On February 16, 2021, the Athens–Clarke County Mayor and Commission voted to approve the Linnentown Resolution "in support of recognition and redress for Linnentown, its descendants, and Athens–Clarke County Black communities harmed by urban renewal . . . ."[431] The Resolution was designed to make amends and provide reparations to the descendants of the residents of Linnentown and the greater Black community remaining in the Athens-Clarke area.[432] The Resolution acknowledges the government and University system role in the destruction of Linnentown, supports the establishment of memorials and historical places to commemorate Linnentown, supports the allocation of funds in the annual budget for economic and community development of historically impoverished areas, calls on the Georgia legislature to establish a body to

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424. *Id.*

425. *Id.*; *see* Act of Sept. 23, 1959, Pub. L. No. 86-372, 73 Stat. 654, 677 (amending the Housing Act of 1949 to allow state universities to participate in the program).

426. Jake Drukman, *Athens Commission passes Linnentown Resolution*, RED & BLACK (Feb. 17, 2021), https://www.redandblack.com/athensnews/athens-commission-passes-linnentown-resolution/article_5cf1ae56-70e0-11eb-9ddc-db80765f8c16.html [https://perma.cc/ZHC7-PPZK].

427. ATHENS–CLARKE CNTY., GA., RESOLUTION IN SUPPORT OF RECOGNITION AND REDRESS FOR LINNENTOWN (Jan. 19, 2021).

428. LINNENTOWN JUSTICE & MEMORY COMM., *supra* note 421.

429. *Id.*

430. *See* ATHENS–CLARKE CNTY., GA., RESOLUTION IN SUPPORT OF RECOGNITION AND REDRESS FOR LINNENTOWN 13 (Jan. 19, 2021) (noting the average compensation was $5,750).

431. *Id.* at 1.

432. *Id.* at 3.

address the state's legacy of slavery and segregation, and commits investments to Black monuments and museums.[433]

Another of the early reparations programs was established in the City of Evanston, Illinois.[434] In March of 2021, Evanston established its "Restorative Housing Program," under which applicants may be eligible to receive assistance grants of up to $25,000 towards the purchase of a home, home improvements, or mortgage assistance.[435] The funding comes from a "Local Reparations Fund" established in 2019 to fund equity initiatives in the city.[436] The total reparations fund reportedly has a balance of $10,000,000.[437]

Other towns and cities have committed to, or are in the process of envisioning reparations projects in their communities.[438] Following the apology, the Town of Amherst created a reparations fund and are creating a process for allocating funds and other repair mechanisms.[439] On July 15, 2000, Providence, Rhode Island, Mayor

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433. Although the community voiced strong support for cash payments to alleviate historical practices of racism, the Georgia State Constitution complicates reparations payments to individuals, where those payments are intended to forgive debts or obligations owed to the public. *See* Rashawn Ray & Andre M. Perry, *Why we need reparations for Black Americans*, BROOKINGS INST. (Apr. 15, 2020), https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans [https://perma.cc/MUW2-FCLR]; Constitution of the State of Georgia. Article III, Section VI, Paragraph VI. As such, the Mayor and Commission included community members in their budgeting process. Prohibited from making direct payments to individuals, the collaboration instead will focus on expenditure of reparations funds on local projects in impoverished or Black communities to improve the well-being and livability of those communities. In the meantime, there remains uncertainty of "budgeting as reparations" plan, but the mayor has publicly committed a portion of the $58 million in Federal recovery funds to these reparations projects. *See* Adina Solomon, *A Look at the First Official Act of Reparations in Georgia*, FACING SOUTH (June 29, 2021), https://www.facingsouth.org/2021/06/look-first-official-act-reparations-georgia [https://perma.cc/PDH9-SWZ7]. Plans to install historical markers commemorating Linnentown were slated to begin in 2021 or 2022. Notably, the University system has apparently not participated, except to state that they "respectfully disagree" with the "conclusions" of the Resolution; *see also* Drukman, *supra* note 426.

