Winter 2021

**Toward Racially Equitable and Accountable Tech**

Andrea Giampetro-Meyer

Janae James

Sydney Brooke

Follow this and additional works at: https://scholarship.law.marquette.edu/mulr

Part of the Law and Race Commons, Privacy Law Commons, and the Technology and Innovation Commons

**Repository Citation**


Available at: https://scholarship.law.marquette.edu/mulr/vol105/iss2/3

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
TOWARD RACIALLY EQUITABLE AND ACCOUNTABLE TECH

ANDREA GIAMPETRO-MEYER*

JANAE JAMES**

SYDNEY BROOKE***

“[W]e will beat the drum of solidarity, marching towards a future where technology serves all of us, not just the privileged few.”

This Article examines three distinct areas to consider how we might move toward racially equitable and accountable tech. The three distinct areas are: (1) fair housing, (2) surveillance, and (3) social media. Fair housing raises questions about where today’s racially biased algorithms fit within the context of historical, racist government housing policy. Surveillance raises questions about how some tech tools render Black faces invisible, while others render Black faces dangerously conspicuous. Social media highlights the clash between civil rights and civil liberties, especially when racial justice conflicts with freedom of speech. Our analysis leads us to consider the extent to which legal and non-legal remedies can promote a racially equitable and accountable tech industry. Moreover, in the context of a Biden administration, we consider the promise of the federal government to lead us in the fight to promote change. Ultimately, the Article suggests that legislators, lawyers, journalists, activists, artists, designers, developers, and community organizers must work together, using all available tools, to dismantle structural racism in tech.

I. INTRODUCTION

II. BACKGROUND

A. Big Tech and Its Tools

B. Equity and Accountability

III. UNFAIR HOUSING

---

* Professor, Law and Social Responsibility, Loyola University Maryland.
** Research Associate, Loyola University Maryland.
*** Research Associate, Loyola University Maryland.
I. INTRODUCTION

In the wake of 2020’s racial protests, tech companies have donated money to organizations that fight racism, promised to be transparent about the algorithms that drive decisions, vowed to curb racism and hate speech on their platforms, and placed a moratorium on their relationships with police. These actions and promises take place in the context of decades-long corporate action to foster the illusion that tech companies—especially large, powerful tech

---


companies—engage in work that is neutral. In reality, the tech industry’s actions in response to racial protests are relatively small, feel-good initiatives that gloss over an industry that is fundamentally racist.

This Article explains why Big Tech’s corporate displays of goodwill are not enough to chip away at fundamentally flawed structures. Moreover, these displays distract racial justice advocates from the important work they must do to force tech companies to diversify their workforces, create cultures that allow Black and Brown employees to thrive, permanently refrain from contributing to flawed surveillance programs, and seriously consider how their algorithms are hurting men and women of color in their daily lives. This Article argues that piecemeal reform, combined with approaches that embrace industry self-regulation, allows Big Tech to avoid the equity and accountability that will

7. Zeynep Tufekci, Opinion, The Real Bias Built In at Facebook, N.Y. TIMES (May 19, 2016), https://www.nytimes.com/2016/05/19/opinion/the-real-bias-built-in-at-facebook.html [https://perma.cc/25HD-UNFZ]. Tufekci explains that tech companies create the illusion that their algorithms are neutral by implying that they are extensions of natural sciences. Instead, algorithms use data, math, and computation. They are “a fountain of bias and slants.” Id. She writes that “[w]ithout laws of nature to anchor them, algorithms used in . . . subjective decision making can never be truly neutral, objective or scientific.” Id. Algorithms optimize output and rely on company choices and conditions.

8. See generally Charlon McIlwain, Of Course Technology Perpetuates Racism. It was Designed that Way, MIT TECH. REV. (June 3, 2020), https://www.technologyreview.com/2020/06/03/1002589/technology-perpetuates-racism-by-design-simulmatics-charlton-mcilwain/ [https://perma.cc/Y8LQ-N8TH] (“Black Americans have seen technology used to target them again and again. Stopping it means looking at the problem differently.”); see also RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE 8 (2019) (exploring a hostile form of systemic bias, the ways in which “discriminatory designs . . . explicitly work to amplify hierarchies, many that ignore and thus replicate social divisions, and a number that aim to fix racial bias but end up doing the opposite”); JESSIE DANIELS, CYBER RACISM: WHITE SUPREMACY ONLINE AND THE NEW ATTACK ON CIVIL RIGHTS (2009) (exploring White supremacy in the digital era, especially the ways in which White supremacist organizations are recruiting new members online).


12. See discussion infra Section III.B regarding mortgages.

13. See discussion infra Section II.B.
yield an industry that truly serves us all. In this context, antiracist\(^{14}\) activists must offer a bold civil rights agenda that incorporates a range of approaches, including approaches that “leverage the power of the federal government to be actively race-conscious and to take actions to end racial inequities.”\(^{15}\)

This Article presents analysis that sits at the nexus of race, technology, and justice. It examines three distinct areas to consider how we might move toward racially equitable and accountable tech. The three distinct areas are: (1) fair housing,\(^{16}\) (2) surveillance,\(^{17}\) and (3) social media.\(^{18}\) We chose these three areas because each highlights unique issues that fall under the umbrella of tech-based racism and the law. Fair housing raises questions about where today’s racially biased algorithms fit within the context of historical, racist government housing policy. Surveillance raises questions about why it matters that some tech tools render Black faces invisible, “while others render Black people hypervisible and expose them to systems of racial surveillance.”\(^{19}\) Social media highlights the clash between civil rights and civil liberties, especially when racial justice conflicts with freedom of speech. Our analysis leads us to consider the extent to which legal and non-legal remedies can promote a racially equitable and accountable tech industry.

This Article proceeds in five parts. Part I describes Big Tech, tech tools, equity, and accountability. Parts II, III, and IV describe and analyze three civil rights challenges in the tech industry. Part V highlights integrated advocacy\(^{20}\) as a way to move toward racial equity and accountability in tech. This Article concludes that legislators, lawyers, journalists, activists, artists, designers, developers, and community organizers\(^{21}\) must work together, using all available tools, to dismantle structural racism in tech.

---

\(^{14}\) See IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 209 (2019). Dr. Kendi explains that, in American society, racial inequity is the norm. Allowing the norm to persist by doing nothing is to essentially be racist. By contrast, antiracists challenge the norm of racial inequality by using their skills to change or eliminate racist policies.


\(^{16}\) See discussion infra Section III.

\(^{17}\) See discussion infra Section IV.

\(^{18}\) See discussion infra Section V.

\(^{19}\) BENJAMIN, supra note 8, at 99.

\(^{20}\) See infra text accompanying notes 194–96.

