

# Barbed Wire Fences: The Structural Violence of Education Law

LaToya Baldwin Clark†

*In this Essay, I argue that, in urban metros like Chicago, poor Black children are victims of not just gun violence but also the structural violence of systemic educational stratification. Structural violence occurs in the context of domination, where poor Black children are marginalized and isolated, vulnerable to lifelong subordination across many domains. Specifically, I argue that U.S. education policy subjects poor Black children to the violence of intergenerational subordination by trapping children behind residential barbed wire fences, starving their schools of necessary resources, and abusively dangling powerless community control.*

## INTRODUCTION

When asked to write this Essay about violence and education, prominent examples came to mind. For example, since 2018, eighty-three school shootings have caused injuries or death.<sup>1</sup> Other statistics less gruesome but more disturbing in their commonness include guns injuring fifty-nine and killing nine children every day.<sup>2</sup> Tragically, gun violence is the second-leading killer of children aged one to nineteen and the number one killer of Black children and teenagers.<sup>3</sup> Even though Black children constitute 14% of all U.S. children, they are victim to 43% of childhood gun deaths.<sup>4</sup> Per thousand children, Black children die by guns at a rate four times that of White children.<sup>5</sup>

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† Assistant Professor, University of California, Los Angeles, School of Law. I thank Guy-Uriel Charles, Hiba Hafiz, Osamudia James, Etienne Toussaint, the participants of this Symposium and the Culp Colloquia, as well as the excellent editors of the *University of Chicago Law Review*. To William, Ahmir, Amina, and Ahmad: thank you for giving me the time, space, and motivation to write about issues that matter to me. All mistakes are mine.

<sup>1</sup> Lesli Maxwell, Holly Peele & Denisa R. Superville, *School Shootings This Year: How Many and Where*, EDUCATIONWEEK (Mar. 1, 2021), <https://perma.cc/2HVQ-MESW>.

<sup>2</sup> CHILDREN'S DEF. FUND, THE STATE OF AMERICA'S CHILDREN: 2021, at 32 (2021).

<sup>3</sup> *Id.* at 30.

<sup>4</sup> *Id.* at 32.

<sup>5</sup> *Id.*

In Chicago in 2020, perpetrators shot more than 415 children younger than eighteen years old.<sup>6</sup> Through the first eight months of 2020, thirty-eight children died of their injuries.<sup>7</sup> The *Chicago Tribune*, which tracks shootings in the city, reported, as of this Symposium, that of the last fifty shooting victims, seventeen were eighteen or younger.<sup>8</sup> Sadly, Chicago is not unique in this regard.<sup>9</sup> Public health officials consider gun violence a national epidemic, and it disproportionately harms the most vulnerable among us.

But gun death and injury are not the only things gravely injuring our children. Many poor Black children's everyday lives suffer from tragedy and trauma. Black babies die at a rate 2.3 times

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<sup>6</sup> Cecilia Reyes, *'No Kids Dies in the Chi' March Urges Action on Gun Violence*, CHI. TRIB. (Dec. 31, 2021), <https://www.chicagotribune.com/news/ct-chicago-march-against-violence-20211231-wmgn67segfhzfh2yfyq4jxz7hy-story.html>.

<sup>7</sup> *See 38 Juveniles Killed in Gun Violence in Chicago So Far This Year: Police*, NBC 5 CHI. (Aug. 3, 2020), <https://perma.cc/WE9Z-2ZGB>.

<sup>8</sup> *Tracking Chicago Shooting Victims*, CHI. TRIB. (May 4, 2021), <https://perma.cc/JFA9-3QYA?type=image>. One notable case occurred in April 2021. At a McDonald's drive-thru on a Sunday afternoon on Chicago's West Side, gunmen opened fire on a car carrying a seven-year-old and her father. Jaslyn Adams died from her wounds. Steven Graves, *7-Year-Old Girl Killed, Father Injured in Shooting at McDonald's Drive-Thru in Homan Square*, CBS CHI. (Apr. 19, 2021), <https://chicago.cbslocal.com/2021/04/19/7-year-old-girl-killed-man-injured-lawndale-shooting>. The Chicago local news consistently runs headlines like that which chronicled Jaslyn's death. *See, e.g.*, WGN Web Desk & Judy Wang, *14-Year-Old Boy Among 4 Killed in Overnight Shootings Across Chicago*, WGN-TV (May 9, 2021), <https://perma.cc/54XA-JA9W>; *Teen Boy Shot to Death in Humboldt Park*, CHI. SUN-TIMES (May 8, 2021), <https://perma.cc/88JM-7VYR>; Stephanie Pagonis, *Chicago Weekend Violence: 6 Killed, Including 13-Year-Old Boy, 28 People Wounded in Shootings*, FOX NEWS (May 10, 2021), <https://perma.cc/HUL9-5QMY>; *14-Year-Old Boy Shot to Death in East Garfield Park, Chicago Police Say*, NBC 5 CHI. (May 9, 2021), <https://perma.cc/5E2R-DB7Z>. Sadly, Chicago is not alone; gun violence against children is a national epidemic. One project puts the number of children killed by guns across the country at 1,200 since the 2018 school shooting in Parkland, Florida. SINCE PARKLAND, <https://perma.cc/778A-D7KQ>.

<sup>9</sup> *See, e.g.*, Mark Sundstrom, *17-Year-Old Brooklyn Boy Fatally Shot in Chest: Police*, PIX11 (Apr. 23, 2021), <https://perma.cc/YN45-EBUH> (New York City, NY); *Boy Killed in South LA Shooting, Suspect at Large*, CBS L.A. (May 5, 2021), <https://perma.cc/FEG3-NPSW> (Los Angeles, CA); Claire Z. Cardona, *7-Year-Old Girl Killed After Gunman Fires into Vehicle Full of Kids in Houston Area, Officials Say*, DALL. MORNING NEWS (Jan. 1, 2019), <https://perma.cc/2JN9-XB3Y> (Houston, TX); Justin Lum, Kenneth Wong & Brent Corrado, *'He Had Heart': Family of Teen Shot, Killed at Maryvale Park Demands Justice*, FOX 10 PHX. (May 9, 2021), <https://perma.cc/5U3J-NQYX> (Phoenix, AZ); Chris Palmer, *7-Year-Old Zamar Jones, Shot in the Head in Front of His West Philadelphia Home This Weekend, Has Died, Police Say*, PHILA. INQUIRER (Aug. 3, 2020), <https://perma.cc/W45F-ZC35> (Philadelphia, PA); Taylor Pettaway, Jacob Beltran & Staff Writers, *From Laughing and Music to Yelling and Crying' - 6-Year-Old Slain During West Side Car Meet*, SAN ANTONIO EXPRESS-NEWS (May 10, 2021), <https://perma.cc/YSL9-L6T6> (San Antonio, Texas); and Karla Rendon-Alvarez, *15-Year-Old Boy Shot, Killed near Chicano Park; Assailant Sought*, NBC 7 SAN DIEGO (Oct. 24, 2020), <https://perma.cc/R3DK-AJTD> (San Diego, CA).

that of White babies.<sup>10</sup> Black babies die due to complications of low birth weight and disorders related to short gestation at a rate nearly four times that of White babies.<sup>11</sup> In 2019, 26% of Black children lived in poverty, compared to only 8% of White children.<sup>12</sup> Over 40% of Black families report being food insecure, compared to only 23% of White families.<sup>13</sup>

Children must attend school, and they spend most of their waking hours there. School's compulsory nature makes it perhaps the most important social institution in children's lives. It plays a crucial role in creating, sustaining, and perpetuating the social arrangements that structure a lifetime. We would hope that school would be a welcome corrective for the trauma associated with Black childhood poverty. Schools could be places of respite, especially for poor Black children, where—unlike any other time in their lives—the state assumes responsibility for their well-being, even if for only eight hours a day.

In this Essay, I argue that the structure of U.S. education not only fails to provide that respite for poor Black children but itself causes tangible injury and harm. Decades of education research show how our unequal and inequitable schools play a role in structuring inequality of opportunity. Moreover, education works with other social institutions to inflict structural harm that accompanies unjust and stratified social arrangements. Poor Black children experience “structural violence,” “the violence of injustice and inequity”<sup>14</sup>—the taken-for-granted, institutionalized social arrangements that dehumanize and distribute suffering inequitably in society.<sup>15</sup>

Many aspects of U.S. educational law, policy, and practices are harmful. For example, the “school-to-prison pipeline” metaphor invokes a well-established commentary on how school discipline

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<sup>10</sup> Danielle M. Ely & Anne K. Driscoll, *Infant Mortality in the United States, 2018: Data from the Period Linked Birth/Infant Death File*, 69 NAT'L VITAL STATS. REPS., July 16, 2020, at 1, 9, <https://perma.cc/MK2D-J3QP>.

<sup>11</sup> *Id.* at 14.

<sup>12</sup> Déjà Thomas & Richard Fry, *Prior to COVID-19, Child Poverty Rates Had Reached Record Lows in U.S.*, PEW RSCH. CTR. (Nov. 30, 2020), <https://perma.cc/B26J-E7JY>.

<sup>13</sup> See DIANE SCHANZENBACH & ABIGAIL PITTS, NW. INST. FOR POL'Y RSCH., *FOOD INSECURITY DURING COVID-19 IN HOUSEHOLDS WITH CHILDREN: RESULTS BY RACIAL AND ETHNIC GROUPS 1* (2020), <https://perma.cc/QMS8-EHGU>.