434. Char Adams, *Evanston is the first U.S. city to issue slavery reparations. Experts say it's a noble start*, NBC NEWS (Mar. 26, 2021), https://www.nbcnews.com/news/nbcblk/evanston-s-reparations-plan-noble-start-complicated-process-experts-say-n1262096 [https://perma.cc/SA7U-TGF9].

435. CITY OF EVANSTON, CITY OF EVANSTON LOCAL REPARATIONS, RESTORATIVE HOUSING ELIGIBILITY APPLICATION, https://arts.formstack.com/forms/restorative_housing_program_eligibility_application [https://perma.cc/E8H5-7AMJ] (deactivated when accessed Nov. 6, 2022).

436. Adams, *supra* note 434.

437. *National Town Hall Meeting*, CITY OF EVANSTON LOCAL REPARATIONS (2021), https://www.cityofevanston.org/government/city-council/reparations [https://perma.cc/N3AK-3KSR] (deactivated when accessed Nov. 6, 2022).

438. Janice Hayes Kyser, *Cities leading the way on reparations, experts say*, LOS ANGELES WAVE (Nov. 14, 2021), https://wavepublication.com/cities-leading-the-way-on-reparations-experts-say [https://perma.cc/9KTY-CT9S].

439. Town of Amherst, Mass., *Order Creating a Special Purpose Fund for Reparations*, Approval Order #FY22-15 (June 23, 2021).

Jorge Elorza signed Executive Order 202-13,[440] identifying a process of Truth, Reconciliation, and Municipal Reparations.[441] Providence is currently engaged in the Reparations phase of the work, led by a coalition that includes Roger Williams University, Providence Cultural Equity Institute, African American Ambassador Group, Providence Public Library and the City of Providence.[442] Detroit President Pro Tem Mary Sheffield's resolution, which unanimously passed the Detroit City Council, creates a city task force to design a reparations approach to address a history of racist policies and inequitable treatment of Black people and communities.[443] The City Council in Asheville, North Carolina, commissioned a racial disparity study, established the Office of Equity and Diversity, called on state and federal governments to provide reparations,[444] and approved reparations funding of over $3 million in investments in areas demonstrating disparate treatment of Black residents.[445] These actions are founded in "reparations"—the idea of repairing damage done.[446] Reparations will not fully repair the legacy of racism, but it is a necessary start.

E. Inclusive Land Use Planning

A primary component of an effort to operate an anti-racist local government must include inclusive land use planning. Many local governments will fail—or at least, many local governments will struggle.[447] But engaging in the planning effort is critical.[448] In the

440. Mayor of Providence, R.I., Executive Order 202-13 (July 15, 2020).

441. Jorge O. Elorza, *Engage in the City's Reconciliation Work*, CITY OF PROVIDENCE (Feb. 28, 2022), https://www.providenceri.gov/engage-citys-reconciliation-work [https://perma.cc/6RBB-JL9V].

442. *Id.*

443. Larry Spruill & Natasha Dado, *Detroit City Council votes in favor of reparations commitment*, CLICK ON DETROIT (July 20, 2021), https://www.clickondetroit.com/news/local/2021/07/20/detroit-city-council-votes-in-favor-of-reparations-commitment [https://perma.cc/3FU8-KCL5].

444. CITY OF ASHEVILLE, N.C., RESOLUTION SUPPORTING COMMUNITY REPARATIONS FOR BLACK ASHEVILLE (July 14, 2020), https://drive.google.com/file/d/1WKialVISWzu72mhasyy9SslDbVGMSj5U/view [https://perma.cc/SR9L-CV2C].

445. CITY OF ASHEVILLE, N.C., STAFF REPORT: INITIAL FUNDING OF REPARATIONS (June 8, 2021), https://drive.google.com/drive/folders/1SAK_WO3BcKeg7_4UKIjm7Oyk66yzRVHK [https://perma.cc/Z6F5-BFUZ].