\(^{21}\) See SASHA COSTANZA-CHOCK, DESIGN JUSTICE: COMMUNITY-LED PRACTICES TO BUILD THE WORLDS WE NEED xvii (2020) (relying on case-driven analysis to explore “the relationship between design and power;” ultimately suggesting ways in which a range of actors can work together to make sure “they don’t continue to reinforce interlocking systems of structural inequality.”).
II. BACKGROUND

A. Big Tech and Its Tools

The phrase “Big Tech” describes the major technology companies that wield the most power and influence—Google, Amazon, Microsoft, IBM, and Facebook. These companies, especially Amazon and Facebook, learn billions of details about world events and human behavior every day. Each of these companies dominates its sector. For example, Facebook dominates the social media space, while Microsoft dominates the software space. Big Tech shapes the way each of us proceeds through the day. Big Tech also influences the economy and society. Big Tech companies are popular with consumers in part because they provide free services. In spite of company popularity, many U.S. citizens are concerned about the tech industry because it offers and uses tools that affect fundamental rights, including privacy and free speech. Big Tech also engages in work that affects national security and law enforcement. Finally, some citizens are concerned that the tremendous size and power of Big Tech gives the industry too much concentrated power.

Big Tech has created, and relies upon, artificial intelligence (AI). The phrase “artificial intelligence” encompasses “[d]evices and applications that...
exhibit human intelligence and behavior, including robots, self-driving cars, medical diagnosis, and the ever-improving areas of voice, face and natural language recognition.\textsuperscript{32} A wide range of industries have been using AI for over two decades,\textsuperscript{33} while other industries recently started to use AI to improve operations and decision making.\textsuperscript{34} An important AI feature is the technology’s ability to learn and adapt over time. Specific AI applications rely on algorithms, which are sets of ordered steps for solving a problem.\textsuperscript{35} Algorithms often support complex problem-solving. The term platform refers to “[a] hardware and/or software architecture that serves as a foundation or base.”\textsuperscript{36} Platforms provide interfaces that allow developers and applications to engage with platform users.\textsuperscript{37} An application can also be a platform when it serves as a base for other programs.\textsuperscript{38} For example, a web browser such as Google Chrome becomes a platform when it accepts third-party plug-ins, such as small programs that allow users to have easy access to their e-mail. Social media

https://www.nytimes.com/2021/03/15/technology/artificial-intelligence-google-bias.html [https://perma.cc/ME3L-RG6Z]; see generally MEREDITH BROUSSARD, ARTIFICIAL UNINTELLIGENCE: HOW COMPUTERS MISUNDERSTAND THE WORLD (2018) (exploring the limitations of what technology can do, especially the faults in computational decision making); YARSEN KATZ, ARTIFICIAL WHITENESS: POLITICS AND IDEOLOGY IN ARTIFICIAL INTELLIGENCE (2020) (considering the ways in which AI has been shaped by, and shapes, social conditions; AI serves the interests of White supremacy).


33. The finance industry has been using AI since the early 2000’s. E.g., Leo Smigel, The History of AI in Finance, ANALYZING ALPHA (June 15, 2021), https://analyzingalpha.com/history-of-ai-in-finance [https://perma.cc/3WU2-GSC2].

34. The agriculture industry has only recently begun using AI. E.g., Kathleen Walch, How AI Is Transforming Agriculture, FORBES (July 5, 2019, 8:00 AM), https://www.forbes.com/sites/cognitiveworld/2019/07/05/how-ai-is-transforming-agriculture/?sh=20c57e704ad1 [https://perma.cc/Y62A-X7MP].


37. Id.

38. Id.
networks can also be platforms. For example, Facebook and Twitter provide interfaces that allow developers to access their data and extend what their applications can do. Increasingly, advocates want Big Tech to offer tools that promote equity. Additionally, advocates want to hold tech companies accountable.

B. Equity and Accountability

Computer scientist Joy Buolamwini, founder of the Algorithmic Justice League (AJL), offers an excellent starting point for defining equity and accountability in tech. Her work offers definitions for what it means for AI to be equitable and accountable. Advocates can revise and apply the AJL’s definitions to a broader range of tech tools, including the algorithms that drive, and the platforms that rely on, AI.

Buolamwini describes equitable AI as AI that “secure[s] affirmative consent from people on how or whether they interact with an AI system.” When companies and government agencies secure consent, they show respect for “human life, dignity and rights.” A first step toward equity is for companies to make sure people are aware of the AI that is all around them. Regarding racially equitable tech tools, advocates must make sure tech tools are impartial and fair at a structural level. Racially equitable tech tools must consider the differing needs of individuals and groups.

Accountable AI is transparent. Accountable AI “must provide an explanation of how the system works, how it was designed, and for what specific purpose.” Accountable AI also “requires continuous oversight by...”

39. Id.
41. THE ALGORITHMIC JUSTICE LEAGUE, supra note 26. The Algorithmic Justice League highlights and challenges race and gender bias in decision-making software. Joy Buolamwini is well known for her research that demonstrated the failure of facial recognition systems to identify dark-skinned women. Her work motivated both Google and Microsoft to revise their products to eliminate bias.
42. Id.
43. Id.
44. See Equity vs. Equality and Other Racial Justice Definitions, The ANNIE E. CASEY FOUNDATION, https://www.aecf.org/blog/racial-justice-definitions?gclid=Cj0KCQjw9O6HbCrARIsADx5qCRznNqBnB78vQdEYxmy5wvUAtEXyWWs0eDnVpkPPEYDgUkSMQbxjIAq_3EALw_wcB [https://perma.cc/23LZ-U4Y4].
45. See id.; see also Daisy, Equality and Equity, SOCIAL CHANGE UK (Mar. 29, 2019) https://social-change.co.uk/blog/2019-03-29-equality-and-equity [https://perma.cc/Q26M-VEL2] (“[T]his different treatment may be the key to reaching equality.”).
46. THE ALGORITHMIC JUSTICE LEAGUE, supra note 26.
independent third parties.”  

Finally, accountable AI offers “access to a remedy” for harm AI causes.  

Regarding *racially* accountable tech tools, advocates must demand that “individuals and groups [are] held in check for their decisions and actions and [consider] whether the work . . . reflects and embodies racial justice principles.”

### III. UNFAIR HOUSING

#### A. The Long History of Housing Segregation in the United States

Racism in the housing industry started as soon as Black buyers were supposedly free.  

Congress abolished slavery in 1865 through the Thirteenth Amendment.  

Congress then passed the Civil Rights Act of 1866 to “secure for all men ‘the great and fundamental rights,'”  

White people challenged the Act’s intentions.  

In the *Civil Rights Cases* of 1883, the United States Supreme Court ruled that the Court had no power to prohibit private discrimination, including in housing transactions.  

For years following that ruling, individuals were allowed to legally discriminate in private settings, including private employment and housing.  

Starting at the end of the nineteenth century, racially restrictive covenants started to appear in home deeds in a few states.  

Developers and sellers used restrictive covenants to keep Black buyers from “buying, leasing, or occupying homes” in White neighborhoods.  