<sup>14</sup> See Barbara Rylko-Bauer & Paul Farmer, *Structural Violence, Poverty, and Social Suffering*, in *THE OXFORD HANDBOOK OF THE SOCIAL SCIENCE OF POVERTY* 47, 47 (David Brady & Linda M. Burton eds., 2016).

<sup>15</sup> See *infra* Part II.

practices funnel poor Black children into the carceral state.<sup>16</sup> Other control techniques, such as dress codes<sup>17</sup> and hair restrictions,<sup>18</sup> are also harmful. In this Essay, however, I do not focus on these discrete examples that harm Black children. Instead, I argue that K–12 education’s basic institutional apparatus inherently causes subordinating injury to poor Black children, whom we compel to participate in its endeavor.

In theory, the basic scheme of U.S. education seems reasonable. First, children attend schools close to where they reside.<sup>19</sup> Second, states must fund schools somehow, and, given the residential basis for attendance, it makes sense to support schools using local funds. Finally, those who send their children to these schools, and those who pay for them, should exert power over them. Supreme Court doctrine has blessed these arrangements as commonsense, justified methods by which states can and should administer education.

But this structure is inherently subordinating by race and class. The three pillars of our educational institution—residential requirements, property tax funding, and local control—contribute to structural violence against poor Black children in cities like Chicago by allowing opportunity hoarding and restricting children’s capabilities to live a dignified life. Together, residential fences, inadequate funding, and powerless control create the institutional foundation for educational stratification, inequality, and subordination. It is this very structure of schooling—how we allocate children, money, and power—that has “enabled the construction, maintenance, and preservation of a racial caste system.”<sup>20</sup> This structure perpetuates and reinforces physical and social “geographies of opportunity.”<sup>21</sup> In those spaces, marginalized and subordinated poor Black children experience structural

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<sup>16</sup> For an overview of the literature, see Sarah E. Redfield & Jason P. Nance, *American Bar Association: Joint Task Force on Reversing the School-to-Prison Pipeline*, 47 U. MEM. L. REV. 1, 12–132 (2016).

<sup>17</sup> See Rouhollah Aghasaleh, *Oppressive Curriculum: Sexist, Racist, Classist, and Homophobic Practice of Dress Codes in Schooling*, 22 J. AFR. AM. STUD. 94, 99–102 (2018).

<sup>18</sup> See Howard Henderson & Jennifer Wyatt Bourgeois, *Penalizing Black Hair in the Name of Academic Success Is Undeniably Racist, Unfounded, and Against the Law*, BROOKINGS INST. (Feb. 23, 2021), <https://perma.cc/GMX4-ELSQ>; see also *Creating a Respectful and Open World for Natural Hair*, THE CROWN ACT, <https://perma.cc/5JS7-L2WD>.

<sup>19</sup> In a forthcoming paper, I argue that what it means for a child to reside in a school district is not as straightforward as it may sound. LaToya Baldwin Clark, *A House Is Not a Home*, \_\_ NW. L. REV. (forthcoming 2022).

<sup>20</sup> Russell C. Gabriel, *Public Defenders, Local Control, and Brown v. Board of Education*, 67 MERCER L. REV. 625, 626 (2016).

<sup>21</sup> See CARLA SHEDD, *UNEQUAL CITY: RACE, SCHOOLS, AND PERCEPTIONS OF INJUSTICE* 28 (2015).

violence—the systemic dehumanization of grossly inequitable circumstances.

Of course, the marginalization and subordination of Black children extends to other institutions beyond education. Education interacts with additional institutionalized marginalization in housing, health care, and employment, among others. But schooling deserves its own special analysis as a nationally mandatory institution with the promise of safety and liberation.

This Essay proceeds as follows. In Part I, I draw on a critical-race-theory method of storytelling to draw a day-in-the-life account of how poor Black children experience educational institutions. In doing so, I draw on public accounts, illustrated in the scholarly literature and news media, to put a real-life face on the educational world of poor Black children. In Part II, I link these experiences to the structure of U.S. education that inequitably allocates children, money, and power. Finally, in Part III, I argue that this educational design describes a system of violence—processes and interactions that severely and avoidably marginalize and subordinate poor Black children.

### I. ISAIAH'S DAY

Imagine Isaiah,<sup>22</sup> aged nine, living in the Austin neighborhood of Chicago. On a typical school day, he wakes around 7:30 a.m., but this morning he lingers. He does not want to get out of bed and put his feet on the cold floor. In the apartment where he lives, the heat can be out or barely working, even in the middle of a cold snap.<sup>23</sup> His parents have already left for work,<sup>24</sup> so his older sister gets him ready for school. After he gets dressed,

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<sup>22</sup> I created Isaiah as a composite, fictional child whose imaginary day draws on data gleaned from media accounts, academic articles, school profiles, and quantitative statistics. Critical race scholars often use storytelling, including composites, to illustrate “social, historical, and political situations to discuss racism, sexism, classism, and other forms of subordination.” Daniel G. Solórzano & Tara J. Yosso, *Critical Race Methodology: Counter-storytelling as an Analytical Framework for Education Research*, 8 *QUALITATIVE INQUIRY* 23, 33 (2002). Theorists such as Professors Derrick Bell and Richard Delgado routinely use composites. For a discussion of storytelling as an analytical method, see *id.*

<sup>23</sup> Between September 15 and June 1, a local ordinance requires Chicago landlords to keep units heated between 66° and 68° Fahrenheit. CHI., ILL., MUN. CODE § 14X-8-802.2.2 (2021). They often violate these provisions. See *City Cracks Down on Landlords Who Leave Tenants Without Heat*, CBS CHI. (Feb. 1, 2019), <https://perma.cc/FTE4-TUHD>.

<sup>24</sup> In Austin, the median household yearly income is \$33,515. CHI. METRO. AGENCY FOR PLAN., COMMUNITY DATA SNAPSHOT AUSTIN, CHICAGO COMMUNITY AREA SERIES, AUGUST 2021 RELEASE 5 (2021), <https://perma.cc/KC3Z-STW9>. Assuming a family of four, this is approximately 126% of the federal Health and Human Services poverty line. See *2021 Poverty Guidelines*, OFF. OF THE ASSISTANT SEC’Y FOR PLAN. & EVALUATION, DEP’T OF HEALTH & HUM. SERVS., <https://perma.cc/4U4D-4QGN>.

washes his face, and brushes his teeth, he can find a little bit to eat, but not much. Isaiah's household reflects reality for many low-income families that suffer from food insecurity.<sup>25</sup>

After breakfast, he starts his trek to school. Imagine his school, and see it only four blocks away from his home. (Then-mayor Rahm Emanuel's epic 2015 school closures<sup>26</sup> did not shutter his school.) As he walks to school, adults in bright yellow vests that read "Safe Passage" stand careful watch at neighborhood corners.<sup>27</sup> They are there to dissuade young men from gun battles or teenagers looking to fight where children walk to school. Finally, Isaiah runs into the school building to feel the moist warmth of the heating pipes. His toes start to thaw.

His stomach grumbles after a few minutes, reminding him of his paltry breakfast at home. Thankfully, due to the free-and-reduced-price federal meal program, the school provides free breakfast and lunch to every child.<sup>28</sup> Isaiah has ten minutes to drink his milk and eat his fruit and scrambled eggs before the school day begins.<sup>29</sup>

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<sup>25</sup> According to the USDA, 14.8% of households with Black children in the nation live in food-insecure households, the highest among all children. Food insecurity means that a family has limited access to food due to a lack of money and other resources. See ALISHA COLEMAN-JENSEN, MATTHEW P. RABBITT, CHRISTIAN A. GREGORY & ANITA SINGH, U.S. DEP'T OF AGRIC. ECON. RSCH. SERV., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2020, at 4 (2021). Living in a household that earns less than 185% of the federal poverty line is an indicator of food insecurity. See *Making Hunger Visible*, GREATER CHI. FOOD DEPOSITORY, <https://perma.cc/HHE8-VX2E>. In many neighborhoods on the West and South Sides of Chicago, over 50% of the population lives below the federal poverty line, and therefore likely experiences food insecurity. See *id.*

<sup>26</sup> See generally EVE L. EWING, GHOSTS IN THE SCHOOLYARD: RACISM AND SCHOOL CLOSINGS ON CHICAGO'S SOUTH SIDE (2018).

<sup>27</sup> See *Safe Passage Program*, CHI. PUB. SCHS., <https://perma.cc/Q3Q7-BDEM>. The program places "Safe Passage" workers on certain routes to school in the morning and afternoon on school days.

<sup>28</sup> In 2020, 79% of Chicago Public Schools students were eligible for the National School Lunch Program. Ill. State Bd. of Educ., *City of Chicago SD 299: Low Income Students*, ILL. REP. CARD, <https://perma.cc/KXA7-WJ3U>. Eligibility caps incomes at 185% of the federal poverty line. *The National School Lunch Program*, U.S. DEP'T OF AGRIC. FOOD & NUTRITION SERV. (Nov. 2017), <https://perma.cc/N6P3-QWYS>.

