

Echoes of Redlining: Discrimination Continues to Shape Neighborhood Options in the COVID-19 Crisis

I. INTRODUCTION

In the mid-twentieth century, public and private institutions excluded minority populations from homeownership and residence through discriminatory mortgage-lending practices.¹ Using a color-coded scheme to assess risk, federal housing programs refused to insure loans of Black urban applicants that were available to White suburban applicants.² This government-endorsed discrimination—known as “redlining”—perpetuated racial segregation through homeownership, an important means of wealth accumulation in the United States.³ COVID-19’s disparate impact on communities of color further exposes the systemic inequities perpetuated by redlining and other prejudicial policies.⁴ Although the Supreme Court ruled redlining unconstitutional shortly after Congress banned housing discrimination as part of the Civil Rights Act of 1968, the practice continues to shape the options for neighborhood residents over a half-century later.⁵

In 2015, the Department of Housing and Urban Development issued a rule requiring municipalities receiving grants from the federal agency to take proactive steps to “affirmatively further fair housing.”⁶ Under the administration of President Donald Trump, the rule was suspended in January 2018 and ultimately rescinded in July 2020.⁷ However, California passed AB 686 in 2018, which calls on cities and counties to report housing inequities within their communities beginning in 2021.⁸ California’s fair housing law preserves a platform for municipalities to address their communities’ systemic disparities highlighted by the COVID-19 crisis, including access to healthcare, employment, and technology.⁹

II. LEGAL BACKGROUND

A. *The Origins of Redlining in the United States*

During the Reconstruction era after the Civil War, Congress passed the Civil Rights Act of 1866 to enforce the Thirteenth and Fourteenth Amendments—which abolished slavery and declared former slaves born in the United States citizens entitled to equal protection, respectively.¹⁰ The statute also prohibited housing discrimination, and the Civil Rights Act of 1875 went further to provide that citizens “of every race and color” were “entitled to the full and equal enjoyment” of public accommodations.¹¹ However, with the contested election of President Rutherford B. Hayes and the subsequent removal of federal troops stationed in the south to protect integrating Blacks, the era of Reconstruction ended, and Black liberation was rolled back.¹² In 1883, the Supreme Court ruled that the Thirteenth and Fourteenth Amendments did not authorize Congress to declare citizens entitled to equal access to conveyances and services from private entities because the amendments were only applicable to state action.¹³ The federal government would not enact another civil rights law for 75 years.¹⁴

As part of the New Deal, President Franklin D. Roosevelt’s administration created the Home Owners’ Loan Corporation (“HOLC”) to protect struggling property owners in urban areas during the Great Depression.¹⁵ The HOLC purchased mortgages that were in immediate danger of foreclosure and issued new mortgages to property owners with more favorable terms.¹⁶ In order to assess risk in granting these mortgages, the HOLC created color-coded maps of 239 cities nationwide.¹⁷ Green areas were the safest investments (often with businesses); blue areas were safe, residential neighborhoods; yellow were “declining” neighborhoods; and red areas were “hazardous.”¹⁸ The HOLC labelled neighborhoods with Black families as hazardous, even when they were middle-class neighborhoods.¹⁹

Shortly after the inception of the HOLC, the Federal Housing Administration (“FHA”) began offering insured mortgages to first-time homebuyers using the HOLC maps to assess risk.²⁰ When the FHA appraised the properties that were the subject of these loans, it determined that racially mixed neighborhoods were too risky to insure.²¹ Even White neighborhoods that were *near* Black neighborhoods did not meet FHA appraisal standards.²² The FHA issued an *Underwriting Manual* instructing appraisers to give higher ratings to properties that included physical barriers like highways between racially segregated neighborhoods to prevent “the infiltration of . . . lower class occupancy, and inharmonious racial groups.”²³ The manual also instructed appraisers to give high ratings when “[p]rotection against [such] adverse influences is obtained.”²⁴ One such “protection” available at the time was a racially restrictive covenant—a private agreement that promised to exclude people of specified races from ownership or occupancy of property.²⁵ In 1948, the Supreme Court held that judicially enforcing such agreements was unconstitutional, but declined to extend the prohibition to private agreements.²⁶ Three justices did not participate in the decision, likely because they lived in homes with racially restrictive covenants.²⁷