In 1926, in

---

47. Id.

48. Id.


55. Id.
Corrigan v. Buckley, the United States Supreme Court affirmed the use of restrictive covenants. Restrictive covenants then became common throughout the United States.

Journalist and historian Richard Rothstein, author of The Color of Law, explains that, in the 1930’s, local, state, and federal governments enacted laws and policies that deliberately caused segregation in public housing. At that time, government-supported developers built housing for working- and middle-class families. When World War II began, millions of workers migrated to cities to work in factories that supported the war effort. Companies were allowed to engage in racial discrimination in employment. Employers hired White workers for the more desirable and higher-paying jobs, leaving menial, lower-paying work for Black workers. The Federal Housing Administration (FHA) required subdivisions to be racially segregated. Congress created and passed the 1949 Federal Housing Act, which affirmed racial segregation in housing. In this era, developers built more White than Black subdivisions, which meant Black people were forced into crowded conditions or homes far from their work. Developers built Black subdivisions in undesirable locations, such as near polluting industries. Black residents lived with pollution and its health consequences. Additionally, Black Americans coped with limited housing by sharing homes; sharing led to overcrowding. Housing segregation led to school segregation, and local governments underfunded schools that Black children attended. Government policies in this era set the stage for the race-based disparities we see in health, achievement, and wealth accumulation. These policies also provided the underpinnings for mass incarceration.

57. Id.
58. ROTHSTEIN, supra note 50, at 216.
59. Id. at 20.
60. See id. at 25.
61. Id. at 158–61.
62. Id. Eventually, when employers became desperate, they hired Black workers into more desirable jobs. Id. Even when Black workers could afford to live in White subdivisions, restrictive covenants prevented them from doing so. Id.
63. Id. at 64–65.
64. Id. at 30–32.
65. Id. at 18, 25.
66. Id. at 54–57.
67. Id. at 19.
68. Id. at 132–37.
69. See id. at 215–17.
70. Id.
By the mid-1930s, government policy shifted. The government got out of the business of creating public housing for working- and middle-class families by offering federally insured mortgages for new single-family homes in the suburbs.\textsuperscript{71} At this juncture, race-based discrimination in housing finance took hold. The FHA and the Veterans Administration (VA) supported White middle-class families as they purchased homes with favorable financial terms.\textsuperscript{72} Government actors failed to extend suburban mortgages to Black Americans.\textsuperscript{73} Mortgage lenders engaged in blatant discrimination.\textsuperscript{74}

In 1948, in \textit{Shelley v. Kraemer}, the United States Supreme Court decided that racially restrictive covenants violate the Equal Protection Clause of the Fourteenth Amendment.\textsuperscript{75} Although these covenants could not be enforced, real estate agents still promoted housing segregation.\textsuperscript{76} Despite the ruling in \textit{Shelley v. Kraemer}, the FHA and VA continued to insure mortgages with racially restrictive covenants,\textsuperscript{77} which meant that unfair housing policies continued to the benefit of White Americans and the detriment of Black Americans.

In 1968, in \textit{Jones v. Mayer}, the United States Supreme Court ruled that Congress had power to enforce the Thirteenth Amendment through the Civil Rights Act of 1866.\textsuperscript{78} The Court determined that private and public discrimination on the basis of race is illegal in the sale or rental of property.\textsuperscript{79} The Court recognized private acts of discrimination as one (of many) “badges and the incidents of slavery” and acknowledged Congress’s power to eliminate badges as necessary.\textsuperscript{80} Congress passed the Fair Housing Act of 1968 right before the Court’s ruling in \textit{Jones v. Mayer}. The Fair Housing Act prohibited “discrimination of sale, rental, and financing of dwelling or other housing-related transaction, based upon race, color, national origin . . . .”\textsuperscript{81}

\begin{footnotes}
\item[72] Id.
\item[73] Id.
\item[75] Bauman, supra note 54.
\item[76] Id.
\item[77] Rothstein supra note 71.
\item[79] Id. at 439; Humber, supra note 50, at 139.
\item[80] Jones, 392 U.S. at 440 (1968).
\item[81] Bauman, supra note 54.
\end{footnotes}
B. New Tech Tools Continue the Tradition of Housing Segregation

Although the Fair Housing Act of 1968 eliminated blatant forms of housing discrimination, technology has supported discriminatory strategies such as: (1) digital steering, (2) misuse of big data, (3) discriminatory advertising, (4) biased Airbnb rental practices, and (5) biased algorithms that determine who can attain a mortgage loan.

Racial steering is a practice in which a real estate agent attempts to guide prospective home buyers or renters to certain neighborhoods based upon race. ⁸² Real estate agents used to engage in obvious steering, such as telling White people not to purchase a particular house because it is in a Black neighborhood. ⁸³ Alternatively, real estate agents would share with White people the racial demographics of a particular neighborhood school, allowing the potential buyer to infer the racial makeup of the neighborhood. ⁸⁴ Plaintiffs who discovered race-based steering challenged this practice in courts. In 1979, in Gladstone Realtors v. Village of Bellwood, the United States Supreme Court interpreted the Fair Housing Act in a way that prohibited steering. ⁸⁵ This decision affirmed FHA policy and lower court decisions indicating that steering “has been . . . rooted in racial animus and contributes to [racial] segregation” in housing. ⁸⁶ Today, the real estate industry engages in online steering; digital steering. Section 230 of the Communications Decency Act ⁸⁷ provides a safe haven to platforms—they are not liable for what others post, even when the postings are high-tech forms of steering.

The real estate industry also engages in high-tech discrimination by misusing data. The tech industry defines big data “as datasets comprised of ‘large, diverse, complex, longitudinal, and/or distributed datasets generated from instruments, sensors, Internet transactions, email, video, click streams, and/or all other digital sources available today and in the future.’” ⁸⁸ Big data can improve and inform business decision-making. Companies can also use big data to engage in racist, discriminatory acts. ⁸⁹ Government and private sector actors collect information about people, information that contributes to large data sets they can use. Use of big data causes both intentional and

---

⁸². Humber, supra note 50, at 149.
⁸³. See id. at 147.
⁸⁴. Id.
⁸⁶. Humber, supra note 50, at 148.
⁸⁸. Richardson, supra note 24, at 214.
⁸⁹. See id. at 210.
unintentional race discrimination.\textsuperscript{90} If the public or private actors use big data for intentional discrimination, they might violate the Fourteenth Amendment’s equal protection clause.\textsuperscript{91}

Regardless of the rhetoric of antidiscrimination laws, racist practices continue. The Fair Housing Act is a multilayered law that aims to address and prevent discriminatory activity beyond renting or buying a home. It also extends to advertising. Discriminatory advertising presents itself in many ways, whether through social media targeting, or biased individuals promoting housing to one group and not another. Section 42 U.S.C.A 3604 (e) of the Fair Housing Act does not allow real estate agents to produce and post advertising that alludes to preference, limitation, or discrimination.\textsuperscript{92} Housing advertisements cannot exclude an entire race or group because advertisements are supposed to engage large audiences. Discriminatory advertisements often include segregationist language to promote and maintain racial separation in various areas. Some home sellers and landlords create advertising in traditional ways, such as through informative flyers they distribute by hand or word-of-mouth. In an online environment, sellers and landlords can misuse big data to accomplish what traditional approaches accomplish—segregation. The root of the problem is a lack of regulatory oversight. Platforms such as Facebook and Instagram target certain races and not others by showing specific ads or areas that cater to users’ racial identity.\textsuperscript{93} Companies are blatantly violating the Fair Housing Act when they withhold information or target certain populations. For example, Facebook, Twitter, and Google use proprietary algorithms that allow advertisers to select custom audiences.\textsuperscript{94} Former HUD Secretary Ben Carson compared algorithms that limit a person’s housing choices to “slamming a door in [the person’s] face.”\textsuperscript{95} Social media companies are inadvertently denying one person the ability to own or rent a place because of race-based targeting. This is, indeed, as discriminatory as slamming a door in someone’s face.