<sup>29</sup> In 2020, Chicago Public Schools piloted a free breakfast program for over four hundred thousand of its students attending high-poverty schools:

Under the new program, students will be able to grab a bag of breakfast items before heading into their classrooms at the start of the day. Students will be given 10 minutes to eat their breakfasts before learning time begins. In the schools that currently use the program, students eat their fare while teachers prepare for the day ahead. It has become a routine that both teachers and students have adapted to, and it allows those who did not come to school with a full stomach a chance to fill up before the real learning time begins.

Grace Chen, *Free Breakfasts at Public Schools*, PUB. SCH. REV. (Dec. 24, 2020), <https://perma.cc/J8NS-8F47>; see also ILL. STATE BD. OF EDUC., CITY OF CHICAGO SD 299:

Imagine Isaiah in the fourth grade, attending a school that is typical of many in the city that serve poor Black children. It enrolls about four hundred children—90% of them Black, 90% of them poor.<sup>30</sup> Over the last four academic years, his school's population has declined precipitously by about two hundred students, and almost half of the children are chronically truant. Isaiah struggles with reading; only 2% of fourth graders are reading at grade level at his school.<sup>31</sup> His reading difficulties foretell ongoing struggles in school. The inability to read in the fourth grade means that he will likely fall behind in his other subjects.<sup>32</sup> He does not fare much better in math; none of the fourth graders is proficient in math at his school.<sup>33</sup>

Not all the news from Isaiah's school will be negative. His school's class sizes are relatively small, with only twenty-three students.<sup>34</sup> He has a cadre of teachers who care about him and do their best to educate their students. Over 90% of his teachers return to his school year after year, a measure of that commitment.<sup>35</sup> But teachers are often absent; in the 2019 school year, 36% of his teachers missed more than ten workdays. Isaiah has seen many substitute teachers over his short tenure in the school.<sup>36</sup> Illinois education law does not require substitute

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BRUNSON MATH & SCI SPECIALTY ELEM (2019), <https://perma.cc/Y967-HVQX> (describing the program for Brunson Math and Science Specialty Elementary School, which serves the Austin neighborhood and is the model for many of the statistics in this composite).

<sup>30</sup> ILL. STATE BD. OF EDUC., *supra* note 29, at 2.

<sup>31</sup> *See id.*

<sup>32</sup> Children who do not read proficiently at grade level in third grade tend to fall behind; after the third grade, shifts in education move from learning to read to reading to learn. *See* Jacey Ippolito, Jennifer L. Steele & Jennifer F. Samson, *Introduction: Why Adolescent Literacy Matters Now*, 78 HARV. EDUC. REV. 1, 2 (2008). In other words, falling behind in reading at that time makes it very difficult to learn other subjects afterward. *See id.* at 1 (“If knowledge is power, then literacy is the key to the kingdom.”). According to the National Assessment of Educational Progress, 85% of low-income students who attended poor schools in 2009 were not reading proficiently at grade level by the beginning of fourth grade. LEILA FEISTER, THE ANNIE E. CASEY FOUND., EARLY WARNING! WHY READING BY THE END OF THIRD GRADE MATTERS 7 (2010), <http://perma.cc/8XYH-XVL8>. The National Research Council states: “[A]cademic success, as defined by high school graduation, can be predicted with reasonable accuracy by knowing someone's reading skill at the end of third grade. A person who is not at least a modestly skilled reader by that time is unlikely to graduate from high school.” *Id.* at 9.

<sup>33</sup> *See* FEISTER, *supra* note 32, at 7; *see also* ILL. STATE BD. OF EDUC., *supra* note 29, at 13.

<sup>34</sup> *See* ILL. STATE BD. OF EDUC., *supra* note 29, at 2.

<sup>35</sup> *Id.* at 9.

<sup>36</sup> Emma Brown, *High-Poverty Schools Often Staffed by Rotating Cast of Substitutes*, WASH. POST (Dec. 4, 2015), [https://www.washingtonpost.com/local/education/how-can-students-learn-without-teachers-high-poverty-schools-often-staffed-by-rotating-cast-of-substitutes/2015/12/04/be41579a-92c6-11e5-b5e4-279b4501e8a6\\_story.html](https://www.washingtonpost.com/local/education/how-can-students-learn-without-teachers-high-poverty-schools-often-staffed-by-rotating-cast-of-substitutes/2015/12/04/be41579a-92c6-11e5-b5e4-279b4501e8a6_story.html).

teachers to hold bachelor's degrees;<sup>37</sup> thus many of Isaiah's substitutes lack teaching credentials. More likely, when his teacher does not show up, there will be no substitute available. In high-poverty schools like his, 50% of teachers report that their school cannot find a substitute when they must miss work.<sup>38</sup> Without substitutes, other teachers in the building must absorb those students, increase class sizes, or forgo their prep time to cover another teacher's classroom.<sup>39</sup>

Illinois underfunds Isaiah's school like it does most Chicago Public Schools (CPS) sites. Illinois sets a state benchmark for school adequacy,<sup>40</sup> but CPS receives only 67% of the funds it needs to reach that benchmark.<sup>41</sup> Inadequate funding creates gaps in opportunities to learn: fewer experienced teachers;<sup>42</sup> fewer librarians, books, and materials;<sup>43</sup> fewer opportunities for children to

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<sup>37</sup> 105 ILL. COMP. STAT. 5/21B-20(4) (2022).

<sup>38</sup> See Amber M. Northern, *A Snapshot of Substitute Teaching in the U.S.*, Fordham Inst. (July 1, 2020), <https://perma.cc/5648-B3ME>.

<sup>39</sup> *Id.* at 11.

<sup>40</sup> In Illinois, an adequately funded school is able to:

(A) provide all students with a high quality education that offers the academic, enrichment, social and emotional support, technical, and career-focused programs that will allow them to become competitive workers, responsible parents, productive citizens of this State, and active members of our national democracy; (B) ensure all students receive the education they need to graduate from high school with the skills required to pursue post-secondary education and training for a rewarding career; (C) reduce, with a goal of eliminating, the achievement gap between at-risk and non-at-risk students by raising the performance of at-risk students and not by reducing standards; and (D) ensure this State satisfies its obligation to assume the primary responsibility to fund public education and simultaneously relieve the disproportionate burden placed on local property taxes to fund schools.

105 ILL. COMP. STAT. 5/18-8.15(a)(1) (2022).

<sup>41</sup> Ill. State Bd. of Educ., *City of Chicago SD 299, District Finances: FY 2021 Percent of Adequacy*, ILL. REP. CARD, <https://perma.cc/P3DF-3TTA>.

<sup>42</sup> See Charles T. Clotfelter, Helen F. Ladd, Jacob Vigdor & Justin Wheeler, *High-Poverty Schools and the Distribution of Teachers and Principals*, 85 N.C. L. REV. 1345, 1353-62 (2006) (finding that high-poverty schools in North Carolina are served by less-experienced teachers and principals than their affluent counterparts).

<sup>43</sup> For example, in Los Angeles Unified School District, which serves a student population of which 80% are poor, schools have laid off librarians due to budget cuts in recent years. Some schools have libraries that are only open twice a month. See Steve Lopez, *In L.A. Unified Elementary Schools, Library Books Could Be Off-Limits to Many Students*, L.A. TIMES (May 4, 2019), <https://www.latimes.com/local/california/la-me-lopez-laUSD-libraries-20190504-story.html>.



engage with technology;<sup>44</sup> fewer counselors;<sup>45</sup> and less teaching time.<sup>46</sup> Isaiah's teachers must often spend their own money on teaching essentials such as pencils and paper.<sup>47</sup> His playground is little more than a concrete parking lot—no play structures or even balls to play with. With fewer and less robust opportunities to learn, the dismal performance gaps are inevitable.<sup>48</sup>

At the end of the school day, imagine Isaiah rushing home, hoping to avoid any violence that might surprise him along the way.<sup>49</sup> Hopefully, the heat will be back on. He will sit at the kitchen table to do his homework, which is difficult because of his reading skills. Nevertheless, he continues to try. But as he gets older, the reality of his situation makes trying hard in school seem like a fool's errand.<sup>50</sup>

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<sup>44</sup> See Benjamin Herold, *Poor Students Face Digital Divide in How Teachers Learn to Use Tech*, EDUC. WK. (June 12, 2017), <https://perma.cc/8FZ5-Y32D> (“Teachers in high-poverty schools are consistently less likely than their counterparts [in affluent schools] to say they’ve received technology-integration training”). Children who attend high-poverty schools then have less opportunity to benefit from technology in the classroom.

<sup>45</sup> See Douglas J. Gagnon & Marybeth J. Mattingly, *Most U.S. School Districts Have Low Access to School Counselors*, CARSEY RSCH., Oct. 24, 2016, at 1, 2 (finding that, while most schools fall short of the recommended student to counselor ratio, poor schools exhibit higher ratios compared to affluent schools).

<sup>46</sup> See, e.g., JOHN ROGERS & NICOLE MIRRA, IT’S ABOUT TIME: LEARNING TIME AND EDUCATIONAL OPPORTUNITY IN CALIFORNIA HIGH SCHOOLS 10 (2014) (showing that the percentage of teachers that report chronic conditions that impact learning time—including insufficient qualified substitutes, noisy and dirty classrooms, insufficient access to the school library, and insufficient numbers of computers—is greater in high-poverty schools than in low-poverty schools and mixed-poverty schools).