446. CITY OF ASHEVILLE, N.C., RESOLUTION SUPPORTING COMMUNITY REPARATIONS FOR BLACK ASHEVILLE (July 14, 2020).

447. For instance, during the development of Houston's 2014 Master Plan, the city conducted a Parks Survey. The majority of Houston residents asked for increased connectivity (e.g., bike and pedestrian paths) between neighborhoods and parks. In response, Houston embarked on an enormous plan to link the City in its Bayou Greenways 2020 plan. The problem with the plan was informational and race-based: the vast majority of the survey responses were taken from white residents with average incomes over $75,000.

tradition of the "Just City," inclusive planning activity decenters whiteness in favor of equity.[449] An effective use of the comprehensive planning process can make anti-racism a central principle that binds the community as a community trait and a shared mission.[450]

A recent planning report in Louisville, Kentucky, provides an example of performative race-based land use planning.[451] In 2019, the City of Louisville published a report addressing challenges to equitable development in the metropolitan area.[452] Although the report identifies "our intentional and unintentional missteps in policy decisions" and further identifies the "crucial" project of understanding the city's past, the report fails to demonstrate a sincere self-assessment of its racist history.[453] In three short paragraphs, this report detailed a story of racism that produced the Supreme Court's consternation in *Buchanan v. Warley* and the city's efforts

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The survey was, depending on how you look at it, underinclusive of BIPOC residents, or overinclusive of white residents. A follow-up, independent study found:

> Neighborhood connectivity to parks was not a salient issue among park users in these neighborhoods, although this had been a primary finding from the 2014 Master Plan Survey and a favored option of 31 percent of respondents in our closed-ended question. Instead, they envisioned a diverse set of new or improved amenities—most prominently, restrooms and water fountains, and an array of recreational infrastructure—in better maintained and safer parks.

Kevin T. Smiley, Tanvi Sharma, Alan Steinberg, Sally Hodges-Copple, Emily Jacobson & Lucy Matveeva, *More Inclusive Parks Planning: Park Quality and Preferences for Park Access and Amenities*, 9 ENV'T JUST. 1, 5 (2016). *See also* the public reaction against the City of Detroit's tree planning program: Christine E. Carmichael & Maureen H. McDonough, *Community Stories: Explaining Resistance to Street Tree-Planting Programs in Detroit, Michigan, USA*, 32 SOC'Y & NAT. RES. 588, 589 (2019); Brentin Mock, *Why Detroit Pushed Back Against Tree-Planting*, BLOOMBERG CITYLAB (Jan. 11, 2019), https://www.bloomberg.com/news/articles/2019-01-11/why-detroiters-didn-t-trust-city-tree-planting-efforts#:~:text=Why%20Detroit%20Residents%20Pushed%20Back%20AgaiAga%20Tree-Planting%20Detroiters,person%20to%20ask%20them%20if%20they%20wanwan%20them [https://perma.cc/HE9T-68KC] ("It's not that they didn't trust the trees; they didn't trust the city.").

448. UNIV. OF ILL. EXTENSION, LOCAL COMMUNITY RESOURCES, COMPREHENSIVE PLANNING, https://web.extension.illinois.edu/lcr/comprehensiveplanning.cfm#:~:text=A%20comprehensive%20plan%20can%20be%20a%20tool%20for,issues%20related%20to%20the%20appropriate%20uses%20of%20land [https://perma.cc/2TGF-Y6ZC] (last visited Jan. 27, 2023) ("An old saying amongst those in the planning profession is that if you fail to plan, what you are in reality doing is planning to fail.").

449. *See, e.g.*, SUSAN S. FAINSTEIN, THE JUST CITY 182 (2010).

450. One example is Boston's use of a racial lens to prepare its resiliency plan. MAYOR'S OFF. OF RESILIENCE & RACIAL EQUITY, RESILIENT BOSTON: AN EQUITABLE AND CONNECTED CITY (2017), https://www.boston.gov/sites/default/files/file/document_files/2017/07/resilient_boston_digital.pdf [https://perma.cc/2W22-VEWG].

451. CITY OF LOUISVILLE, DEVELOP LOUISVILLE, ADVANCING EQUITY: REMOVING BARRIERS TO EQUITABLE DEVELOPMENT IN LOUISVILLE METRO 2 (Apr. 2019) [hereinafter DEVELOP LOUISVILLE].

452. *Id.* at 1.