Most modern-day housing discrimination involves technology, but that technology is often paired with new ideas and practices. For example, Airbnb has gained immense traction in recent years. Airbnb is a platform that offers

\begin{flushright}
\textsuperscript{90} See id. at 210–11.
\textsuperscript{91} See id. at 213.
\textsuperscript{92} Humber, supra note 50, at 151.
\textsuperscript{93} Meghan J. Ryan, Secret Algorithms, IP Rights, and the Public Interest, 21 NEV. L.J. 61, 93 (2020).
\textsuperscript{94} Id. at 94; see generally Eugenia Siapera & Paloma Viejo-Otero, Governing Hate: Facebook and Digital Racism, 22 TELEVISION & NEW MEDIA 112 (2021).
\textsuperscript{95} Ryan, supra note 93, at 95.
\end{flushright}
users short term rentals. 96 Consumers like Airbnb rentals because these rentals are often cheaper than hotels, allow for a more unique experience, and can hold more guests. But regulatory oversight is lacking here, too, and discrimination runs rampant. Customers can complain, but remedies are limited and difficult to attain. “Airbnb is not liable for discrimination occurring on their platform because they are immune under section 230 (c) of the Communications Decency Act of 1996 . . .” 97 Congress passed this law with good intentions, but it now facilitates discriminatory practices as courts interpret this section broadly to give websites immunity when they facilitate unfair housing.

Mortgage lenders have long relied on opaque tools to determine who deserves a mortgage and who does not. 98 Today, mortgage lenders rely on algorithms. 99 They plug an applicant’s information through an algorithm that determines whether the applicant is a good risk, e.g., whether it is likely that person will pay their mortgage on time and consistently. 100 Although algorithms are secret, we do know that credit scores—which mortgage lenders use to make loan decisions—do not include a renter’s consistency in paying rent. 101 Common sense suggests that renters who consistently pay rent on time would be ideal candidates for mortgages. 102 Today, however, mortgage lenders are more likely to consider an applicant’s wealth and assets. 103 White families generally have eight times the wealth of Black families. 104 This gap is because of past discriminatory policies, including policies created and implemented by local, state, and federal governments. 105 If lending algorithms rely on applicants’ wealth, that criterion creates a barrier for Black families. 106 Consequently, still today, Black people have more difficulty breaking into the

97. Id. at 11.
99. See generally Allen, supra note 50.
100. See Id. at 223–24.
101. Brancaccio & Conlon, supra note 98. The algorithms are secret because lenders don’t want borrowers to reverse engineer and tinker with their risk calculations.
102. Id.
103. Id.
104. Id.
106. Id.
housing market, and that difficulty has long-term consequences for wealth accumulation.

Just as the Thirteenth Amendment’s ban on slavery did not produce equality, The Fair Housing Act did not produce housing equality. Sellers, landlords, and lenders have continued to find ways around the Fair Housing Act—ways to be unfair. Today, more than half of Black citizens who reside in large cities would have to move if we were to achieve integration. Tech companies have created tools to facilitate ongoing segregation.

IV. SURVEILLANCE

A. The Past Shapes the Present

Surveillance occurs when “states, police, middle managers, or massive corporations” monitor, control, or restrict people’s movements. Surveillance implies a hierarchical, unequal relationship between the watchers and the watched. Targets include alleged criminals, immigrants, poor
individuals, protest participants, and people with dark skin. Targets are especially interested in making sure tech tools are racially equitable and accountable.

Two U.S.-based scholars, Professors Simone Browne and Ruha Benjamin, have engaged in significant work that explores the long history of government surveillance of Black people. Dr. Simone Browne, author of *Dark Matters: On the Surveillance of Blackness*, traces the surveillance of black bodies from the beginning of the transatlantic slave trade, through slavery and Jim Crow, to today. For example, Dr. Browne describes how leaders in the slave trade designed ships and inventory process to track Black bodies, created physical branding as a way to identify slave bodies, and developed avenues to circulate slave notices to locate fugitive slaves. Dr. Browne encourages readers to relate historic practices to incidents that take place today. For example, Dr. Browne describes the history of government actors deputizing White citizens so they could pursue fugitive slaves. Today, something similar takes place when White citizens engage in racially motivated 911 calls. For example, when a White person calls the police because two Black...
men are waiting for a friend at a Philadelphia Starbucks, or a Black girl in California is selling water, or a Black boy is mowing a neighbor’s lawn, these White “deputies” are engaging in racial profiling and taking action to “restore order.”

Dr. Browne also describes 18th century New York City lanterns laws that required “black, mixed-race, and indigenous slaves to carry small lamps, if in the streets after dark and unescorted by a white person.” Lantern laws allowed White people to monitor, control, and restrict the movements of enslaved people. Dr. Browne describes lantern laws as a precursor to recent stop-and-frisk policies, which allow police officers to stop individuals and ask questions about their movement and activities. Dr. Browne’s work makes clear how White people surveil Black people in ways that systematically dehumanize them.

Dr. Ruha Benjamin, author of Race After Technology: Abolitionist Tools for the New Jim Code, considers the ways in which technology can support inequity. She looks at a range of modern automated technology to show how tech tools can perpetuate structural discrimination through both design and application. For example, Dr. Benjamin explains that soap dispensers that rely on optic sensors have failed to identify dark skin. The dispenser’s optic sensor includes a light that must penetrate several levels. The darker a person’s skin tone, the more difficult it is for light to bounce back, thereby affecting the equipment’s function. Dr. Benjamin also explains how computer scientists and software engineers who create predictive algorithms that anticipate crime often create the algorithms based upon biased data. For example, if biased police officers engage in more stop-and-frisks in neighborhoods of color, and then algorithms use the number of stop-and-frisks as data to predict crime, the algorithm’s outcomes will be biased. Over-policing, which affects predictive algorithms, can yield even more over-policing. Generally, Dr. Benjamin is concerned about the harmful

126. Id.
127. BROWNE, supra note 116, at 25.
128. See id. at 39.
129. See generally BENJAMIN, supra note 8.
130. Id. at 40.
131. Id. at 66–69.
133. BENJAMIN, supra note 8, at 66–69; see also Fussell, supra 132.
134. BENJAMIN, supra note 8, at 81–84.
consequences of biased tech policies and practices. Facial recognition technology is one of the tools that concerns Dr. Benjamin. She is concerned about the technology itself. She is also concerned about how government actors and their affiliates use the technology.