<sup>47</sup> See generally Tim Walker, *Teacher Spending on School Supplies: A State by State Breakdown*, NAT’L EDUC. ASS’N (Aug. 26, 2019), <https://perma.cc/TU4D-UC7G>.

<sup>48</sup> See generally Kevin G. Welner & Prudence L. Carter, *Achievement Gaps Arise from Opportunity Gaps*, in CLOSING THE OPPORTUNITY GAP 1 (Prudence L. Carter & Kevin G. Welner eds., 2013).

<sup>49</sup> One notorious case of violence befalling a child on the way home from school is that of Tyshawn Lee. His killers, ultimately found guilty of first-degree murder, lured him into an alley after school and then executed him. They believed that Tyshawn’s father was a member of a rival gang and responsible for a gang shooting. *Jury Convicts Man in Killing of Chicago Boy Lured into Alley*, AP NEWS (Oct. 3, 2019), <https://apnews.com/article/us-news-il-state-wire-ap-top-news-chicago-08433b642b154f36a5cce6c7bfc5664e>.

<sup>50</sup> In Chicago, about 40% of Black twenty-to-twenty-four-year-olds were out of school or out of work in 2015. TERESA L. CORDOVA & MATTHEW D. WILSON, GREAT CITIES INST., UNIV. OF ILL. AT CHL., THE HIGH COSTS FOR OUT OF SCHOOL AND JOBLESS YOUTH IN CHICAGO AND COOK COUNTY 23 (2017), <https://perma.cc/9JGT-BHTM>. The lack of accessible jobs in West and South Side neighborhoods contributes to these high unemployment rates. *Id.* at vi. When work is unavailable, Black men may see schooling as futile. See ALFORD A. YOUNG, JR., THE MINDS OF MARGINALIZED BLACK MEN: MAKING SENSE OF MOBILITY, OPPORTUNITY, AND FUTURE LIFE CHANCES 53 (2004) (explaining the futility that Black men on the Near West Side of Chicago felt when it comes to employment: “They generally did not believe that potential employment existed. Thus, the common logic was ‘There’s no point in seeking that which is not there in the first place.’”).

Isaiah's parents would love for him to attend a different school where opportunities abound—perhaps a nearby elementary school in the suburbs.<sup>51</sup> That school is majority White and performs in the top 10% of Illinois schools.<sup>52</sup> Almost 60% of that school's fourth graders meet the standards for English, and another 25% approach the standards.<sup>53</sup> In math, nearly 65% meet the standards, while another 25% approach the standards.<sup>54</sup> While it is true that that school's Black students do not do as well as its White students, they have more opportunities than students in Isaiah's school.<sup>55</sup>

But Isaiah's parents lack that hypothetical choice.

Isaiah is a good kid. But his prospects for adulthood are dim. In his neighborhood, only 10% of adults have a bachelor's degree, and about one-fifth of adults did not finish high school.<sup>56</sup> Moreover, because of Isaiah's reading troubles, he is six times as likely to drop out of high school or not finish high school than his reading-proficient peers who attend better-resourced schools.<sup>57</sup>

If Isaiah does not finish high school, he will face an inter-generational pattern of adverse outcomes as an adult.<sup>58</sup> Graduating from high school garners economic returns,<sup>59</sup> and Black boys

<sup>51</sup> For example, Horace Mann Elementary School serves Oak Park students. It educates nearly five hundred students in kindergarten through fifth grade. ILL. STATE BD. OF EDUC., OAK PARK ESD 97: HORACE MANN ELEM SCHOOL (2019), <https://perma.cc/WD9B-8YC5>. I pull the remaining statistics in this paragraph from this school's 2019 figures.

<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> See R. L'HEUREUX LEWIS-MCCOY, *INEQUALITY IN THE PROMISED LAND: RACE, RESOURCES AND SUBURBAN SCHOOLING* (2014).

<sup>56</sup> See CHI. METRO. AGENCY FOR PLAN., *supra* note 24, at 11.

<sup>57</sup> See *Students Who Don't Read Well in Third Grade Are More Likely to Drop Out or Fail to Finish High School*, THE ANNIE E. CASEY FOUND. (Apr. 8, 2011), <https://perma.cc/G3V5-VUZ2>

<sup>58</sup> Black children born into poverty (measured as incomes in the bottom household income quintile) have a 2.5% chance of rising to the top quintile of household income. White children have a 10.6% chance. The gap differs by gender:

Among those who grow up in families with comparable incomes, black men grow up to earn substantially less than the white men. In contrast, black women earn slightly *more* than white women *conditional on parent income*. Moreover, there is little or no gap in wage rates or hours of work between black and white women.

RAJ CHETTY, NATHANIEL HENDREN, MAGGIE JONES & SONYA R. PORTER, *THE EQUAL. OF OPPORTUNITY PROJECT, RACE AND ECONOMIC OPPORTUNITY IN THE UNITED STATES: EXECUTIVE SUMMARY 3* (2019), <https://perma.cc/R4BM-ULH8> (emphasis in original).

<sup>59</sup> See *Median Weekly Earnings by Education, Second Quarter 2020*, BUREAU OF LAB. STATS. (July 23, 2020), <https://perma.cc/5FD2-BPVP>. In 2020, the median weekly earnings of a full-time worker without a high school diploma were \$630, while the median high school graduate earned \$789 weekly. *Id.*

who drop out of high school are more likely to be unemployed than their White counterparts.<sup>60</sup> We incarcerate one in three Black men aged twenty to thirty-four without a high school diploma.<sup>61</sup> And Black men with low levels of educational attainment have lower life expectancies than their more educated counterparts.<sup>62</sup>

Though Isaiah is fictional, his experiences reflect the experiences of many poor Black schoolchildren who have few legal options for where to attend school outside of their neighborhood. Their schools are woefully under-resourced. Children in many low-income Black communities grow up amid heartbreaking violence,<sup>63</sup> and poor Black children encounter trauma before they ever step into an elementary classroom.<sup>64</sup> Their schools reflect their neighborhoods, leaving children intergenerationally “stuck

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<sup>60</sup> In 2015, 17% of Black adults without a high school diploma were unemployed. In the same year, only 7% of White adults without a high school diploma were unemployed. The national unemployment rate that year was 5.3%. See Valerie Wilson, *Black Unemployment Is Significantly Higher than White Unemployment Regardless of Educational Attainment*, ECON. POL'Y INST. (Dec. 17, 2015), <https://perma.cc/SMU9-6NRP>. But when Black adults without high school diplomas are employed, they tend to earn less than White men without high school diplomas. NAT'L CTR. FOR EDUC. STATS., STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2018, at 170 (2019), <https://perma.cc/A9BE-42BR>.

<sup>61</sup> PEW CHARITABLE TRS., COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 8 (2010).

<sup>62</sup> In 2017, a twenty-five-year-old Black man could expect to live to 73.77 years old. But this masks an education gap; a twenty-five-year-old Black man with low educational attainment (high school or less) could expect to live to only 71.26 years. A twenty-five-year-old White man with low educational attainment could expect to live to 73.47 years. See Isaac Sasson & Mark D. Hayward, *Association Between Educational Attainment and Causes of Death Among White and Black US Adults, 2010-2017*, 322 J. AM. MED. ASS'N 756, 759 (2019).

<sup>63</sup> Today, Austin is one of the most violent neighborhoods in the city. See, e.g., Gary Lucido, *Chicago's Safest and Most Dangerous Neighborhoods 2018: Murders*, CHICAGONOW (July 24, 2018), <https://perma.cc/T2PL-VDS9>; Whet Moser, *Austin: Chicago's Deadliest Neighborhood?*, CHICAGO (July 24, 2012), <https://perma.cc/L8HS-ZR7M>.

<sup>64</sup> During their childhood, over 60% of Black children have experienced at least one adverse childhood experience (ACE), “traumatic experiences . . . that can result in poor outcomes in physical and mental health over the life course.” See Melissa Stropolis, Whitney Tucker, Elizabeth Crouch & Elizabeth Radcliff, *The Intersectionality of Adverse Childhood Experiences, Race/Ethnicity, and Income: Implications for Policy*, 47 J. PREVENTION & INTERVENTION IN THE CMTY. 310, 310 (2019); see also Kathryn Maguire-Jack, Brianna Lombardi & Paul Lanier, *Investigating Racial Differences in Clusters of Adverse Childhood Experiences*, 90 AM. J. ORTHOPSYCHIATRY 106, 109 (2020). Maguire-Jack et al. found that “there were no significant differences [in trauma exposure] between White and Latinx children, but Black children were more likely than both groups to experience all types of ACEs except parental drug use and mental illness.” *Id.* at 110. Black children also experience trauma at an earlier age than White children. *Id.* at 111.

in place,” existing in the margins of society both as children and through their lifetimes as adults.<sup>65</sup>

Of course, many institutions contribute to this marginalization. For example, adverse birth outcomes plague Black neighborhoods in Chicago, including high infant mortality caused by prematurity, low birth rate, congenital disabilities, and maternal health.<sup>66</sup> While education alone does not drive these outcomes, our education system compels children to participate in a state apparatus that exacerbates their structural subordination. In the next Part, I explain how the basic contours of that institutional design—how we allocate children, money, and power to schools—create a subordinating world inhabited by Isaiah and poor Black children like him.