B. Legislative Remedies

By the mid-1960s, social unrest prompted the administration of President Lyndon B. Johnson to commission a report to identify causes and steps to address and prevent violence in cities.²⁸ The resulting analysis by the Kerner Commission identified residential segregation as well as other housing and economic inequities as significant causes of the social unrest.²⁹ Congress adopted the Kerner Commission’s recommendations and passed the Fair Housing Act shortly after Martin Luther King, Jr. was murdered in April 1968.³⁰

The Fair Housing Act officially prohibited housing discrimination on the basis of race, color, religion, or national origin, but did not end the effects of that discrimination on communities of color.³¹ The statute acknowledged this by directing the Department of Housing and Urban Development (“HUD”) to affirmatively further fair housing (“AFFH”) by reporting on “the nature and extent of discriminatory housing practices” in communities.³² After determining that HUD’s existing AFFH approach was less effective than planned, President Barack Obama’s administration issued new rules in 2015.³³ These new rules required that HUD program participants create an annual standardized Assessment of Fair Housing (“AFH”) identifying and evaluating fair housing issues and their contributing factors.³⁴

Following the election of 2016, the federal government suspended the HUD rules requiring AFH reports.³⁵ In response to the rollback, the California State Legislature enacted and Governor Jerry Brown signed AB 686, which requires cities and counties to provide annual AFH reports.³⁶ The statute defines AFFH to include “taking meaningful actions that . . . address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, [and] transforming racially and ethnically concentrated areas of poverty into areas of opportunity.”³⁷ Although the federal requirement was rescinded under President Trump—himself sued by the Justice Department in 1973 under the Fair Housing Act for not renting to Black tenants—California’s AFFH statute remains intact and AFH reports are due annually beginning in January 2021.³⁸

III. ANALYSIS

In 1938, the HOLC redlined the West End in Sacramento, excluding the area from the rapid growth that the rest of the city experienced over the next decade.³⁹ In the 1950s, redlined Sacramento neighborhoods were targeted for “urban renewal” projects, including highway

construction.⁴⁰ Despite failing to win support through a public bond measure, local officials obtained federal funding for the construction of Interstate 5 by declaring West End neighborhoods “blighted” and dislocated many working-class minority communities.⁴¹ Many Black families moved into a nearby neighborhood called Meadowview after the construction of Interstate 5 because it lacked the racially restrictive covenants that were present in the surrounding neighborhoods.⁴² In 2018, Stephon Clark was shot and killed by Sacramento police in the backyard of his grandmother’s home in Meadowview.⁴³ When activists protested Clark’s death, they marched a route tracing the West End and shut down Interstate 5.⁴⁴

Two years later, several months into the COVID-19 crisis, protests erupted across the nation in response to the murder of George Floyd by Minneapolis police.⁴⁵ In Minnesota, where Floyd’s fatal arrest occurred, a major protest used Interstate 94 as a path to the state capitol.⁴⁶ The route was significant to protesters because, similarly to Sacramento’s Interstate 5, the construction of Interstate 94 in the 1950s displaced hundreds of businesses and thousands of people in Rondo, a thriving Black community in St. Paul.⁴⁷ Days after the Interstate 94 protest, an autopsy revealed that George Floyd posthumously tested positive for COVID-19, symbolically sealing the link between the co-existing crises.⁴⁸

Redlining and other discriminatory practices created obstacles that persist in neighborhoods today and disparately expose their predominantly non-White residents to the effects of the pandemic. This paper explores these practices and their impact on communities of color in three distinct ways. Section A discusses how the systemic discrimination and divestment involved in redlining have contributed to health disparities across these populations.⁴⁹ Section B describes the impact that housing discrimination has had on employment and generational wealth

of the Black community.⁵⁰ Section C examines how redlining is reflected in community access to digital services, which are vital during the pandemic.⁵¹