453. *Id.*

to circumvent the decision and continue to support racial segregation.[454] The report merely attributes as "missteps" the adoption of a racial zoning scheme in 1914, a land use scheme so racist that "the U.S. Supreme Court was forced to intervene."[455] The report only refers to the practice of redlining as merely creating "unnecessary hurdles" to equity in housing, and cautions only that it would be "unwise" to ignore the impact of Jim Crow laws and white flight on the legacy of segregation in the city.[456] Similarly, the report identifies highway construction that split neighborhoods and created physical barriers between racialized neighborhoods because "it would be remiss to overlook" the impacts of such practices.[457] The failure or refusal to even use the word racism might be all we need to know. There is a serious lack of accountability or ownership demonstrated here.

The report focuses on barriers that have prevented African Americans from acquiring intergenerational wealth.[458] At best, it might be said that the report lacks perspective. First, the report identifies housing disparities, arguing that minimum lot size, a complicated rezoning process, restrictive covenants and prohibitions on accessory dwelling units have reduced affordable housing opportunities.[459] Second, the report identifies off-street parking requirements as the cause of urban tree removal, demolition of downtown structures, and high costs for both commercial and residential uses, each of which could have played a role in maintaining the persistence of racial disparities in the city.[460] Finally, the report notes that "our land-use policies fail to recognize the role of craft manufacturers and artisans; many of whom provide the goods directly to consumers."[461]

To resolve the history of racism in Louisville, the report recommends reducing minimum lot sizes and increasing densities in certain areas, providing for open space regulations for new developments, allowing attached and accessory dwelling units, supporting small businesses, revising parking standards, conducting a survey in certain districts to promote "quality of place," and "[r]esolv[ing] through the Louisville Metro Council the discriminatory elements located in deeds of restriction . . . ."[462] With these recommendations, the authors of the report claim to "have provided the framework for understanding our past and building towards a more equitable

454. 245 U.S. 60, 81 (1917); DEVELOP LOUISVILLE, *supra* note 451, at 1.
455. DEVELOP LOUISVILLE, *supra* note 451, at 1.
456. *See id.*
457. *Id.*
458. *Id.* at 2.
459. *See id.* at 2–3.
460. *See id.* at 4.
461. DEVELOP LOUISVILLE, *supra* note 451, at 5.
462. *Id.* at 6.

future."[463] Although the recommendations championed by Louisville can be found in literature on inclusive zoning practices,[464] Louisville is likely the first city to see its proposals as the solution to land use racism—for good reason.[465] We can do better.

Anti-racism entails an active—not passive—approach to beginning the process of reversing racism and repairing the damage done. Reparations, racial histories, enhanced participation and racial impacts analysis are a good start. However, implementing anti-racist ideas through the comprehensive plan requires a bit more vision about inclusiveness, vision that accounts for race, space, and place. Inclusive land use planning can address a long list of initiatives that have been made necessary due to a history of exclusion, displacement and disempowerment.[466] Just as in Minneapolis, Portland, Seattle, Charlotte, Richmond, and Denver (among others), comprehensive plans can address more inclusive neighborhood design, food security, a polycentric approach to historic resources, a diverse array of cultural resources, transportation equity, community connectedness, educational equity, housing security, community engagement, business opportunities for entrepreneurs of color, more inclusive community awareness and voice, support for attractions and events for people of color, ensuring safe use of natural and built environment, safe pedestrian routes, neighborhood resiliency, open and convenient access to shared spaces, self-determination in identifying investments for neighborhood revitalization and enhancement, distributional equity in natural resource investments, and support for neighborhood and community identity.[467] In each of these categories, which should be understood as categories of opportunity, cities and towns can fashion programs and priorities to address local needs in a way that illustrates that communities of color are valued. This type of planning could support more inclusive policies that can be—and should be—adopted by anti-racist communities. For instance, communities could:

- Make the community reflect greater diversity by removing monuments to racist figures and moments, while erecting monuments celebrating people of color.

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463. *Id.* at 5.

464. *See, e.g.*, Jonathan Rosenbloom, *Reducing Racial Bias Embedded in Land Use Codes*, 3 CITYLAW 50, 58–60, 62 (2020).