## II. SUBORDINATION BY DESIGN

Marginalization marks low-income Black children’s educational world. In this Part, I briefly sketch the basic educational design of the U.S. compulsory education system and the seminal constitutional rulings that uphold this design. This sketch will likely be familiar to education law scholars who have written extensively on these topics.<sup>67</sup> It sets up Part III, which is the main theoretical contribution of this Essay: how the educational

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<sup>65</sup> See generally PATRICK SHARKEY, *STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY* (2013) (explaining how children inherit neighborhoods and how that inheritance stifles economic mobility).

<sup>66</sup> HEALTHY CHI., CHICAGO INFANT MORTALITY RATE, 2010-2015, <https://perma.cc/LS4N-A929> (using Illinois Department of Public Health, Division of Vital Records data to illustrate that “community areas with the highest rates of infant mortality cluster on the south and west sides of the City, while the lowest cluster on the north side”).

<sup>67</sup> For examples of scholarly work about school funding, see generally CHARLES J. OGLETREE, JR. & KIMBERLY JENKINS ROBINSON, *THE ENDURING LEGACY OF RODRIGUEZ: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY* (2015); Eloise Pasachoff, *Conditional Spending After NFIB v. Sebelius: The Example of Federal Education Law*, 62 AM. UNIV. L. REV. 577 (2013); and Goodwin Liu, *Interstate Inequality in Educational Opportunity*, 81 N.Y.U. L. REV. 2044 (2006). For scholarship about school boundaries, see generally Genevieve Siegel-Hawley, *Mitigating Milliken? School District Boundary Lines and Desegregation Policy in Four Southern Metropolitan Areas, 1990–2010*, 120 AM. J. EDUC. 391 (2014); Jennifer B. Ayscue & Gary Orfield, *School District Lines Stratify Educational Opportunity by Race and Poverty*, 7 RACE SOC. PROBS. 5 (2015); Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139 (2016); and Aaron J. Saiger, *The School District Boundary Problem*, 42 URB. LAW. 495 (2010). For scholarship critiquing local control, see generally Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287 (2013); Goodwin Liu, Brown, Bollinger, and Beyond, 47 HOW. L.J. 705 (2004) [hereinafter Brown, Bollinger, and Beyond]; Nadav Shoked, *An American Oddity: The Law, History, and Toll of the School District*, 111 NW. U. L. REV. 945 (2017); Meaghan E. Brennan, *Whiter and Wealthier: “Local Control” Hinders Desegregation by Permitting School District Secessions*, 52 COLUM. J.L. SOC. PROBS. 39 (2018).

apparatus not only leads to inequities but systematically subordinates poor Black children, insuring the social domination and exclusion of children and families.

#### A. Barbed Wire Fences

By design, Isaiah and poor Black children like him have few options to attend school outside their neighborhoods<sup>68</sup>—and even fewer outside their school districts.<sup>69</sup> In most states, children must attend school in the districts where they reside.<sup>70</sup> Within districts, students must attend the school that corresponds with their address. Administratively, and all things being equal, having children attend school close to where they live makes practical sense.

But all things are not equal because neighborhoods differ—and they differ because of the governmental and private actions that subordinated Black people in the past and continue to subordinate them now. States allocate children to schools using residence in a race-class residentially segregated society.

Legitimized by the Supreme Court, states allow school districts to discriminate against children who do not live within their borders. In Illinois, for example, the elementary school district just a few miles from where Isaiah would go to school has no obligation to allow Isaiah to attend its schools,<sup>71</sup> even though its schools are better funded and situated in a safer neighborhood. If Isaiah could attend those schools, he would have a better chance of reading at grade level, graduating from high school, and breaking intergenerational patterns of poverty.

But he cannot attend better schools because of the coconstitutive forces of residential segregation and school segregation that reinforce each other. First, a long history of state and public actions segregated the United States by race and class, and the structures that enabled that segregation continue to keep it segregated today. State action drove the segregation process, not

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<sup>68</sup> CPS offers a host of different educational experiences: classical schools, magnet schools, and more. But these are all test-in schools, and families that take advantage of those opportunities are overwhelmingly White and wealthy. See Sarah Karp, *Second Chance at Chicago's Coveted Test-In Schools Benefits Wealthiest Kids*, WBEZ CHI. (Apr. 10, 2018), <https://www.wbez.org/stories/second-chance-at-chicagos-coveted-test-in-schools-benefits-wealthiest-kids/19347d82-5575-41f8-af3c-ce9e72574991>.

<sup>69</sup> See generally LaToya Baldwin Clark, *Stealing Education*, 68 UCLAL. REV. 566 (2021).

<sup>70</sup> See *id.*; see also *supra* note 19.

<sup>71</sup> See *id.* at 590–91.

only in the usual suspects of places—most notably the Jim Crow South—but also in the places we associate with liberalism.<sup>72</sup>

Past government efforts—such as redlining to restrict the availability of home loans in Black areas,<sup>73</sup> developing public housing that created monoracial urban spaces,<sup>74</sup> passing zoning laws that slowed growth in some regions to only single-family homes that were financially out of reach for most Black families,<sup>75</sup> and enforcing racially restrictive covenants (agreements among White homeowners to not sell to Black families)<sup>76</sup>—created the segregation that we see today. Even when those practices ended, the effects remained. Contemporary manifestations of those

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<sup>72</sup> See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, at xii (2017):

Racial segregation in housing was not merely a project of southerners in the former slaveholding Confederacy. It was a nationwide project of the federal government in the twentieth century, designed and implemented by its most liberal leaders. Our system of official segregation was not the result of a single law that consigned African Americans to designated neighborhoods. Rather, scores of racially explicit laws, regulations, and government practices combined to create a nationwide system of urban ghettos, surrounded by white suburbs. Private discrimination also played a role, but it would have been considerably less effective had it not been embraced and reinforced by government.

<sup>73</sup> See *id.* at 65–67 (explaining how, in the aftermath of the Depression, federal efforts to save homeowners' homes involved offering federally insured long-term mortgages). To assess risk of default, the "HOLC [Home Owners' Loan Corporation] created color-coded maps of every metropolitan area in the nation, with the safest neighborhoods colored green and the riskiest colored red. A neighborhood earned a red color if African Americans lived in it, even if it was a solid middle-class neighborhood of single-family homes." *Id.* at 64. Private banks also relied on the maps to inform their own lending practices. DOUGLASS MASSEY & NANCY DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF AN UNDERCLASS* 51–52 (1993). Most significantly, the Federal Housing Administration used the HOLC rating system to restrict access to more favorable mortgages than had been previously available. These mortgages favored the suburbs and single-family homes and disfavored neighborhoods with "inharmonious racial or nationality groups." *Id.* at 54.

<sup>74</sup> The federal government made a practice of segregating public housing by race. See ROTHSTEIN, *supra* note 72, at 18–38.

<sup>75</sup> After the Supreme Court declared unconstitutional zoning laws that explicitly restrict Black people from purchasing homes in White neighborhoods, *Buchanan v. Warley*, 245 U.S. 60 (1917), municipalities instituted exclusionary zoning. Exclusionary zoning prohibited, for example, building apartment structures in areas zoned for single-family homes. These zoning schemes discriminated against Black people for whom purchasing a single-family home was economically out of reach. ROTHSTEIN, *supra* note 72, at 52–53.

<sup>76</sup> Racially restrictive covenants were agreements among homeowners to refuse to sell homes to non-Whites. The covenants run with the land, meaning that they bind not only the original parties to the agreement but future owners as well. The Supreme Court ruled the covenants judicially unenforceable as a violation of the Fourteenth Amendment. See *Shelley v. Kraemer*, 334 U.S. 1, 18 (1948). Many such covenants remain in home deeds, even though they are unenforceable. See Justin Wm. Moyer, *Racist Housing Covenants Haunt Property Records Across the Country. New Laws Make Them Easier to Remove*, WASH. POST (Oct. 22, 2020), <https://perma.cc/24DK-2Q9T>.

historical practices, such as persistently lower home values in Black neighborhoods,<sup>77</sup> directly impact local services like schools. Discriminatory bank practices perpetuate segregation,<sup>78</sup> as does lax enforcement of the Fair Housing Act<sup>79</sup> and other civil rights legislation.<sup>80</sup> Second, education perpetuates that segregation. The same governments that segregated places like metropolitan Chicago also tie schooling to geography<sup>81</sup> and thus tie geography with opportunity.

This system is constitutionally protected. In *Martinez v. Bynum*,<sup>82</sup> the Supreme Court upheld a Texas law that allowed a school district to discriminate against a nonresident child and deny access to that district's education.<sup>83</sup> The Court called the law a "bona fide" resident requirement, and it upheld the requirement because it "further[ed] the substantial state interest in assuring that services provided for its residents are enjoyed only by residents."<sup>84</sup> As a result, today districts aggressively enforce their boundaries. In *Milliken v. Bradley*,<sup>85</sup> the Supreme Court gave

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<sup>77</sup> See ANDRE PERRY, JOHNATHAN ROTHWELL & DAVID HARSHBARGER, BROOKINGS INST., *THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS* 15 (2018) (finding that home values in Black neighborhoods (where Black people comprise more than 50% of the population) are 23% lower than comparable homes in less-Black neighborhoods, even after controlling for neighborhood quality and structural characteristics).

