

AFTER *THE COMET*: DU BOIS, AFROFUTURISM, AND CONSTITUTIONAL RENEWAL

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*American constitutional development has long followed cycles of crisis and restoration, resisting linear narratives of progress. This pattern is especially evident in the interplay between Black protest movements and constitutional interpretation, where transformative possibilities emerge during periods of social rupture but are later constrained by institutional restoration. This Essay argues that W.E.B. Du Bois's 1920 speculative fiction, *The Comet*, offers a framework for understanding these cyclical dynamics. The short story's three-part structure—normalcy, rupture, and restoration—reveals how genuine equality surfaces during catastrophic disruption yet proves unsustainable once hierarchical “normalcy” returns. Using interdisciplinary analysis that combines legal theory, historical inquiry, and literary criticism, this Essay traces “comet cycles” within major Black protest movements from abolition to contemporary struggles. It demonstrates that literary imagination can illuminate constitutional dynamics that conventional doctrinal analysis cannot reach.*

Specifically, this Essay argues that Black protest movements function both as catalysts of constitutional rupture and as interpreters of constitutional possibility during suspended moments of normalcy. Examining the abolitionist era, the Civil Rights movement, and present-day struggles through Du Bois's framework highlights how social movements advance foundational promises of liberty and equality while revealing the fragility of constitutional gains. Even radical critiques of constitutional legitimacy often arise because movements have taken these promises seriously, exposing the inadequacy of conventional reform. This approach offers strategic insight for contemporary movements, clarifying when transformative possibilities emerge and how restoration dynamics undermine them. By centering Black lived experiences as integral to constitutional interpretation, this Essay reframes American constitutionalism as shaped fundamentally by those historically excluded from legal discourse, yet central to its most transformative moments.

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“That’s just the way it is / Things’ll never be the same.”

—Tupac, *Changes*¹

“People are trapped in history and history is trapped in them.”

—James Baldwin, *Notes of a Native Son*²

¹ TUPAC, *Changes*, on *Greatest Hits* at 01:04–01:10 (CD, Amaru Ent. Oct. 13, 1998).

² JAMES BALDWIN, *Stranger in the Village*, in *NOTES OF A NATIVE SON* 163 (1955).

INTRODUCTION

In W.E.B. Du Bois's 1920 short story, *The Comet*, a celestial disaster appears to annihilate New York City, leaving only two apparent survivors: Jim, a Black messenger employed by a major bank, and Julia, a wealthy White woman.³ As they move through the emptied city, the ordinary structures of racial hierarchy briefly collapse. On the rooftop of the Metropolitan Tower, Julia reflects on this new normal: "Your people were not my people," she says, "but today—."⁴ She pauses. Jim is "a man,—no more; but he was in some larger sense a gentleman,—sensitive, kindly, chivalrous, everything save his hands and—his face. Yet yesterday—."⁵ Julia's inability to complete either thought—"but today" and "yet yesterday"—captures the story's constitutional liminality. The rupture has made something imaginable that she cannot yet name, even as the legal and social arrangements of yesterday persist as unspoken constraints.

For a brief interval, Jim and Julia inhabit what might be called a constitutional *tabula rasa*, a space in which settled hierarchies are suspended and alternative social arrangements become conceivable.⁶ This suspension, however, proves fragile. When they discover that others have survived and that social order is returning, the constitutional protections of Whiteness reassert themselves with immediate force.⁷ Julia's fiancé, Fred, encounters her with Jim and reacts instinctively: "Suddenly he stiffened and his hand flew to his hip. 'Why!' he snarled. 'It's—a—nigger—Julia! Has he—has he dared—?'"⁸ Julia's response reveals her role in restoring the prior order. "She lifted her head and looked at her late companion curiously and then dropped her eyes with a sigh. 'He has dared—all, to rescue me,' she said quietly, 'and I—thank him—much.' But she did not look at him again."⁹ Julia's refusal to meet Jim's gaze marks the constitutional restoration. She acknowledges his humanity just enough to perform gratitude, but the recognition that had seemed natural during the rupture has already dissolved. To look at

³ W.E.B. Du Bois, *The Comet*, in *DARKWATER: VOICES FROM WITHIN THE VEIL* 253–74 (1920).

⁴ *Id.* at 268.

