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Discriminatory Dualism

This Article identifies and theorizes a significant but previously overlooked feature of structural discrimination: it frequently develops into two seemingly opposite, yet in fact mutually supportive practices. This phenomenon, which this Article terms “discriminatory dualism,” occurs in multiple contexts and domains, including policing, housing, and employment. In the context of policing, both over and under policing constitute two seemingly opposing discriminatory strands: communities of color experience over-policing (the aggressive overenforcement of minor, petty crime) at the same time as they experience under-policing (the persistent failure to protect or address violent crime). Housing discrimination takes a similar form: redlining (the denial of credit to aspiring homeowners) combines with its opposite, reverse redlining (the over-offering of credit on exploitative terms) to suppress minority homeownership. And, in the context of employment, sexual harassment (unwanted sexual attention) combines with shunning (the refusal to engage with women workers at all) to deny equal opportunity in the workplace.

While scholars working in these discrete fields have noted each of these paradoxes, this Article is the first to argue that these paradoxes are fundamentally connected. By placing each of these paradoxes into the larger paradigm of discriminatory dualism, this Article illuminates not only the nature of the paradoxes themselves, but also the profound difficulties that discriminatory dualism presents in all its manifestations. Specifically, the two co-existing, contradictory strands of each paradox simultaneously both deny and support each other’s existence, resulting in perpetually destabilizing systems that often thwart and confound conceptualization and countermobilization efforts. This Article provides a theoretical framework which begins to remedy the hermeneutical injustice caused by those conceptual difficulties. And, in framing discriminatory dualism as a recurring technology of oppression, this Article diagnoses why previous reform efforts have failed. It then suggests how to begin dismantling discriminatory dualism, not only in the policing, housing, and employment examples explored, but also in its many emerging and future manifestations.