465. *See* DEVELOP LOUISVILLE, *supra* note 451, at 2.

466. *See* MAYOR'S OFF. OF RESILIENCE & RACIAL EQUITY, *supra* note 450, at 7, 9, 21.

467. DEVELOP LOUISVILLE, *supra* note 451, at 23–24; Rosenbloom, *supra* note 464, at 63; CITY OF RICHMOND, VA., THE FINAL RICHMOND 300 (2020), https://www.rva.gov/sites/default/files/2021-03/Inclusive%20Housing.pdf [https://perma.cc/DRE9-M652].

- Make shared spaces, such as forests and trails, safer and more inclusive by asking partners of color to design and manage open spaces.
- Reconsider the curricula and professional standards of land use planners to include training on truth-telling, privilege, inclusive participation, and the importance of authentic voice in designing communities.
- Implement programs in schools that foster an outdoor education and recreation pipeline for students of color.
- Play an active and intentional role in creating future land use professionals by introducing diverse students to a greater array of professional opportunities and supporting a pipeline for diverse students to pursue professional roles in land use planning, natural resources industries, and community leadership roles.
- Participate in reparations needs by committing public lands to lease and ownership opportunities for people of color, while also promoting entrepreneurial, farming, recreational, and conservation opportunities for people of color, while affirming that reparations objectives are consistent with the community vision.
- Reserve spaces for people of color and recognize that for several centuries in the United States, both private and public places have largely been white spaces.
- Re-indigenize spaces, such as forests and open spaces, acknowledging that the present accomplishments are tainted by a history of the erasure of others' cultures, spaces, and places.

CONCLUSION

A common theme in diversity and inclusion discussions concerns how proud folks are for engaging in a self-assessment of privilege.[468] In these conversations, people often wonder aloud when the self-assessment ends.[469] The questions are understandable, and the pride might be appropriate, but these discussions are going the wrong direction. Being an anti-racist community means the progress will not be linear. It involves so much culture and history, so many ingrained practices, so many assumptions dictated by complicated, lurking social constructs. It involves reflection on the normal,

468. *See* MAYOR'S OFF. OF RESILIENCE & RACIAL EQUITY, *supra* note 450, at 137–38.

469. *See, e.g.*, *Talking About Race: Being Antiracist*, NAT'L MUSEUM OF AFRICAN AM. HIST. & CULTURE, https://nmaahc.si.edu/learn/talking-about-race/topics/being-antiracist [https://perma.cc/7HF4-W7D8].

unquestioned acceptance of racialized assumptions. As such, the very idea of *completing* a racial self-assessment is not sincere. Inclusivity and anti-racism simply are not achievable without recognizing the complexity of excavating racism from a community's forgotten identity and history.

Land use planning presents an opportunity to disrupt historical patterns of segregation and exclusion.[470] Communities are positioned to be unapologetically anti-racist, to act in a way that reverses displacement and diaspora, to foster a diverse sense of belonging in spaces that are historically white-dominated. To sincerely engage in inclusive practices, communities need to be constantly aware that words, vision, and investments occur within a historical context.[471] We are all racists.[472] Ignoring that fact does not solve the problem. It is an active erasure of history and an erasure of identity. It is a violent act.

Communities have a choice. As a community interested in collective well-being and in creating belonging in a particular place, are we acting in an anti-racist and inclusive way? Addressing this question means engaging in an iterative process, one which constantly interrogates whiteness, especially the way that whiteness is relevant to sense of place. It means asking whether particular actions illustrate a commitment to anti-racism and whether a particular approach to inclusivity means expecting people to come to the community, or whether the community meets people in their own

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470. *See* UNIV. OF ILL. EXTENSION, *supra* note 448.

