

Tear It All Down: Highways as Racist Monuments

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Deborah N. Archer, *“White Men’s Roads Through Black Men’s Homes”: Advancing Racial Equity Through Highway Reconstruction*, __ **Vanderbilt L. Rev.** __ (forthcoming, 2020), available at [SSRN](#).

In recent months, citizens and elected officials around the country have been tearing down or ordering the removal of monuments that symbolize white supremacy and subjugation.¹ While many of the targeted monuments are statues of people who supported or espoused racist ideologies, another set of more innocuous monuments to racial segregation still stand: America’s Highways.

In her forthcoming article, *“White Men’s Roads Through Black Men’s Homes”: Advancing Racial Equity Through Highway Reconstruction*, Professor Deborah N. Archer examines the way that the U.S. highway system served as a tool of segregation, both destroying and isolating Black communities.

Archer begins by describing the way that the creation of interstate highways provided a vehicle for the enactment of a pre-existing racist agenda. The roads were often intentionally positioned in order to isolate and segregate or destroy thriving Black neighborhoods in the name of urban renewal, slum clearance, and improved traffic conditions.

Archer looks at the examples of Miami (where Overtown, the “Harlem of the South,” was destroyed and replaced by the highway), Birmingham, and Atlanta (where freeways were constructed along historic racial zoning boundaries, thus serving as physical barriers between pre-existing segregated Black communities and white ones).

Although many decisions about where to place highways were made in the past, this is not a mere legacy issue. Archer undertakes a discussion of some of the ongoing impacts of past highway construction, including “cement[ing] hyper racial segregation in housing and schools; concentrating poverty and excluding low-income inner-city residents from communities of opportunity; and the physical, psychological and economic division of communities.” (P. 29.) Thus, although many of the structures themselves were designed and built in the past, they continue to regulate behavior and enforce harm on communities of color in the present.

Archer recognizes that we are now at a moment in history where we might have a chance to alter some of these physical structures. Much of our highway infrastructure was built in the 1950s and 60s, and is therefore nearing or beyond the end of its useful life. Thus, there is the potential for additional harm to Black communities and other communities of color that were harmed by the initial highway construction as these roads are torn down or rebuilt.

However, there is also opportunity for redress. But merely removing existing highways will not be enough to affirmatively further racial equity in communities that were destroyed by highway development.

The existence of the highways has led to years of neglect in affected areas. Something more must be done in order to ensure that highway redevelopment has positive, instead of negative, impacts on communities of color.

Unfortunately, as Archer points out, our existing laws are not sufficient to ensure that racial equity will be centered in new highway development decisions. These laws often focus on intent, but “[o]ne or two bad apples, making a few discrete racially-motivated decisions, did not lead to the interstate highway system’s devastation of Black communities.” (Pp. 53-54.) Rather, structural racism and systemic inequality were behind these actions, and our existing civil rights laws have been interpreted in such a way that they are unable to dismantle these systemic

problems.

Archer's article goes on to consider other laws that might be helpful. Here, Archer makes an important contribution by addressing the way that advocates have attempted to use the National Environmental Policy Act (NEPA)—the focus of which is environmental protection—to force consideration of the racial impacts of proposed projects, couching race-related harms as either social or economic impacts.

While many highway projects must comply with NEPA, that statute is merely procedural and lacks teeth. So while decision-makers might consider the racial impacts of highway projects under NEPA, that statute doesn't force any specific action or mitigation of harm.

Because our existing laws are insufficient, Archer joins the call for expanded use of racial equity impact studies (REIS), suggesting that they be completed prior to any highway redevelopment projects. As Archer notes, REIS are primarily designed to ferret out unintended consequences of governmental programs, but impact statements can also illuminate historic influences and structural racial inequities. As the article has made clear, the racial impacts of highway development have historically been largely intentional and systemic.

Under Archer's proposal, REIS should: collect demographic data to determine how communities of color will be affected by proposed highway projects, further transportation justice goals, require a process that gives local stakeholders voice and an opportunity for participation, take a regional focus, and require both monitoring systems and mitigation requirements.

While tearing down Confederate monuments carries symbolic weight, it doesn't change the systems of racism at work in the United States. In contrast, tearing down the freeways that physically divide and control movement between and within places can have a real impact toward eliminating both physical and psychological barriers to movement.

Thus, Archer's framing and proposal provide a real means of dismantling one aspect of systemic racism. And, while our existing legal tools are likely not sufficient to achieve these goals, Archer's suggested REIS process might get us there.

1. See generally Jess R. Phelps & Jessica Owley, *Etched in Stone: Historic Preservation Law and Confederate Monuments*, 71 **Fla. L. Rev.** 627 (2019); Stephen Clowney, *Landscape Fairness: Removing Discrimination from the Built Environment*, 2013 **Utah L. Rev.** 1 (2013).

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