B. Facial Recognition Technology: A New Tool with Racist Roots

Relatively new surveillance tech tools include building and traffic cameras, surveillance drones, speech and facial recognition software, GPS tracking, and smart TVs. Facial recognition technology is a form of AI. A range of actors use the technology to identify individuals from images and videos based on analysis of their facial features. Individuals use the technology to unlock their smartphones and check into hotels and rental car facilities efficiently. Law enforcement officers use the technology to identify suspects. When law enforcement officers use the technology, it is important that the technology itself is accurate, and that officers use the technology in ways that protect individuals’ rights.

Civil rights advocates remind us of the power imbalance among tech companies, law enforcement officers, and those police officers target for surveillance. Regulators provide limited oversight over the tech companies that produce and control facial recognition systems. Surveillance targets have little information or power. With law enforcement’s history of over-policing and surveillance of communities of color, civil rights advocates have legitimate reasons to be concerned.

Facial recognition systems are inaccurate, especially when companies and government actors apply them to people with darker skin. In 2018, Joy Buolamwini, a researcher at MIT Media Lab’s Civic Media group, made public findings that three companies’ facial analysis programs demonstrated both “skin-type and gender biases.” In research experiments, “the three programs’ error rates in determining the gender of light-skinned men were never worse...
than 0.8 percent.”\textsuperscript{143} However, “[f]or darker-skinned women, . . . the error rates ballooned—to more than 20 percent in one case and more than 34 percent in the other two.”\textsuperscript{144} Buolamwini engaged in this research with Timnit Gebru and Inioluwa Deborah Raji.\textsuperscript{145} They called their work the Gender Shades project.\textsuperscript{146}

The National Institute of Standards and Technology (NIST) also notes the inaccuracy of facial recognition systems. In 2019, the federal agency released results of a study that concluded that “many of the world’s top facial recognition algorithms are biased along lines of age, race, and ethnicity.”\textsuperscript{147} NIST found that “algorithms currently sold in the market can misidentify members of some groups up to 100 times more frequently than others.”\textsuperscript{148} “The study tested ‘one-to-one’ checks . . . as well as ‘one-to-many’ searches . . . .”\textsuperscript{149} NIST determined that “[t]he highest accuracy rates were generally found among middle-aged white men.”\textsuperscript{150} By contrast, “[i]n some cases, Asian and African American people were misidentified as much as 100 times more than white men.”\textsuperscript{151}

The Gender Shades project and NIST’s work make it clear that current facial recognition technologies misidentify. Law enforcement officers should be reluctant to use the technology in crime fighting. In fact, some law enforcement officers have already misidentified alleged criminals.\textsuperscript{152} The encouraging news is that some cities and police departments have voluntarily

\textsuperscript{143} Id.

\textsuperscript{144} Id.

\textsuperscript{145} Coded Bias’s Joy Buolamwini and Black Women Scientists’ Research Omitted by 60 Minutes, WOMEN MAKE MOVIES (May 25, 2021), https://www.wmm.com/coded-bias-joy-buolamwini-and-black-women-scientists-research-omitted-by-60-minutes/ [https://perma.cc/9DXK-7HW3].

\textsuperscript{146} Joy Buolamwini & Timnit Gebru, Gender Shades, MIT MEDIA LAB (Feb. 9, 2018), http://www.gendershades.org/ [https://perma.cc/WLW9-KP2N].


\textsuperscript{148} Id.

\textsuperscript{149} Id.

\textsuperscript{150} Id.

\textsuperscript{151} Id.

suspended use of facial recognition technology. As new technological advances have made surveillance easier than the traditional human, street-level surveillance or wiretaps, those who value justice in policing have embraced principles of racially equitable and accountable tech.

V. SOCIAL MEDIA

In a technological era that has grown significantly more digital with the surge of the COVID-19 pandemic, social media platforms increasingly influence American citizens’ private lives. These days, private life occurs on platforms rather than in physical spaces, and “platforms such as Facebook, Airbnb, and Uber now structure how we find various private goods and services.” Consequently, platforms have yielded a new means by which individuals perform racism. Racial justice advocates are especially concerned about the ways platforms have enabled White supremacist groups to exchange information, develop common practices, and mobilize their followers online. Section 230 of the Communications Decency Act protects platforms from liability for racism they are hosting in their digital space. Section 230 is a significant barrier to racial justice.

A. A Safe Harbor Protects Platforms

As this Article has noted, Section 230 of the 1996 Communications Decency Act, also called the Safe Harbors Act, privileges platforms as non-publishers who therefore cannot be found liable for user-generated content. Courts cannot hold platforms like Facebook and Twitter legally responsible for negligence when they allow users to post hate speech. Today, racial justice


156. SONU BEDI, PRIVATE RACISM 85 (2020).

157. Id.

158. Siapera & Viejo-Otero, supra note 94, at 115.

159. Id. at 116.

160. See supra text accompanying notes 87, 89.

advocates raise questions about what happens when platforms go beyond allowing hate speech to amplifying or circulating hate speech. Platforms increasingly use algorithms to deliver recommended search results and automate “trending” feeds. To date, no court has ruled on the question whether platforms lose their immunity when they generate and apply algorithms that distribute hate speech and misinformation. So far, courts have erred on the side of viewing platforms as neutral and upholding their non-publisher status. For example, in Jurin v. Google, Inc, a federal district court ruled that Google’s search autocomplete function was acting as a “neutral tool.” The court upheld Google’s non-publisher status, thereby making Google immune from liability.

Racial justice advocates are concerned when Google, Facebook, and other Big Tech platforms deploy algorithms that help spread harmful content and get away with it because of Section 230’s protection. Advocates must work harder to dispel the false narrative of platform neutrality that Big Tech companies perpetuate. Critical race perspectives lead us to question the claims of “neutrality, objectivity, colorblindness, and meritocracy” that platforms assert. Platform neutrality stands as a myth as algorithms create “echo chambers” with the consequential political effects of “fake news.” For example, Google’s search engine “relies on the wisdom of crowds . . . to return what it deems to be relevant information,” regardless of whether this relevant information is false, racist, or hateful. A false claim of algorithm and platform neutrality ignores historical power dynamics, subjugation, and discrimination that continue to produce racist harm in the digital space. For instance, Safiya Umoja Noble notably exposed Google’s distribution of racist content through its search algorithm, citing the fact that the Google search “Black girls” returned pornographic images of women of color.