⁵ *Id.*

⁶ See, e.g., JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* 267–428 (Peter Laslett ed., Cambridge Univ. Press 1988) (1690) (describing where constitutional authority is derived); THOMAS HOBBS, *LEVIATHAN* 82–188 (Richard Tuck ed., 1991) (1651) (discussing the state of nature, laws of nature, and social contract); BRUCE ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 3–33 (1991) (distinguishing between "normal" and "constitutional" political moments).

⁷ For analysis of Du Bois's use of apocalyptic fiction, see Adriano Elia, *W.E.B. Du Bois's Proto-Afrofuturist Short Fiction: The Comet*, 18 *IL TOLOMEO* 173, 177–78 (2016).

⁸ Du Bois, *supra* note 3, at 272.

⁹ *Id.*

him would be to affirm an equality incompatible with the reestablished social order. Julia's father forcibly separates them, Jim is returned to Harlem, and White society expresses relief at the restoration of racial "normalcy."¹⁰

Du Bois's speculative fiction operates here as constitutional theory. Through narrative imagination, the story explores possibilities unavailable to formal legal discourse.¹¹ Its three-part structure—pre-comet normalcy, comet-induced rupture, and post-comet restoration—offers a framework for understanding recurring patterns in American constitutional development.¹² Du Bois dramatizes a central paradox: Genuine equality appears possible during moments of catastrophic disruption, yet once normalcy reasserts itself, those possibilities prove unsustainable.¹³

This Essay argues that *The Comet* offers more than a literary meditation on racial injustice in Jim Crow America.¹⁴ It provides an analytical framework for understanding the relationship between constitutional rupture and renewal across U.S. history. The story poses questions that sit at the core of modern constitutional development. What happens when established legal and social structures momentarily collapse? Can equality emerge within existing constitutional

¹⁰ *Id.* at 272–74.

¹¹ On literature as constitutional theory, see James Boyd White, *Law as Language: Reading Law and Reading Literature*, 60 TEX. L. REV. 415, 434 (1982); ROBIN WEST, *NARRATIVE, AUTHORITY, AND LAW* (1993).

¹² For analysis of cyclical patterns in constitutional development, see ACKERMAN, *supra* note 6; Jack M. Balkin, *The Recent Unpleasantness: Understanding the Cycles of Constitutional Time*, 94 IND. L.J. 253, 257 (2019) (describing three cycles at work in American politics—the rise and fall of political regimes, polarization and depolarization, and decay and renewal of republican government, or constitutional rot and renewal); see also Barry Friedman, *The Cycles of Constitutional Theory*, 67 LAW & CONTEMP. PROBS. 149, 149 (2004) (discussing the connection between political events and constitutional cycling).

¹³ On the relationship between crisis and constitutional change, see Jack M. Balkin, *Constitutional Crisis and Constitutional Rot*, 77 MD. L. REV. 147, 154 (2017) (defining constitutional crisis as a “crucial moment in time—usually rather brief in duration—in which the constitutional system will adequately respond to a challenge, be undermined, or be successfully reconstituted”). See also Aziz Rana, *Freedom Struggles and the Limits of Constitutional Continuity*, 71 MD. L. REV. 1015 (2012) (arguing that “the Civil War and the initial months of Reconstruction” demonstrate “the American failure to . . . embrace rupture and to break from constitutional faith,” which “played a critical role in sustaining practices of subordination”).

¹⁴ See generally Magdalene Zier, Note, *Crimes of Omission: State-Action Doctrine and Anti-Lynching Legislation in the Jim Crow Era*, 73 STAN. L. REV. 777 (2021) (examining how narrow state-action doctrine enabled federal inaction on lynching and insulated racial violence from constitutional scrutiny); MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 118 (1st ed. 2004) (arguing that Supreme Court decisions were deeply shaped by prevailing racial and political attitudes, often reinforcing segregation before mid-century); C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1957) (tracing the historical development of segregation laws and showing Jim Crow as a contingent political invention rather than an inevitable social order).

arrangements, or does it require more radical transformation?¹⁵ Why do moments of constitutional possibility so often evaporate once institutions reassert control?¹⁶ The cyclical pattern Du Bois reveals should not be understood as deterministic. Rather, the comet framework illuminates the conditions under which transformative possibilities arise and the countervailing forces that work to contain them. In so doing, it offers strategic insight for movements seeking to extend moments of rupture and resist the dynamics of restoration.¹⁷