A. Healthcare

Research indicates a strong link between redlined communities, their exposure to extreme heat, and the rate of hospital visits for asthma that is likely due to poorer air quality.”⁵² In Sacramento, for instance, people living in historically redlined neighborhoods are more likely to repeatedly visit emergency rooms due to asthma.⁵³ These neighborhoods are less likely to have tree canopies or other features that can mitigate environmental impacts on their residents.⁵⁴ Spatial inequities like these and the resulting phenomenon of weathering—accelerated aging due to stress brought on by exposure to toxins, lack of sleep and racial discrimination—help explain why Black populations historically suffer from asthma, heart disease, hypertension, and diabetes at higher rates.⁵⁵ Illnesses that weaken lungs and immune systems leave those living with these conditions more vulnerable to the effects of COVID-19.⁵⁶

Black neighborhoods have less access to healthcare because they tend to be farther from hospitals and their residents have to wait longer for prescriptions from inadequate pharmacies.⁵⁷ Early data from the pandemic suggests when Black people visit clinics with symptoms, they are less likely to be referred for testing, which is particularly dangerous for a fast-moving illness like COVID-19.⁵⁸ Previous research also indicates that doctors are half as likely to prescribe pain medication to Black people for “non-definitive” pain because they assess that Black people are at a higher risk for drug addiction.⁵⁹

While no correlation has been found between high population density areas and COVID-19 infection rates, overcrowding within homes is detrimental to public health.⁶⁰ Overcrowding occurs when exclusion from opportunity and a lack of sufficient housing force households into

tight quarters designed for fewer inhabitants.⁶¹ In June 2020, Sacramento County reported that areas with high poverty rates saw spikes in COVID-19 infection rates.⁶² Overcrowding—nearly twice as common in Sacramento than the national average—and a high number of essential workers in affected areas may help explain the spikes.⁶³

B. Employment & Wealth

While public health experts urge people to stay home to fight COVID-19, communities of color are overrepresented as essential workers, who do not have the luxury to stay home.⁶⁴ Fewer than one-fifth of Black and Latinx employees can telework.⁶⁵ Despite disproportionate representation as essential workers, Black and Latinx unemployment rates were still higher than White unemployment rates in the early months of the pandemic.⁶⁶

Furthermore, when governments and lenders denied loans to people of color through the practice of redlining, they excluded families from opportunities to gain wealth from home appreciation.⁶⁷ These rejections affected more than just the individual applicants: historically, many people of color never applied for loans because they knew or believed they would be rejected.⁶⁸ Today, the average White family has ten times the wealth of the average Black family.⁶⁹ With less inherited wealth, Black people are also less likely to have health insurance coverage, which increases their economic exposure during the crisis.⁷⁰

C. Technology

The digital divide—disparity in access to technological services—reflects the practice of redlining because internet service providers underserve lower-income geographical areas due to an assessment of financial risk.⁷¹ Children in homes without connectivity risk losing out on their education while COVID-19 forces schools to close and transition to remote learning.⁷² The Greenlining Institute reports that Oakland neighborhoods that are currently underserved with

internet access closely resemble the redlined neighborhoods the HOLC drew for the city in 1938.⁷³ Conversely, the digital divide also often hits rural areas with little access to broadband hard.⁷⁴ Overall, Black and Latinx people have less broadband access than their White counterparts in California, with only 57% of Latinx people who primarily speak Spanish having broadband connectivity.⁷⁵ Many students can only connect to the internet through a smartphone, which is not conducive to education.⁷⁶ Data and speed maximums on phone internet plans provide additional obstacles for remote students, and the plans designed for low-income households are often poorly marketed, offer limited eligibility, and provide inadequate service.⁷⁷ Students with inadequate internet service face additional hurdles to complete their assignments and often must find public—often unstable or illegitimate—sources of internet service while better-served students can work from the comfort of their homes.⁷⁸ These additional stressors can cause students to fall behind in their studies and lead to chronic absenteeism.⁷⁹