166. Chander & Krishnamurthy, supra note 164, at 404.
167. *Id.* at 404–05 (emphasis omitted).
Across the globe, democratic countries are combatting racist hate speech, discrimination, and injustice on a spectrum of platform liability—the United States being the strongest pole on the side of platform immunity. European Union member states have adopted an intermediary liability position, legislating so that platforms hold some responsibility under the European Union Directive 2000/31/EC (e-Commerce Directive). Under this directive, while platforms are not responsible for regulating all user-generated content, they are required to address all content reported by people who experience harm. Other countries, such as Australia, have responded differently to similar legal questions United States courts have answered. For example, in Trkulja v. Google, the Australian Supreme Court of Victoria classified Google as a publisher in the context of search results the Court deemed defamatory. On the global spectrum, democracies like the United Kingdom and United States remain in favor of promoting platform self-regulation practices that many platforms have already implemented.

B. Platforms Self-Regulate, but Ineffectively

Today, many platforms demonstrate a commitment to regulating disturbing, hateful, and discriminatory content—at least at face value. Platform self-governance practices, however, are ineffective in creating digital spheres free from hate speech, supremacist groups, and discrimination. Racial justice advocates are justifiably skeptical of private self-regulation. Furthermore, racial justice advocates should be skeptical about platform reliance on AI because AI is currently unable to effectively regulate discriminatory language.

The Internet’s biggest platforms have recognized a substantial need for reviewing and regulating user-generated content that falls within certain categories. In doing so, they have brought the current debate past if speech should be regulated to how speech should be regulated. YouTube policy outlines the platform’s right to “remove content promoting violence or hatred against individuals or groups based on... race.” Twitter prohibits content

170. Id. at 290.
171. Id.
175. Id. at 1056.
176. Id. at 1075.
177. Id. at 1047.
that “promote[s] violence against or directly attack[s] or threaten[s] other people on the basis of race.”

Facebook’s Terms of Service state a commitment to respond to reported hateful content with “action— for example, offering help, removing content, blocking access to certain features, [or] disabling an account.” Yet platforms continue to “contribute to the subjugation of racialized people and reinforce supremacist ideologies” as their priorities remain on content and information flow above antiracism.

Facebook’s governing policies are insufficient in combatting racist hate speech and associated content due to: (1) the platform’s underlying laissez-faire principles, and (2) the platform’s reliance on AI systems. Facebook’s policies are built upon assumptions of color-blindness in a post-racial world that turn a blind eye to “power asymmetry], restorative justice, and more broadly social justice.”

The platform’s Article 4 “Fundamental Equality” policy focuses on the protected characteristic of race, not racism, meaning that all races are protected. Thus, Facebook fails to address the historical and present realities of anti-Blackness that are overwhelmingly present in both physical and digital society. Facebook’s Transparency Report of 2019 concluded that AI systems are accurate when they review and remove user generated content. However, the capabilities of AI are limited, as it is “poor at taking linguistic, cultural, and societal context into account and its design often reproduces many of the social biases and discriminatory schema it is meant to regulate.”

In turning to algorithms, Facebook, Twitter, and other platforms have created self-regulatory systems without regard for historical and current socio-political contexts. Twitter, for example, uses the context of an individual post but not external realities or resources to make evaluative decisions. Without context, algorithm systems can both fail to regulate harmful content and over-censor content that seeks to promote awareness and education. Additionally, the AI systems platforms use frequently evaluate only user-flagged content, not all user-generated content. User-flagging is flawed because it assumes users to be technologically literate, offers limited grounds on which to report (i.e.

178. Id. at 1048.
179. Siapera & Viejo-Otero, supra note 94, at 121 (emphasis omitted).
180. Id. at 114.
181. Id. at 127.
182. Id. at 121–22.
183. Id. at 124.
185. Id. at 1064.
186. Id. at 1066.
187. Id. at 1065.
bullying, nudity, stalking), leaves unreported content unregulated, and places the burden of flagging onto targeted, historically vulnerable groups.\footnote{188} Despite self-regulation efforts platforms tout, social media platforms are awash in digital racism. Although Facebook reports responding to 9.6 million posts in the first quarter of 2020,\footnote{189} researchers question Facebook’s self-regulation and seek data that measures algorithm accuracy. As platforms continue to act freely to self-regulate, they will be continually morally responsible for the physical, relational, and reactive harm produced by their users’ content.\footnote{190} The issue of how best to regulate social media is important. White supremacists and their networking on social media platforms have illuminated the consequences of laissez-faire approaches. White supremacists’ ability to facilitate and coordinate the January 6, 2021 attack on the United States Capitol is a wake-up call.\footnote{191} The need for transparency is also evident as Facebook “continued to recommend white supremacist pages to its users” following the Christchurch terrorist attack.\footnote{192} In essence, self-regulation efforts are fundamentally ineffective in rooting out digital racism because platforms fail to address the “software, policies, and infrastructures that amplify hate, racism, and white supremacy.”\footnote{193}

VI. INTEGRATED ADVOCACY

Integrated advocacy is a way to use law to move initiatives forward.\footnote{194} Integrated advocacy calls upon lawyers and co-collaborators to use a range of tools to produce change.\footnote{195} These tools include litigation, legislative advocacy, media engagement, community organization, and interdisciplinary

\footnote{188} Id.
\footnote{189} Id. at 1047.
\footnote{190} See Johnson, supra note 161, at 286.
\footnote{192} Id. The Christchurch terrorist attack refers to two back-to-back mass shootings at mosques in Christchurch, New Zealand in March 2019.
\footnote{193} Id.
\footnote{194} See Scott L. Cummings, Law and Social Movements: Reimagining the Progressive Canon, 2018 WIS. L. REV. 441, 442 (2018). Lawyers use different labels to describe contemporary approaches to legal mobilization, including political lawyering, movement lawyering, creative lawyering, rebellious social movement lawyering, social justice lawyering, and community lawyering. All share the same broad goal—using law and additional tools to promote social justice and produce power and policy change.
collaborations. When activists choose integrated advocacy, they commit to working together using legal and non-legal strategies to promote change.

A. Litigation

To push for racially equitable and accountable tech, racial justice advocates and lawyers should engage in strategic litigation. Legal action can bring about remedies in the form of monetary compensation, as well as injunctions to put a stop to discriminatory behaviors. Litigation focused on racial equity ensures that platforms and tech tools remain impartial and fair. Litigation focused on accountability can alter the frameworks in which platforms and Big Tech can legally function. Previous cases in which advocates have pursued racial equity in algorithms and platforms demonstrates how lawsuits can shape a better future for technology. These lawsuits outline the disparate impact on members of historically disenfranchised groups.