By examining the Black protest tradition—from abolition through the civil rights movement to contemporary struggles—this Essay contends that constitutional change in the United States proceeds not through linear progress but through recurring cycles of disruption and consolidation. Periods of constitutional normalcy are interrupted by moments of rupture that briefly enable radical possibilities, followed by the reestablishment of hierarchical arrangements.¹⁸ Each historical period contains its own “comet cycle,” with Black protest movements functioning both as catalysts for rupture and as interpreters of constitutional meaning during moments of suspended normalcy.¹⁹ The central claim of this Essay is that American constitutionalism cannot be understood apart from the lived experiences of Black Americans—those historically excluded from formal constitutional discourse yet central to its most transformative moments.²⁰ Through historical analysis, literary

¹⁵ See, e.g., ACKERMAN, *supra* note 6, at 187–88; MARK TUSHNET, *TAKING THE CONSTITUTION AWAY FROM THE COURTS* 36–41 (1999).

¹⁶ See Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1347 (2006) (arguing that originalism has served both as a legal theory and a political strategy—using the language of restoration to rally opposition to the Court and turn a once-rebellious movement into the new constitutional mainstream).

¹⁷ See Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927, 950 (2006) (noting that while social movements can disrupt entrenched legal arrangements and win partial reforms, their goals are usually reshaped and constrained as they move through legal channels).

¹⁸ On cyclical versus linear models of constitutional change, see ACKERMAN, *supra* note 6, at 6–33; Reva B. Siegel, *Text in Contest: Gender and the Constitution from a Social Movement Perspective*, 150 U. PA. L. REV. 297 (2001).

¹⁹ See, e.g., William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062, 2072–112 (2001) (discussing how the civil rights and Black protest movements transformed constitutional meaning by pressing courts and legislatures to reinterpret equality, liberty, and due process norms through sustained social mobilization). For discussion of Black protest movements as constitutional interpreters, see also TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* (2011) (reframing the history of the civil rights movement by decentering court narratives of civil rights progress and highlighting local dissent and community conflict).

²⁰ See DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* 4, 7–8 (1987) (arguing that Black Americans are often systematically excluded from the

interpretation, and engagement with contemporary struggles, this study shows how protest operates as a mode of constitutional interpretation during periods of rupture, pressing the nation toward its professed commitments to liberty, equality, and justice while also revealing the fragility of those gains.²¹

Du Bois's story also exposes a persistent tension within Black constitutional engagement. Some protest movements have acted as faithful constitutional interpreters during moments of rupture, while others have rejected the Constitution's legitimacy altogether, concluding that genuine equality may require apocalyptic transformation rather than incremental reform.²² This Essay treats these positions not as contradictions but as parallel points along a spectrum of constitutional engagement.²³ Even the most radical critiques often emerge from taking constitutional promises seriously and finding the gap between promise and reality unbridgeable through conventional means—just as in *The Comet*, where equality appears possible only in the wake of cosmic disruption.²⁴

Methodologically, the Essay synthesizes legal theory, history, literary criticism, and critical race theory to reframe constitutional interpretation as a cyclical process shaped by crisis and restoration. Building on James Boyd White's insight that law functions as constitutive rhetoric—creating meaning through language rather than discovering fixed truths—this study treats Du Bois's speculative fiction as constitutional analysis in its own right.²⁵ *The Comet* does not merely illustrate

formal mechanisms of constitutional change); MARTHA S. JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA 1–15* (2018) (documenting how free Black Americans in antebellum America engaged in constitutional discourse—petitioning, litigating, and publicly arguing for citizenship rights—despite their formal exclusion from the polity, establishing a tradition of Black constitutional interpretation that predates the Reconstruction Amendments).

²¹ On protest as constitutional interpretation, see William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1, 3–4, 89–91 (1999). See generally LANI GUINIER, *THE TYRANNY OF THE MAJORITY: FUNDAMENTAL FAIRNESS IN REPRESENTATIVE DEMOCRACY 1–10, 44–46* (1994) (arguing that majoritarian democracy fails to realize constitutional commitments to equality for excluded minorities, making protest an indispensable mode of constitutional interpretation).

²² See, e.g., Louis Michael Seidman, *America's Racial Stain: The Taint Argument and the Limits of Constitutional Law and Rhetoric*, 2 AM. J.L. & EQUAL. 165, 183 (2022); Gillian E. Metzger, *Considering Legitimacy*, 18 GEO. J.L. & PUB. POL'Y 353 (2020); Dorothy E. Roberts, *The Meaning of Blacks' Fidelity to the Constitution*, 65 FORDHAM L. REV. 1761 (1997).