IV. CONCLUSION

Redlining and related forms of housing discrimination perpetuated systemic inequities that continue to burden communities of color.⁸⁰ Past discrimination shapes present-day gaps in the areas of health, employment, and technology that exacerbate the vulnerability of urban communities during the COVID-19 crisis.⁸¹ Despite rollbacks at the federal level, California's fair housing legislation requires cities and counties to analyze discrimination within their communities.⁸² These Assessment of Fair Housing reports present municipalities with a platform to identify patterns of segregation so that state government can take steps to address the significant disparities that persist to this day.⁸³

¹ See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

² See *id.*

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- ³ See Tracy Jan, *Redlining Was Banned 50 Years Ago. It's Still Hurting Minorities Today*, WASH. POST (Mar. 28, 2018), <https://www.washingtonpost.com/news/wonk/wp/2018/03/28/redlining-was-banned-50-years-ago-its-still-hurting-minorities-today/> (quoting John Taylor, president and chief executive of the National Community Reinvestment Coalition: “Homeownership is the number-one method of accumulating wealth, but the effect of these policies that create more hurdles for the poor is a permanent underclass that’s disproportionately minority”).
- ⁴ See Janice Gassam, *COVID-19 Reveals Racial Inequities in U.S. Healthcare System: Strategies for Solutions*, FORBES (Apr. 12, 2020), <https://www.forbes.com/sites/janicegassam/2020/04/12/covid-19-reveals-racial-inequities-in-us-healthcare-system-strategies-for-solutions/>.
- ⁵ See Jan, *supra* note 3.
- ⁶ See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (Jul. 16, 2015) (to be codified at 24 C.F.R. pt. 5, 91, 92, 570, 574, 576, 903).
- ⁷ See Lisette Voyko, *Trump Touts ‘Suburban Lifestyle Dream’ After Rescinding Obama-Era Rule Preventing Housing Discrimination*, FORBES (July 29, 2020), <https://www.forbes.com/sites/lisettevoytko/2020/07/29/trump-touts-suburban-lifestyle-dream-after-rescinding-obama-era-rule-preventing-housing-discrimination/>
- ⁸ CAL. GOV’T CODE § 65583 (West 2020).
- ⁹ *Infra* Part III.
- ¹⁰ U.S. CONST., amend. XIII § 1; U.S. CONST., amend. XIV § 1; Civil Rights Act of 1866, ch. 31, 14 Stat. 27.
- ¹¹ Civil Rights Act of 1866 § 1; Civil Rights Act of 1875, 18 Stat. 335-337.
- ¹² See ROTHSTEIN, *supra* note 1, at 39.
- ¹³ See Civil Rights Cases, 109 U.S. 3, 9 (1883).
- ¹⁴ See Louis Menand, *The Supreme Court Case That Enshrined White Supremacy in Law*, THE NEW YORKER (Jan. 28, 2019), <https://www.newyorker.com/magazine/2019/02/04/the-supreme-court-case-that-enshrined-white-supremacy-in-law>; see also Civil Rights Act of 1957, Pub. L. No. 85-315 (commissioning a report to investigate the deprivation of voting rights based on “color, race, religion, or national origin”).
- ¹⁵ See Matthew Green, *How Government Redlining Maps Pushed Segregation in California Cities*, KQED: THE LOWDOWN (Apr. 27, 2016), <https://www.kqed.org/lowdown/18486/redlining>.
- ¹⁶ See ROTHSTEIN, *supra* note 1, at 64.
- ¹⁷ Jan, *supra* note 3.
- ¹⁸ See *id.*
- ¹⁹ See ROTHSTEIN, *supra* note 1, at 63–64.
- ²⁰ See *id.*
- ²¹ See *id.*
- ²² See *id.* See also Ta-Nahesi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), available at <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (“Neither the percentage of black people living there nor their social class mattered. Black people were considered a contagion.”).
- ²³ See ROTHSTEIN, *supra* note 1, at 65.
- ²⁴ See *id.* at 64.
- ²⁵ *Shelley v. Kraemer*, 334 U.S. 1 (1948).
- ²⁶ *Id.* at 13.
- ²⁷ See JESSE DUKEMINIER ET AL., PROPERTY 862 (9th ed. 2017) (attributing the analysis to Justice John Paul Stevens); see also *Shelley v. Kraemer*, 334 U.S. 1 (1948).
- ²⁸ Exec. Order No. 11365, 32 Fed. Reg. 11,111 (Jul. 29, 1967). See also *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2516 (2015).
- ²⁹ REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 91 (1968).
- ³⁰ See *Texas Dep’t of Hous. & Cmty. Affairs*, 135 S. Ct. at 2516.
- ³¹ See ROTHSTEIN, *supra* note 1, at 183.
- ³² 42 U.S.C.A. § 3608 (West 2020).
- ³³ See *Affirmatively Furthering Fair Housing*, 80 Fed. Reg. 42,272 (Jul. 16, 2015) (to be codified at 24 C.F.R. pt. 5, 91, 92, 570, 574, 576, 903).
- ³⁴ See *id.*
- ³⁵ Cal. State Assemb. Office of the Chief Clerk, AB 686 Assemb. Floor Analysis, 2018 Cal. Leg. 2017–18 Sess. 4 (2018).
- ³⁶ CAL. GOV’T CODE § 8899.50 (West 2020).
- ³⁷ *Id.*
- ³⁸ *Id.* See also Voyko, *supra* note 7 (noting the suit filed against Trump settled in 1975).
- ³⁹ See *id.* (reporting that property values in the West End dropped by 30% despite rising 46% across Sacramento).