In the case of Department of Housing and Urban Development (HUD) v. Facebook, plaintiffs filed a civil complaint against the platform arguing a violation of subsections 804(a), 804(b), 804(c) and 804(f) of the Fair Housing Act. The plaintiffs focused on the discriminatory nature of Facebook’s advertisement design, which allows advertisement buyers to include or exclude certain identity groups—therefore making housing opportunities unavailable to some. Advocates should continue to engage in litigation that reveals discriminatory designs of AI and housing. Additionally, advocates can use litigation to challenge unjust changes to rules and policy. Advocates should model the work of the Massachusetts Fair Housing Center and Housing Works, an organization that challenged HUD’s new rule for filing disparate impact claims in the courts. The new rule required proof “that there is a robust causal link between the challenged policy or practice and the adverse effect on members of a protected class,” a task quite difficult when AI systems are opaque and unavailable for public review and scrutiny. This litigation

196. Id.
198. Id. at 3.
199. In the social media area, with regard to racial equity, litigation can encourage Facebook to overhaul its hate-speech algorithm. See Elizabeth Dwoskin, Civil Rights Groups Flagged Dozens of Anti-Muslim Pages and Groups to Facebook That Stayed Up, Lawsuit Alleges, WASH. POST (Apr. 8, 2021), https://www.washingtonpost.com/technology/2021/04/08/muslim-advocates-facebook-lawsuit/ [https://perma.cc/PWH8-2FN2].
resulted in: (1) the judge’s blocking of the rule, and (2) the Biden administration’s executive order calling for a review of the new rule’s effects on the Fair Housing Act. The risks of litigation resulting from fair lending cases like these pressure platforms and financial institutions to carefully consider their design; the known risk helps to forge platforms designed to avoid disparate impact and maintain equity.

Advocates can also use litigation to combat the harmful outcomes of facial recognition bias. Advocates should continue to bring legal challenges to the growing and unregulated reliance on AI in law enforcement. Specifically, advocates should file lawsuits in circumstances of wrongful arrests due to facial recognition technology to defend individuals’ Fourth Amendment rights and many states’ civil rights. Previous cases include that of Robert Williams—a 43-year-old Black man of Farmington Hills, Michigan—who was wrongly identified as a shoplifting thief by facial recognition software. Another includes that of Nijeer Parks—a Black man from New Jersey—who was falsely identified as the suspect by similar software, jailed for 10 days, and spent $5,000.00 in defense costs. Lawyers can use lawsuits in cases like these to pursue accountability, bring national attention to injustice, and demonstrate the need for AI regulation. This is a critical step in the charge for equitable tech, as “a national study of over 100 facial recognition algorithms found that they did not work as well on Black and Asian faces,” resulting in life-altering instances of wrongful arrest among people of color.

Litigation involving social media platforms demonstrates how lawyers can pursue monetary remedies to injustice through class action lawsuits and injunctions to seek the removal of unresponsive platforms from app stores. Lawyers should continue to engage in litigation that seeks settlements to hold platforms accountable for their lack of regulation of user-generated content and harmful algorithms. Similar cases include a class action lawsuit against


201. Id.


204. See id.

205. Id.

206. Hill, supra note 152.

207. Id.
Facebook over “allegations that Facebook stored digital scans of peoples [sic] faces, through its photograph face-tagging feature, without the permission of its users,” resulting in a $650 million settlement to 1.6 million users in Illinois.208 Pursuing settlements not only delivers monetary compensation to harmed parties but can also deter platforms from engaging in unfavorable behaviors because of the financial risk of litigation. Lawyers should also seek injunctions to change the behavior of platforms or eliminate them from the market. For example, lawyers can follow the strategy of the Coalition for a Safer Web who sued Apple in the U.S. District Court for Northern California for hosting Telegram, an app known as a “superspreader [of hateful speech].”209 When apps such as Telegram refuse to self-regulate, lawyers can attempt to sue hosts to remove apps as a proxy for combatting the unregulated hate speech that occurs on the platforms themselves.

B. Legislative Advocacy

Government officials have the power to move toward racially equitable and accountable tech tools by implementing new, and strengthening established, legislation. Legislative advocacy that focuses on racial equity works toward impartiality and fairness at a structural level. Legislative advocacy focused on accountability focuses on oversight. Advocates can employ new federal and state laws to eliminate racial disparities that are prominent in new technology such as algorithms. Likewise, legislators and regulators can revisit and reform enacted laws, such as antitrust laws, in a way that promotes equity and accountability.

Policymakers on both the federal and state level need to exercise their constitutional abilities to combat racist tech tools. That means introducing new legislation. At the federal level, Congress has introduced, but not yet passed, The Algorithmic Justice and Online Platform Transparency Act of 2021.210 Congresswoman Matsui and Senator Markey introduced this legislation, which would:

[1] Prohibit algorithmic processes on online platforms that discriminate on the basis of race, age, gender, ability and other protected characteristics.

[2] Establish a safety and effectiveness standard for algorithms, such that online platforms may not employ automated processes that harm users or fail to take reasonable steps to ensure algorithms achieve their intended purposes.

[3] Require online platforms to describe to users in plain language the types of algorithmic processes they employ and the information they collect to power them.

[4] Require online platforms to maintain detailed records describing their algorithmic process for review by the Federal Trade Commission (FTC), in compliance with key privacy and data de-identification standards.

[5] Require online platforms to publish annual public reports detailing their content moderation practices.

[6] Create an inter-agency task force comprised of entities including the FTC, Department of Education, Department of Housing and Urban Development, Department of Commerce, and Department of Justice, to investigate the discriminatory algorithmic processes employed in sectors across the economy.\textsuperscript{211}

In essence the bill prohibits online platforms from using algorithms to discriminate.\textsuperscript{212}


It is difficult for policymakers to conduct oversight and regulate the metrics of algorithms because of their features and how creators designed them. Both popular and obscure companies use algorithms, often causing harm to Black and Brown communities through built-in tools such as systems of automation. Color of Change, the nation’s largest online racial justice organization, endorsed The Algorithmic Justice and Online Platform Transparency Act of 2021. Color of Change appreciates the positive regulations the act intends to impose. In proposing the legislation, Senator Markey said, “As we work to eliminate injustice in our society, we cannot ignore the online ecosystem. It is time to open up Big Tech’s hood, enact strict prohibitions on harmful algorithms, and prioritize justice for communities who have long been discriminated against as we work toward platform accountability.” Senator Markey’s words are important because they correlate to the current climate in the country. Amidst the racial reckoning ensuing in this country and the growing technological field, it is crucial that we do as much as possible to promote and achieve racial equity in all aspects of life.

At the state level, often it takes one state to pass a new law and additional states will follow. In 2008, Illinois’ legislators passed the Illinois Biometric Privacy Act (BIPA), which regulates collection of biometric information. BIPA provides for a private right of action for individuals who are damaged by a violation of the law. Soon after Illinois passed BIPA, Texas, Washington, Act proposes ways to hold online businesses accountable when they violate civil rights laws. In particular, the SAFE TECH Act reforms Section 230 of the Communications Decency Act. If a company pays a platform to distribute content, the platform can be held liable for harms that content causes.