²³ See, e.g., KEITH E. WHITTINGTON, *CONSTITUTIONAL INTERPRETATION: TEXTUAL MEANING, ORIGINAL INTENT, AND JUDICIAL REVIEW 159–89* (1999).

²⁴ On the gap between the constitutional promise of racial equality and reality, see Charles Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

²⁵ See JAMES BOYD WHITE, *WHEN WORDS LOSE THEIR MEANING: CONSTITUTIONS AND RECONSTITUTIONS OF LANGUAGE, CHARACTER, AND COMMUNITY 231–74* (1984); White, *supra* note 11, at 434–38.

constitutional ideas; it generates them, revealing patterns in constitutional development that doctrinal analysis alone cannot capture.²⁶ This method builds upon what I have elsewhere termed a “hermeneutic project” that reads Black culture as a form of constitutional interpretation, recognizing how cultural narratives illuminate the nature and function of law in ways that formal legal analysis cannot access.²⁷

This approach also aligns with Robert Cover’s concept of *nomos*: the normative universe created through narrative and interpretation.²⁸ Du Bois’s story constructs alternative constitutional meaning through fiction rather than doctrine, anticipating what Cover would later describe as *jurisgenerative* processes—the creation of legal meaning through interpretive communities operating outside formal institutional boundaries.²⁹ In this sense, Du Bois’s use of speculative narrative prefigures the ways contemporary movements deploy marches, songs, and performances to articulate constitutional visions during moments of rupture.³⁰ These cultural practices function not as political theater but as forms of legal discourse that reveal how law operates as culture, and frequently, culture as law.³¹

More generally, *The Comet* represents an early instance of what would later be termed *Afrofuturism*. Mark Dery famously coined the term *Afrofuturism* to describe “speculative fiction that treats African-American themes and addresses African-American concerns in the

²⁶ On law and literature methodologies, compare RICHARD A. POSNER, *LAW AND LITERATURE* 209–47 (3d ed. 2009) (arguing that while literary imagination can enrich legal thought, literature ultimately serves an illustrative rather than generative function in legal analysis, and that narrative cannot substitute for rigorous doctrinal reasoning), and IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* (1995) (surveying the methodological possibilities and limits of the law and literature movement, examining how literary interpretation can illuminate legal texts while cautioning against overstating literature’s capacity to resolve legal questions), with WEST, *supra* note 11 (arguing for literature’s generative rather than merely illustrative role, contending that narrative can actively produce legal meaning rather than simply illustrating principles derived from doctrine).

²⁷ See Etienne C. Toussaint, *On the Cultivation of Black Letter Law*, 124 COLUM. L. REV. F. 151, 155–57 (2024).

²⁸ Robert M. Cover, *The Supreme Court, 1982 Term—Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983).

²⁹ *Id.* at 11–19.

³⁰ See LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* 71–106 (2002) (arguing that transformative political change requires translating the lived experiences of marginalized communities into broader democratic coalitions, and that cultural and collective actions serve as vehicles for making constitutional claims visible beyond formal legal channels).

³¹ See generally Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35 (2001) (arguing that law is a cultural practice shaped by shared meanings, narratives, and social norms, rather than a closed system of rules).

context of twentieth-century technoculture.”³² Ytasha L. Womack later expanded this definition to encompass “an intersection of imagination, technology, the future, and liberation”—a cultural aesthetic that uses speculative vision to address the concerns of people of African descent.³³ Alondra Nelson describes Afrofuturism broadly as “African American voices” with “other stories to tell about culture, technology and things to come,” emphasizing how such works “excavate and create original narratives of identity, technology, and the future.”³⁴

Lisa Yaszek identifies Du Bois’s story as exhibiting this proto-Afrofuturist sensibility.³⁵ Afrofuturism, as Yaszek argues, engages in producing a “history of the future,” using speculative frameworks to intervene in dominant historical narratives and imagine alternative Black futures.³⁶ John Jennings and Clinton R. Fluker describe this mode of analysis as a “syncretic nexus” that collapses past, present, and future into what they call the “Future/Past.”³⁷ This temporal collapse “seeks to unify through radical cultural productions that recontextualize the perceptions of black people in order to restore their subjectivity,”³⁸ illuminating how *The Comet* functions as constitutional theory. Reynaldo Anderson and Charles E. Jones further extend this definition, characterizing Afrofuturism 2.0 as an emerging pan-African social philosophy that moves beyond its earlier literary and musical focus toward a more applied, transdisciplinary framework encompassing metaphysics, aesthetics, and the sciences in service of Black liberation.³⁹ By rendering present arrangements contingent, Du Bois exposes constitutional meaning as historically constructed rather than fixed—a fundamentally Afrofuturist intervention that uses speculative narrative to reimagine constitutional possibilities.