<sup>78</sup> See Aaron Glantz & Emmanuel Martinez, *Modern-Day Redlining: How Banks Block People of Color from Homeownership*, CHI. TRIB. (Feb. 17, 2018), <https://perma.cc/KW5G-FBFB> (reporting on how Black and Latinx potential homebuyers are disproportionately denied conventional mortgages); Emily Flitter, *Senate Bill Would Outlaw Bank Discrimination for the First Time*, N.Y. TIMES (Oct. 21, 2020), <https://perma.cc/5UT7-LJK2> (reporting on legislation that would close a regulatory loophole that allows banks to discriminate as long as customers eventually receive the services they are looking for).

<sup>79</sup> Pub. L. No. 90-284, 82 Stat. 81 (1968) (codified as amended at 42 U.S.C. §§ 3601–3619).

<sup>80</sup> See *Trump Administration Withdraws Obama Era Rules on "Affirmatively Furthering Fair Housing" (AFFH)*, JOSEPH WILLIAM SINGER, PROPERTY LAW DEVELOPMENTS (Aug. 18, 2020), <https://perma.cc/UMY6-ZZP3> (reporting on President Donald Trump's rescinding of rules promulgated by the Obama administration that attempted to enforce a provision of the Fair Housing Act requiring any government entity managing or receiving federal funds "affirmatively to further fair housing").

<sup>81</sup> Richard Rothstein argues that the link between housing segregation and school segregation was a key objective for the Fair Housing Act:

Its manual warned that if children 'are compelled to attend school where the majority or a considerable number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable than if this condition did not exist,' and mortgage lending in such neighborhoods would be risky.

ROTHSTEIN, *supra* note 72, at 65–66.

<sup>82</sup> 461 U.S. 321 (1983).

<sup>83</sup> *Id.* at 332–33.

<sup>84</sup> See *id.* at 328, 332–33.

<sup>85</sup> 418 U.S. 717 (1974).

constitutional reverence to these borders, giving a race-neutral explanation that they are more than “mere administrative convenience[s].”<sup>86</sup> This sentiment echoes in *Martinez*: “The provision of primary and secondary education, of course, is one of the most important functions of local government. Absent residence requirements, there can be little doubt that the proper planning and operation of the schools would suffer significantly.”<sup>87</sup>

But given the state-created residential sorting that tends to congregate poor Black people in urban centers, residential requirements for schools are not race-class-neutral. In his dissent in *Milliken*, Justice Thurgood Marshall identified these school district boundaries as explicitly racist, characterizing these lines (and, I’d argue, their resulting residency requirements) as powerful symbols of geographic subordination. He writes that such lines

Will surely be perceived as fences to separate the races when, under a Detroit-only decree, white parents withdraw their children from the Detroit city schools and move to the suburbs in order to continue them in all-white schools. The message of this action will not escape the Negro children in the city of Detroit. It will be of scant significance to Negro children who have for years been confined by *de jure* acts of segregation to a growing core of all-Negro schools surrounded by a ring of all-white schools that the new dividing line between the races is the school district boundary.<sup>88</sup>

Justice Marshall understood that the boundaries around school districts keep children “in their place” both physically and socially.<sup>89</sup> Indeed, these fences are barbed: parents who transgress these boundaries risk prosecution, heavy fines, and ostracization.<sup>90</sup>

School boundary making and residential requirements have been integral to establishing the coconstitutive relationship between residential segregation and school segregation. For example, sociologist Elijah Anderson describes the early days of racial transition in Philadelphia, Pennsylvania, and the local school board’s response:

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<sup>86</sup> *Id.* at 741.

<sup>87</sup> *Martinez*, 461 U.S. at 329.

<sup>88</sup> *Milliken*, 418 U.S. at 804–05 (Marshall, J., dissenting) (citation omitted).

<sup>89</sup> Pierre Bourdieu explained that “[t]he *site (le lieu)* can be defined absolutely as the point in *physical space* where an agent or a thing is situated, ‘takes place,’ exists: that is to say, either as a *localization* or, from a relational viewpoint, as a *position*, a rank in an order.” Pierre Bourdieu, *Site Effects*, in *THE WEIGHT OF THE WORLD: SOCIAL SUFFERING IN CONTEMPORARY SOCIETY* 123, 123 (1993) (emphasis in original).

<sup>90</sup> See generally Baldwin Clark, *supra* note 69.



[a]s the black residential presence in white neighborhoods increased, the city's local school boards went into action to neutralize or stifle the threat of a black incursion. The local boards, which were a unique feature of Philadelphia's educational system, manipulated the boundaries of their catchment areas to keep the schools exclusively white for as long as they possibly could. Later on, after court-ordered desegregation, they devised confusing and confidential voluntary transfer policies that white families, but not black families, were able to utilize to send their children to "better"—that is, whiter—schools.<sup>91</sup>

Thus, the way that we allocate children to schools through residence and geographic boundaries isolates and denies opportunities to poor Black children in poor schools.<sup>92</sup>

## B. Financial Neglect

Scholars, lawyers, and school administrators alike have grappled with the problem of unequal school finance.<sup>93</sup> Schools receive funds from three sources: federal, state, and local governments. On average, the federal government provides about 8% of school funding, the state provides about 47% of school funding, and local governments provide around 45% of school funding.<sup>94</sup> But localities vary significantly on the relative mix of income used to fund schools.<sup>95</sup>

Poor schools lack funds because they cannot raise adequate funds under a funding scheme that relies heavily on local property taxes. Property tax revenue derives from two levers: property values and tax rates. Most of the variation in school income derives from property values. Tax rates tend to be within a limited range,

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<sup>91</sup> Elijah Anderson, *The Devolution of the Inner-City High School*, 673 ANN. AM. ACAD. POL. & SOC. SCI. 60, 64–65 (2017) (citing Deenesh Sohoni & Salvatore Saporito, *Mapping School Segregation: Using GIS to Explore Racial Segregation Between Schools and Their Corresponding Areas*, 115 AM. J. EDUC. 569 (2009)) (citation omitted).

<sup>92</sup> See Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 HARV. L. REV. 1841, 1850–52 (1994).

<sup>93</sup> While the controversy continues, a current article quotes a researcher as saying that, "[b]y and large, the question of whether money matters is essentially settled." Matt Barnum, *Does Money Matter for Schools? Why One Researcher Says the Question Is 'Essentially Settled'*, CHALKBEAT (Dec. 17, 2018), <https://perma.cc/N5A4-RU4Q>. Scholars generally acknowledge three waves of school finance litigation. For a general synopsis of waves one through three, see generally Michael Heise, *State Constitutions, School Finance Litigation, and the "Third Wave": From Equity to Adequacy*, 68 TEMP. L. REV. 1151 (1995).

<sup>94</sup> REBECCA R. SKINNER, CONG. RSCH. SERV., R45827, STATE AND LOCAL FINANCING OF PUBLIC SCHOOLS 1–2 (2019).

<sup>95</sup> *Id.* at 3.

either as required by state constitutional amendment (such as Proposition 13 in California)<sup>96</sup> or by what is politically feasible. Property values have no upper limit.

This scheme has the Supreme Court's blessing. In *San Antonio Independent School District v. Rodriguez*,<sup>97</sup> the Supreme Court held that a funding scheme that resulted in per pupil disparities within one state did not offend the Constitution.<sup>98</sup> The Court's determination that the State's formula need only survive rational basis review relied on a finding that wealth is not a suspect category,<sup>99</sup> even though wealth disparities between jurisdictions perpetuate racial subordination. "[S]ome inequality," the Court noted, was insufficient to "strick[e] down the entire system."<sup>100</sup> The Court approved of the formula, saying that the difference could reflect merely a "freedom to devote more money to the education of one's children."<sup>101</sup>

But that freedom does not equally benefit all children. One has the freedom to devote more money only to the extent that one has more money to choose to spend—money many poor Black schools and districts do not have. Contemporary school finance litigation focuses on states providing an "adequate" education, even under conditions of inequality.<sup>102</sup> Adequacy means the funds that "would be required to achieve national average test scores."<sup>103</sup> Schools with higher proportions of high-needs students—low-income students, English-language learners, and homeless or foster youth—need more resources to achieve national average test scores. In contrast, schools with fewer high-needs

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<sup>96</sup> Proposition 13, a 1978 ballot initiative enacted to amend the California Constitution, limited property tax rates and the assessed value upon which those rates would be levied. CAL. CONST. art. XIII A § 1(a).

<sup>97</sup> 411 U.S. 1 (1973).

<sup>98</sup> *See id.* at 54–55.

<sup>99</sup> *See id.* at 28, 35–37.

<sup>100</sup> *Id.* at 51 (citing *McGowan v. Maryland*, 366 U.S. 420, 425–26 (1961)).

<sup>101</sup> *Id.* at 49.

<sup>102</sup> *See* Lauren Nicole Gillespie, Note, *The Fourth Wave of Education Finance Litigation: Pursuing a Federal Right to an Adequate Education*, 95 CORNELL L. REV. 989, 1002–06 (2010); William S. Koski & Rob Reich, *When "Adequate" Isn't: The Retreat from Equity in Educational Law and Policy and Why It Matters*, 56 EMORY L.J. 545, 559–62 (2006); Joshua E. Weishart, *Transcending Equality Versus Adequacy*, 66 STAN. L. REV. 477, 518–21 (2014).