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- ⁴⁰ See Michael Finch II, *Legacy of Racist ‘Redlining’ Lingers in Sacramento Neighborhoods. How This Cost the City*, SACRAMENTO BEE (Feb. 24, 2020), <https://www.sacbee.com/article240318511.html>.
- ⁴¹ See Alan Pyke, *The Long, Painful History of the Sacramento Neighborhood Where Stephon Clark Was Killed*, THINKPROGRESS (Mar. 30, 2018), <https://archive.thinkprogress.org/sacramento-segregation-geography-stephon-clark-72d7800743ee/> (including a discussion of how the term “blight” originated with eugenics).
- ⁴² See *id.*
- ⁴³ See *id.*
- ⁴⁴ See *id.*
- ⁴⁵ See Dionne Searcy and David Zucchini, *Protests Swell Across America as George Floyd is Mourned Near His Birthplace*, N.Y. TIMES (June 6, 2020), <https://nyti.ms/3h1G7W5>.
- ⁴⁶ See Linda Poon, *The Racial Injustice of American Highways*, BLOOMBERG CITYLAB (Jun. 3, 2020, 9:11 AM PDT), <https://www.bloomberg.com/news/articles/2020-06-03/what-highways-mean-to-the-george-floyd-protesters>.
- ⁴⁷ See *id.* (explaining that due to the surrounding area’s redlining and real estate covenants precluding homeownership and leases to minorities, “[s]ome had little choice but to sell their property to the city at a fraction of its value, while those who resisted were forcibly removed”).
- ⁴⁸ See Steve Gorman, *George Floyd Was Infected with COVID-19, Autopsy Reveals*, REUTERS (June 4, 2020), <https://www.reuters.com/article/us-minneapolis-police-autopsy/george-floyd-was-infected-with-covid-19-autopsy-reveals-idUSKBN23B1HX>.
- ⁴⁹ See *infra* Section III.A.
- ⁵⁰ See *infra* Section III.B.
- ⁵¹ See *infra* Section III.C.
- ⁵² See Finch, *supra* note 42.
- ⁵³ See *id.*
- ⁵⁴ See *id.*
- ⁵⁵ See Akila Johnson & Talia Buford, *Early Data Shows African Americans Have Contracted And Died of Coronavirus at an Alarming Rate*, PROPUBLICA (Apr. 3, 2020), <https://www.propublica.org/article/early-data-shows-african-americans-have-contracted-and-died-of-coronavirus-at-an-alarming-rate>; see also John Eligon et al, *Black Americans Face Alarming Rates of Coronavirus Infection in Some States*, N.Y. TIMES (Apr. 7, 2020), <https://nyti.ms/3aRc0wZ>.
- ⁵⁶ See Johnson & Buford, *supra* note 55.
- ⁵⁷ See Rayshawn Ray, *Why are Blacks Dying at Higher Rates from COVID-19?*, THE BROOKINGS INSTITUTION: FIXGOV (Apr. 9, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/09/why-are-blacks-dying-at-higher-rates-from-covid-19/>.
- ⁵⁸ See Eligon, *supra* note 55.
- ⁵⁹ See Amanda Holpuch, *Black Patients Half as Likely to Receive Pain Medication as White Patients, Study Finds*, THE GUARDIAN (Aug. 10, 2016), <https://www.theguardian.com/science/2016/aug/10/black-patients-bias-prescriptions-pain-management-medicine-opioids>.
- ⁶⁰ See Scott Weiner & Anthony Iton, *A Backlash Against Cities Would Be Dangerous*, THE ATLANTIC (May 17, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/urban-density-not-problem/611752/>.
- ⁶¹ See *id.* Cf., ROTHSTEIN, *supra* note 1, at 13 (describing how the phenomenon occurred in East Palo Alto, Cal. in the 1950s).
- ⁶² See Theresa Clift & Phillip Reese, *Coronavirus Surging in Sacramento’s Poor Neighborhoods. What Can Be Done to Slow It?*, SACRAMENTO BEE (June 20, 2020), <https://www.sacbee.com/news/local/article243645912.html>.
- ⁶³ See *id.* (reporting that Chet Hewitt, president and CEO of the Sierra Health Foundation, suspected a combination of overcrowding and essential workers contributed to the spike).
- ⁶⁴ See Catherine Thorebrecke & Arielle Mitropoulos, *‘Extreme Inequality Was the Preexisting Condition’: How COVID-19 Widened America’s Wealth Gap*, ABC NEWS (June 28, 2020), <https://abcnews.go.com/Business/extreme-inequality-preexisting-condition-covid-19-widened-americas/story?id=71401975>.
- ⁶⁵ See U. S. BUREAU OF LABOR STATISTICS, *JOB FLEXIBILITIES AND WORK SCHEDULES — 2017–2018 DATA FROM THE AMERICAN TIME USE SURVEY 2* (2019).
- ⁶⁶ See Thorebrecke & Mitropoulos, *supra* note 64.
- ⁶⁷ See ROTHSTEIN, *supra* note 1, at x–xi; see also Jan, *supra* note 3.
- ⁶⁸ See ROTHSTEIN, *supra* note 1, at x–xi.
- ⁶⁹ See Jan, *supra* note 3 (citing the Federal Reserve).
- ⁷⁰ See Gassam, *supra* note 4.