471. Through planning we can address the letter published by the self-fashioned A Concerned Black Human, from her *An Open Letter to the Union of Concerned Scientists: On Black Death, Black Silencing, and Black Fugitivity*. The author asks us to affirm Black life. She writes:

> [Y]ou can listen. Ask questions with curiosity and care. Be open to the responses by listening compassionately, even if it's not what you want to hear. Even if it's inconvenient, or goes against everything you believe. You, too, have truths to tell. Share them patiently. Affirm Black life. Say hello to your Black neighbors instead of making uncomfortable faces and crossing the street when they walk by. . . . Instead of buying doorbell cameras and high security systems to protect property because you think your neighborhood is unsafe, inquire about why the material conditions of people around you have not been met and what you can do to invest in their safety and wellbeing . . . . And please, stop calling the cops! If you make conditions better for the Black people around you will inevitably make them better for everyone else. And not just the friendly Black people present in your social circles, but the ones on the streets. The queer, trans, immigrant, disabled, incarcerated, poor, uneducated Black folks too. None of us are free until all of us are.

An Open Letter to the Union of Concerned Scientists: On Black Death, Black Silencing, and Black Fugitivity, An Affirmation of Black Life, From a Concerned Black Human (June 5, 2020), https://docs.google.com/document/d/132Ow3_FYcTQdc73pyAe0V_IIoIzq4nktYpZ-V4MZRTY/edit?pli=1 [https://perma.cc/Q3NN-UZEZ].

472. We are all supporting white power structures merely by interacting in the social system that created and supports segregation and neo-segregation. *See* Lawrence, *supra* note 221, at 322 ("To the extent that this cultural belief system has influenced all of us, we are all racists. At the same time, most of us are unaware of our racism.").

spaces. It will do no harm to name the beliefs and practices that maintain the horrific and unjust circumstances of racialized spaces. It may be inconvenient, but it will not hurt. At least, it will not hurt in comparison to the exclusion, denigration, and dehumanization that is being levelled against racially subordinated communities. Whiteness can be interrogated, privilege can be acknowledged, stereotypes can be adjusted,[473] and racism can be reversed. It will not be easy.[474] Excavating and reversing racism is difficult, but the comprehensive plan is an ideal opportunity to engage a local history.[475]

The Lansing Mayor's Report on Racial Justice concludes with hope but in recognition of the difficult work ahead:

> This plan is a beginning.
> To achieve our vision of making Lansing a city of inclusion, racial equity, and opportunity for all, we must engage the community and we must be transparent and provide regular updates on our progress and our setbacks.
> We know this for sure: we are strengthened by our diversity and emboldened by our mission. Diversity combines multiple perspectives to develop better solutions. Our work spans differences and is key to what's coming for our families, children, and neighborhoods.
> Generational reach is durable, long-term change supported by meaningful investment and an inclusive, community-based approach to the future.
> Let's get to work.[476]

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473. *See* LIPSITZ, *supra* note 3, at 244 ("Because of the absence of context, we are led to conclude that people who have problems are problems, that places where people are poor exist because of the people who live in them. What we do not see is that relations between races are relations between places, that the racial problems we confront have special causes." (emphases removed)).

474. As Cheryl Harris notes, "Although dominant societal norms have embraced the idea of fairness and nondiscrimination, removal of privilege and antisubordination principles are actively rejected or at best ambiguously received because expectations of white privilege are bound up with what is considered essential for self-realization." Harris, *supra* note 227, at 1760–61. *See also* Timothy D. Wilson & Nancy Brekke, *Mental Contamination and Mental Correction: Unwanted Influences on Judgments and Evaluations*, 116 PSYCH. BULL. 117, 133 (1994) "(There is considerable evidence, then, that forewarning and debiasing manipulations are most likely to work when . . . [t]hey make people aware of the unwanted processing, they motivate people to resist it, and people are aware of the direction and magnitude of the bias and have sufficient control over their responses to correct for it."); PARK & PELLOW, *supra* note 2, at 205 (equity will always be resisted by those with privilege, because "to seriously address these injustices they would necessarily have to give up those privileges.").

475. Irene V. Blair, *The Malleability of Automatic Stereotypes and Prejudice*, 6 PERSONALITY & SOC. PSYCH. REV. 242, 247 (2002) (concluding that "highly motivated individuals can modify the automatic operation of stereotypes and prejudice").

476. CITY OF LANSING, MICH., *supra* note 363, at 28.