<sup>103</sup> BRUCE D. BAKER, MATTHEW DI CARLO & MARK WEBER, ALBERT SHANKER INST. & RUTGERS GRADUATE SCH. OF EDUC., *THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS: FINDINGS FROM THE SCHOOL FINANCE INDICATORS DATABASE, SCHOOL YEAR 2015-2016*, at 9 (2019).

students need less. According to a national think tank, only five states adequately fund their highest-poverty districts.<sup>104</sup>

Illinois ties Nevada as the most regressive state for funding high-poverty schools; the “highest-poverty districts receiv[e] only a fraction of the revenue provided to districts with 0 percent poverty.”<sup>105</sup> According to the state education board, in the fiscal year 2021, CPS received funds to that met only 67% of their adequacy target,<sup>106</sup> while a neighboring, more affluent school district exceeded their financial adequacy target by 9%.<sup>107</sup> With that low per-pupil funding, some schools like Isaiah’s school fight an uphill battle every day to educate their children.<sup>108</sup> This systemic inequity in funding starves schools that serve Black children of the opportunity to thrive.

### C. Abusive Control

The concept of local control is relatively straightforward: those directly affected by school decisions and paying the schools’ bills should be those making the decisions and controlling the resources. Proponents of local control stress these concerns about decision-making and participation. The argument goes that local control

promotes efficiency and direct accountability to those most affected by schooling practices—the parents and citizens who live in that particular community. Perhaps most significantly, local control invites a high level of direct citizen involvement

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<sup>104</sup> *Id.* at 12 (defining the “[h]ighest poverty districts” as the “top 20 percent highest poverty districts in each state”).

<sup>105</sup> *Id.* at 16.

<sup>106</sup> Ill. State Bd. of Educ., *supra* note 41.

<sup>107</sup> Ill. State Bd. of Educ., *Oak Park - River Forest SD 200, District Finances: FY 2021 Percent of Adequacy*, ILL. REP. CARD, <https://perma.cc/7YFH-2WB6>.

<sup>108</sup> Poor Black children also tend to go to physically unsafe schools. Before the pandemic and massive school closures, the U.S. Commission on Civil Rights reported that poor children, in comparison to their more affluent peers, often attended schools in “older buildings with inadequate or poorly maintained heating, ventilation, and air conditioning (HVAC) systems.” U.S. COMM’N ON C.R., PUBLIC EDUCATION FUNDING INEQUITY IN AN ERA OF INCREASING CONCENTRATION OF POVERTY AND RESEGREGATION 47 (2018). Anderson described the conditions of three poor Black high schools in Philadelphia:

The water pipes may be full of rust and mold. In the spring and fall, the building is at times too hot, and in winter, too cold. In the worst-case scenario, janitorial services are inconsistent or nonexistent. The bathrooms may be left in disrepair: the stalls may be missing their doors, the toilets are not always kept clean, and toilet paper may sometimes be missing. As students sense the low regard in which the school is held, many feel that they, too, are disrespected.

Anderson, *supra* note 91, at 67.

at the grass-roots level. Despite its many shortcomings, the local school district remains the most broad-based and effective vehicle for meaningful participatory democracy in American society.<sup>109</sup>

As was the case with residential requirements and funding schemes, local control as an educational value requires understanding the historical context upon which its contemporary manifestation lies. Local control emerged as a constitutional value designed to shield White school districts from participating in racial desegregation efforts after *Brown v. Board of Education*.<sup>110</sup>

The Supreme Court affirmed local control as a constitutional value in education in *Milliken*. In *Milliken*, the Court denied Michigan the ability to employ a regional, multidistrict plan including majority-White suburbs to effectuate desegregation in a majority-Black Detroit.<sup>111</sup> To remedy illegal de jure racial segregation in Detroit, a district court found that Detroit-only plans “would make the Detroit school system more identifiably Black . . . thereby increasing the flight of Whites from the city and the system.”<sup>112</sup> A regional remedy would require the suburban schools to admit students who lived in Detroit and vice versa. To do so, the court held that “school district lines are simply matters of political convenience and may not be used to deny constitutional rights.”<sup>113</sup>

The Supreme Court disagreed, and it did so by upholding “local control” as the most “deeply rooted” tradition in public education.<sup>114</sup> To require a suburban school district to participate in a desegregation plan when a court did not find that district responsible for the urban segregation was to direct it to give up its power to determine who is entitled to the district’s education.<sup>115</sup> Without that power, according to the Court, the community concern, support, and quality of education would suffer.<sup>116</sup> Thus, local power

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<sup>109</sup> Michael A. Rebell, *Fiscal Equity in Education: Deconstructing the Reigning Myths and Facing Reality*, 21 N.Y.U. REV. L. & SOC. CHANGE 691, 708 (1994).

<sup>110</sup> 347 U.S. 483 (1954).

<sup>111</sup> *Milliken*, 418 U.S. at 752.

<sup>112</sup> *Id.* at 732.

<sup>113</sup> *Id.* at 733.

<sup>114</sup> *Id.* at 741.

<sup>115</sup> See *id.* at 730 (stressing the absence of any “claim that these outlying districts had committed constitutional violations”).

<sup>116</sup> See *Milliken*, 418 U.S. at 741–42.

trumped *Brown's* integration imperative.<sup>117</sup> Local control gave constitutional cover to exactly what *Brown* sought to overcome.

The ability to control is, in theory, available to all school districts. But as Professor Kimberly Robinson argues, “The reality of local control of education for many communities means the ability to control inadequate resources that provide many students substandard educational opportunities.”<sup>118</sup> Local control allows suburban school districts to treat education as property.<sup>119</sup> In the context of poor schools, local control rings hollow—power with no substance.

### III. EDUCATION'S VIOLENCE

The apparatus I illustrate above is structural violence. In legal scholarship, Professor Robert Cover's famous essay *Violence and the Word* provides a useful starting point: “Legal interpretation takes place in a field of pain and death.”<sup>120</sup> This field arises from law's “normative world-building” through “interpretive commitments” that are “realized in the flesh.”<sup>121</sup> Cover uses criminal law as the most practical instantiation of this statement;<sup>122</sup> a defendant cannot refuse to participate in a trial, nor can the convicted defendant refuse to go to jail. If they were to refuse, physical force would effectuate the trial's result and punishment because the sentencer's “words [ ] serve as virtual triggers for action.”<sup>123</sup> Thus, criminal law is violent, not only in the actual physical force but in the threat of that force. Because legal violence is “rarely suffered by the victim apart from a setting of domination,” for legal

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<sup>117</sup> But, as then professor Goodwin Liu showed, if local control was one of the most deeply rooted traditions in U.S. public education, it only found its way into constitutional doctrine in *Rodriguez*, decided one year before *Milliken*. Before then, it was mentioned in dissent in *Wright v. Council of the City of Emporia*, 407 U.S. 451, 477–78 (1972) (Burger, C.J., dissenting). See *Brown, Bollinger, and Beyond*, *supra* note 67, at 718–19. Subsequent invocations of local control limited the “remedial obligations not of ‘innocent’ suburban school districts, but of southern school districts found guilty of unconstitutional racial segregation.” *Id.* at 719.

<sup>118</sup> Robinson, *supra* note 67, at 288.

<sup>119</sup> See generally LaToya Baldwin Clark, *Education as Property*, 105 VA. L. REV. 397 (2019).

<sup>120</sup> Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601 (1986).

<sup>121</sup> *Id.* at 1605.

<sup>122</sup> See *id.* at 1607. Legal violence is more than criminal law. Cover argues this, but he does not elaborate: “[A]ll law which concerns property, its use and its protection, has a similarly violent base.” *Id.* at 1607 n.16. While I also do not elaborate on this notion in this Essay, I will pursue this topic in future work.

<sup>123</sup> *Id.* at 1613.

interpretation to be violent, there must be “*conditions of effective domination*.”<sup>124</sup>

Other areas of law create structural violence. Structure describes “social relations and arrangements . . . that shape how individuals and groups interact within a social system.”<sup>125</sup> Structural violence occurs when subordination becomes embedded, entrenched, and ubiquitous.<sup>126</sup> Anthropologist Paul Farmer describes structural violence as harm and injury

exerted systematically—that is, indirectly—by everyone who belongs to a certain social order: hence the discomfort these ideas provoke in a moral economy still geared to pinning praise or blame on individual actors. In short, the concept of structural violence is intended to inform the study of the social machinery of oppression.<sup>127</sup>

Structural violence sustains itself when “inequality is backed by power.”<sup>128</sup> While we condemn direct violence as abhorrent to our social order, structural violence, in contrast, is covert and marked by everydayness.<sup>129</sup> Structural violence manifests as social neglect when the state withdraws support for the wellbeing of its citizens, indicating a sense of indifference to their humanity by leaving them incapable of being able to meet their basic needs.<sup>130</sup> It also begets social suffering<sup>131</sup>—the “painful part of the lived experience of social domination and exclusion.”<sup>132</sup>

Structural violence creates vulnerability. Most analyses of criminal behavior focus on the perpetrator by trying to understand why the shooter, for example, chooses to pull the trigger. But structural violence invites us to ponder the “vulnerable

<sup>124</sup> *Id.* at 1616 (emphasis in original).