213. Senator Markey, supra note 211.
215. Id.
216. Senator Markey, supra note 211.
and California adopted similar laws to fight racist tech tools and unregulated online systems that promote trade, leisure, and commerce.\textsuperscript{219}

To strengthen established legislation, government officials are applying established laws in new ways. For example, both the FTC and U.S. Department of Justice (DOJ) Antitrust Division have offered new guidance on how they plan to combat racism through legislative reformation. These groups enforce federal antitrust laws, including the Sherman Act, Federal Trade Commission (FTC) Act, and Clayton Act. Specifically, the FTC offered new guidance on how the agency will administer consumer protection laws, including the FTC Act.\textsuperscript{220} The FTC plans to apply the FTC Act in new ways by extending and employing the FTC Act (Section 5),\textsuperscript{221} the Fair Credit Reporting Act,\textsuperscript{222} and the Equal Credit Opportunity Act.\textsuperscript{223} Not only does the FTC offer new guidance, but the agency gives definitions of prohibited behavior to ensure understanding.\textsuperscript{224} The FTC’s guidance makes it clear that organizations should share information, tell the truth about how they use data, and self-assess to determine whether their algorithms yield biased results.\textsuperscript{225} Moreover, Rebecca Kelly Slaughter, who leads the FTC, has made it clear that antitrust enforcement can be antiracist.\textsuperscript{226} Antitrust regulation holds potential for harnessing the best in tech companies. If Big Tech companies were smaller and less powerful, they would be more accountable to U.S. citizens. Civil rights advocates would be in a better position to demand racial equity.


\textsuperscript{221} See Federal Trade Commission Act, 15 U.S.C. §§ 41–58 (prohibiting unfair or deceptive acts or practices in or affecting commerce).

\textsuperscript{222} Fair Credit Reporting Act, 15 U.S.C. § 1681.

\textsuperscript{223} Equal Credit Opportunity Act, 15 U.S.C. § 1691 (prohibiting discrimination in access to credit based on protected characteristics such as race, color, sex, religion, age, marital status).

\textsuperscript{224} See Federal Trade Commission Act, supra note 221, at § 45(4)(A) (giving the example that the FTC tells us what the word “deceptive” means).

\textsuperscript{225} Cohen, supra note 220.

\textsuperscript{226} Id.
C. Beyond Law

In addition to litigation and legislative advocacy, (1) media engagement, (2) community organization, and (3) interdisciplinary collaborations hold potential to promote racially equitable and accountable tech.

The media is important because news outlets can offer powerful narratives and amplify stories. Stories bring the realities of racial bias in tech to the forefront of the minds of “the public, judges, politicians, and government administrators.” Additionally, stories educate and promote community empowerment.

For example, on May 9, 2021, CNN aired an episode of *United Shades of America* that focused on techno-racism. Host W. Kamau Bell highlighted stories of the ways in which “[d]igital technologies used by government agencies and private companies can unwittingly discriminate against people of color.” He included stories about facial recognition technology, including the story of Nijeer Parks, which this Article already described. Parks was the man who spent eleven days in jail in 2019 after facial recognition technology erroneously identified him. The *United Shades* episode also highlighted mortgage algorithms that show bias against Black and Latino borrowers.

By calling attention to techno-racism, viewers understand the issues more and are motivated to demand equity and accountability.

Many citizens want to participate in decision-making that stops racial bias in tech. Often, citizens act collectively through community organizing that brings together citizens who share similar expertise and beliefs. Researchers, computer scientists, and activists have created organizations and networks to examine the tech industry through a racial justice lens. For example, Data

---

228. Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 231 (2013); see id. at 220 (describing social justice lawyering as “lawyering [that] moves beyond the traditional notions of lawyering to a transformative paradigm which focuses on working collaboratively across professional sectors, geographical boundaries, and community borders to create change”).
230. *Id.*
231. *See supra* text accompanying note 195.
233. *Id.*
234. *See SASHA COSTANZA-CHOCK, supra* note 21, at xvii.
235. *Id.* at 8.
236. *Id.* at 9. Additional organizations include the AI Now Institute, the Algorithmic Justice League, the Center for Critical Race and Digital Studies, the People’s Guide to AI, and the Stop LAPD Spying Coalition.
for Black Lives “is a movement of activists, organizers, and mathematicians committed to the mission of using data science to create concrete and measurable change in the lives of Black people.”

This organization highlights the ways in which public and private actors have used data to oppress, reinforce inequality, and perpetuate injustice—e.g., the practices of redlining, “predictive policing, risk-based sentencing, and predatory lending.”

Data for Black Lives is also highlighting social media practices. For example, the organization is urging Facebook to: (1) “Commit anonymized Facebook data to a Public Data Trust,” (2) “[w]ork with technologists, advocates, and ethicists to establish a Data Code of Ethics,” and (3) “[h]ire Black data scientists and research scientists.”

Data for Black Lives is one of many organizations that is working towards racially equitable and accountable tech.

Lawyers and activists call upon social scientists, historians, artists, and more to offer interdisciplinary perspectives on specific issues. These interdisciplinary perspectives enrich racial justice narratives and increase the likelihood of equity and accountability. Richard Rothstein’s *The Color of Law* relies on history to explain the racist underpinnings of U.S. unfair housing policy.

Dr. Simone Browne’s work in *Dark Matters* relies on the history of surveillance to help readers understand surveillance today. When readers know more, they demand more. Dr. Ruha Benjamin’s work in *Race After Technology* relies on anthropology and sociology to show how technology yields inequity.

Joy Buolamwini’s work through the Algorithmic Justice League relies on computer science and art to promote racial equitable and accountable tech. Each of these individuals collaborates across disciplinary lines to increase readers’ understanding of inequity in tech. Increased understanding yields calls for increased accountability.

---

238. Id.
241. See supra text accompanying notes 61–75.
243. See supra text accompanying notes 135–38, 139–45.
244. THE ALGORITHMIC JUSTICE LEAGUE, supra note 26. Buolamwini’s art includes spoken word poetry, which we cited at the beginning of this Article.
VII. CONCLUSION

Tech tools are vessels of history. Because humans invent machines and create algorithms, these tools can be as racist as their inventors and creators. Tech inventors and creators are generally White and thus less likely to act based upon in-depth understanding of structural racism. The tech industry and its people can change. A new tech industry can invent and create differently.

As civil rights advocates beat the drum of solidarity and march forward toward racially equitable and accountable tech, Big Tech can play a role in co-creating change. Legislators, lawyers, journalists, activists, artists, designers, developers, and community organizers will continue to fight for technological justice. As tech tools currently stand, they harm everyone, but especially Black people. So far, tech companies have been able to do whatever they want, with limited oversight. Those of us who care deeply about dismantling structural racism must do better at demanding positive change. We must actively seek change that harnesses the innovation of tech and directs the industry’s energy toward supporting and promoting racial justice.


247. Id.

248. Id. at 90–92.