⁷¹ See Mark Anderson, *Reports: Digital Divide Is Modern Incarnation of Historic Lack of Inclusion*, SACRAMENTO BUS. J. (Jun. 5, 2020), <http://www.bizjournals.com/sacramento/news/2020/06/05/digital-divide-inclusion.html>.

⁷² See Nicole Gaudiano, *Coronavirus Quarantines Could Rob Poor, Rural Students of Access to Education*, POLITICO (Mar. 3, 2020, 1:49 PM EDT), <https://www.politico.com/news/2020/03/10/coronavirus-quarantines-rural-students-125048>.

⁷³ *On the Wrong Side of the Digital Divide*, THE GREENLINING INST. (June 2, 2020), <https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide/>.

⁷⁴ See Gaudiano, *supra* note 72.

⁷⁵ See Anderson, *supra* note 71.

⁷⁶ See *id.*

⁷⁷ See *On the Wrong Side of the Digital Divide*, *supra* note 73.

⁷⁸ See *id.*

⁷⁹ See *id.*; see also, e.g., Monica Valez, *Thousands of Fresno Students Chronically Absent as Schools Weigh Return to Classrooms*, FRESNO BEE (Oct. 22, 2020), <https://www.fresnobee.com/news/local/education-lab/article246628973.html> (reporting that thousands of students were chronically absent from the Fresno Unified District during the pandemic compared the previous year because “not everyone had technology”).

⁸⁰ See *supra* Parts II & III.

⁸¹ See *supra* Part III.

⁸² CAL. GOV'T CODE § 8899.50 (West 2020). See *supra* Section II.B.

⁸³ See *supra* Section II.B & Part III.