<sup>125</sup> Rylko-Bauer & Farmer, *supra* note 14, at 47.

<sup>126</sup> *See id.* (“Structural violence is the violence of injustice and inequity—‘embedded in ubiquitous social structures and normalized by stable institutions and regular experience.’”).

<sup>127</sup> Paul Farmer, *An Anthropology of Structural Violence*, 45 CURRENT ANTHROPOLOGY 305, 307 (2004).

<sup>128</sup> Jonathan Weinberg, *Bureaucracy as Violence*, 115 MICH. L. REV. 1097, 1098 (2017) (explaining how Professor David Graeber defines structural violence in his book, *The Utopia of Rules: On Technology, Stupidity, and the Secret Joys of Bureaucracy*).

<sup>129</sup> Mary K. Anglin, *Feminist Perspectives on Structural Violence*, 5 IDENTITIES 145, 146 (1998).

<sup>130</sup> *See* Rylko-Bauer & Farmer, *supra* note 14, at 49–51 (discussing how structural violence is manifest in policies that result in an inequitable distribution of resources).

<sup>131</sup> *Id.* at 47–48.

<sup>132</sup> Emmanuel Renault, *A Critical Theory of Social Suffering*, 11 CRITICAL HORIZONS 221, 225 (2010).

victim”<sup>133</sup> because structural violence “puts people *at risk of risks*.”<sup>134</sup> Structural violence traps people in spaces of violence, poverty, and subordination where pain and suffering concentrate. Mobility opportunities are low in these spaces,<sup>135</sup> and “escape is difficult, if not impossible.”<sup>136</sup>

How does the basic apparatus of education that allocates children, money, and power to schools manifest structural violence in poor Black children’s lives? Subordination within the structure of education harms children by “marginalizing [them] and [their] communities, constraining their capabilities and agency, assaulting their dignity, and sustaining inequalities.”<sup>137</sup>

By allocating children to schools based on residence, poor Black children remain stuck, both figuratively and literally. Parents who dare to cross school boundary lines without authorization are subject to criminalization or civil sanctions. In some states, legislation criminalizing “stealing education” intends to inflict legal violence. In Illinois, for example, the governor called the laws the “teeth of a tiger” for school districts to pursue parents who dared to breach the boundary.<sup>138</sup> Eighteen additional states have school districts that threaten prosecution under general criminal statutes like fraud, theft, and perjury.<sup>139</sup> Other states without criminal penalties associated with border trespass punish border crossing through civil penalties like nonresident tuition for the period their children attended the school without authorization and automatic expulsion.<sup>140</sup>

Residential requirements perpetuate inequality, and the power to enforce those requirements involves criminalization.

<sup>133</sup> See generally Patrick Sharkey, Max Besbris & Michael Friedson, *Poverty and Crime*, in THE OXFORD HANDBOOK OF THE SOCIAL SCIENCE OF POVERTY, *supra* note 14, at 623.

<sup>134</sup> Rylko-Bauer & Farmer, *supra* note 14, at 57 (quoting Bruce G. Link & Jo Phelan, *Social Conditions as Fundamental Causes of Disease*, J. HEALTH & SOC. BEHAV. 80, 80 (1995) (emphasis in original)).

<sup>135</sup> Even when people move about in their daily lives, poor Black people tend to visit neighborhoods ecologically similar to their own residential neighborhoods, meaning that even in travel, they are still vulnerable to the dangers of residential violence associated with segregation. See Robert J. Sampson & Brian L. Levy, *Beyond Residential Segregation: Mobility-Based Connectedness and Rates of Violence in Large Cities*, 12 RACE & SOC. PROBS. 77, 81–83 (2020).

<sup>136</sup> Douglas S. Massey, *Getting Away with Murder: Segregation and Violent Crime in Urban America*, 143 U. PA. L. REV. 1203, 1216 (1995).

<sup>137</sup> *Id.*

<sup>138</sup> Baldwin Clark, *supra* note 69, at 593 (quoting Sherry Thomas, *New Law Goes After Parents of Out-of-District Students*, MAYWOOD HERALD (July 10, 1996), <https://perma.cc/J3X5-3UKM>).

<sup>139</sup> See *id.* at 594.

<sup>140</sup> See, e.g., *id.* at 594–95.

School district boundaries thus serve as barbed wire fences, behind which children live in conditions of race-class-based marginalization, oppression, and subordination. Physical space and social space reinforce each other.<sup>141</sup>

Behind those fences, funding schemes starve low-income Black schools of the resources they need. Poor schools have fewer resources to close the opportunity gaps that manifest along race-class lines. The failure to adequately fund schools economically subordinates poor children through their lifetimes. The structure of schooling intends to fulfill the goals of the employment market, where, upon graduation, the job market requires slotting into jobs of differing skills and prestige.<sup>142</sup> Poor children who attend poor schools get poor jobs. Poor schools educate children of poor parents, who were once themselves poor children.<sup>143</sup>

Lastly, local control subordinates children who live outside of a well-funded district's borders. It engenders resource and opportunity hoarding, where "a well-defined network of actors control access to valuable resources."<sup>144</sup> Local control allows suburban school districts, which tend to be whiter and more affluent than neighboring urban school districts, to treat education as property and "relegate [poorer and Blacker] schoolchildren to manifestly poorer educational opportunities"<sup>145</sup> when they have no obligations toward those children. Invoking local control for poor Black schools is abusive gaslighting.<sup>146</sup> It ignores reality.

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<sup>141</sup> Bourdieu, *supra* note 89, at 124 (explaining social structure as the "relation[ship] between the spatial structure of the distribution of agents and the spatial structure of the distribution of goods and services, private or public"). Residence describes more than a geographic location; it is a "spatial depiction of human social organization." Richard Thompson Ford, *Law and Borders*, 64 ALA. L. REV. 123, 128 (2012).

<sup>142</sup> Professors Samuel Bowles and Herbert Gintis call this the correspondence principle, whereby

[t]he educational system helps integrate youth into the economic system . . . through a structural correspondence between its social relations and those of production. The structure of social relations in education not only inures the student to the discipline of the workplace, but develops the types of personal demeanor, modes of self-presentation, self-image, and social-class identifications which are the crucial ingredients of job adequacy.

SAMUEL BOWLES & HERBERT GINTIS, *SCHOOLING IN CAPITALIST AMERICA: EDUCATIONAL REFORM AND THE CONTRADICTIONS OF ECONOMIC LIFE* 131 (1976).

<sup>143</sup> See, e.g., Baldwin Clark, *supra* note 69, at 583, 627.

<sup>144</sup> *Id.* at 573.

<sup>145</sup> Brown, Bollinger, and *Beyond*, *supra* note 67, at 726.

<sup>146</sup> See Sarah DiGiulio, *What Is Gaslighting? And How Do You Know if It's Happening to You?*, NBC NEWS (July 13, 2018), <https://perma.cc/NAT4-RCCZ> (defining gaslighting as "a specific type of manipulation where the manipulator is trying to get someone else (or a group of people) to question their own reality, memory or perceptions").



Institutionally, U.S. education inflicts grave harm on poor Black children like Isaiah; it does the exact opposite of what we would hope that it would do. Structural violence in education constrains options and severely undermines life chances rather than presenting opportunities and bettering children's life chances.<sup>147</sup> This structural violence does not allow poor Black children to reach their full capabilities,<sup>148</sup> capabilities required to live a life where they have the "information and capacities that give [them] the tools needed to permit [them] to understand and engage in voluntary choosing."<sup>149</sup>

### CONCLUSION

In this Essay, I've argued that our system of allocating children, money, and power is structurally violent. By erecting barbed wire fences, engaging in a financial scheme that starves poor Black schools, and vesting the ability to control little to nothing, education as an institution denies poor Black children like Isaiah the dignity of being able to choose their path to the "good life." In thinking about how education harms, it helps to understand that the problem is how education law creates impoverished lives—lives denied genuine choice and freedom.

I hope that this Essay pushes us toward thinking of the injustices and subordination of the simple structures in our lives as violent, not merely harmful. We call shootings violent because of their capacity to inflict grave bodily harm; we should also consider how our institutions inflict severe social suffering and how they impact the most vulnerable among us, including our children.

We must acknowledge the social subordination that emerges from foundational social institutions because we might otherwise be satisfied with the absence of physical violence in an unjust society. If "peace is [the] absence of violence,"<sup>150</sup> ending gun violence against poor Black children like Isaiah in poor Black communities like some in Chicago will not end their suffering.

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<sup>147</sup> See Erin Adamson, Cecilia Menjivar & Shannon Drysdale Walsh, *The Impact of Adjacent Laws on Implementing Violence Against Women Laws: Legal Violence in the Lives of Costa Rican Women*, 45 LAW & SOC. INQUIRY 432, 445 (2020).

<sup>148</sup> See generally Rod Hick & Tania Burchardt, *Capability Deprivation*, in THE OXFORD HANDBOOK OF THE SOCIAL SCIENCE OF POVERTY, *supra* note 14, at 75.

<sup>149</sup> Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 767 (2009).

<sup>150</sup> Johan Galtung, *Violence, Peace, and Peace Research*, 6 J. PEACE RSCH. 167, 172 (1969) (arguing that "action should be directed against personal as well as structural violence").