³² Mark Dery, *Black to the Future: Interviews with Samuel R. Delany, Greg Tate, and Tricia Rose*, in *FLAME WARS: THE DISCOURSE OF CYBERCULTURE* 179, 180 (1994).

³³ YTASHA L. WOMACK, *AFROFUTURISM: THE WORLD OF BLACK SCI-FI AND FANTASY CULTURE* 9 (2013).

³⁴ Alondra Nelson, *Introduction: Future Texts*, 20 *SOC. TEXT* 1, 9 (2002).

³⁵ Lisa Yaszek, *Afrofuturism, Science Fiction, and the History of the Future*, 20 *SOCIALISM & DEMOCRACY* 41, 49 n.8 (2006).

³⁶ *Id.* at 41–43.

³⁷ John Jennings & Clinton R. Fluker, *Forms of Future/Past: Black Kirby Afrofuturism and the Visual Technologies of Resistance*, in *THE BLACK SPECULATIVE ARTS MOVEMENT: BLACK FUTURITY, ART+ DESIGN* 59, 59 (Reynaldo Anderson & Clinton R. Fluker eds., 2019).

³⁸ *Id.*

³⁹ Reynaldo Anderson & Charles E. Jones, *Introduction: The Rise of Astro-Blackness*, in *AFROFUTURISM 2.0: THE RISE OF ASTRO-BLACKNESS* vii, vii–x (2016) (characterizing Afrofuturism 2.0 as a transdisciplinary pan-African social philosophy that expands earlier formulations to include religion, architecture, visual art, and philosophy, reflecting its growth as a global creative and critical phenomenon oriented toward Black liberation).

To be sure, organizing a constitutional argument around a single literary work risks imposing artificial coherence on complex historical developments.⁴⁰ This Essay does not treat Du Bois's story as a template to which history must conform, but as a heuristic device that highlights recurring dynamics while remaining attentive to historical specificity.⁴¹ Its value lies in analytical illumination, not prediction.

The Essay proceeds in three parts. Part I develops the theoretical foundations, reading *The Comet* as constitutional theory and exploring the distinction between constitutional time and normal time in institutional responses during moments of crisis.⁴² Next, Part II traces the comet cycles of Black protest movements, examining abolition, the civil rights era, and contemporary struggles as episodes of rupture and restoration. Finally, Part III turns to radical breaks and alternative frameworks, considering moments when movements seek not reform but fundamental reimagining of political order, with attention to contemporary debates over free speech, Palestine solidarity movements, and the transnational dimensions of constitutional discourse.

This study does not aim to catalogue all forms of protest or constitutional interpretation. Instead, it offers one lens for understanding the cyclical relationship between Black protest movements and American constitutional development. By foregrounding the dialectic between continuity and rupture, the Essay shows how Black protest has persistently exposed the gap between constitutional ideals and lived reality, illuminating both the transformative promise and the structural limits of constitutional discourse.⁴³ This cultural-legal approach recognizes that understanding constitutional development requires engaging with the sociocultural dimensions of constitutional meaning-making. Black Americans have functioned as unrecognized constitutional interpreters whose lived experiences expose the inadequacy of purely doctrinal approaches to constitutional analysis.⁴⁴

More than a century after its publication, *The Comet* continues to clarify why struggles over constitutional recognition and equality recur across generations. Du Bois's cosmic perspective offers not only

⁴⁰ See HAYDEN WHITE, *THE CONTENT OF THE FORM: NARRATIVE DISCOURSE AND HISTORICAL REPRESENTATION*, at ix (1987); DOMINICK LACAPRA, *HISTORY & CRITICISM* (1985).

⁴¹ See Richard H. Fallon Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189, 1244–49 (1987) (describing traditional arguments used in pursuit of coherent constitutional interpretation).

⁴² See Bruce Ackerman, *Constitutional Politics/Constitutional Law*, 99 YALE L.J. 453 (1989); ACKERMAN, *supra* note 6, at 230–94.

⁴³ See DERRICK BELL, *RACE, RACISM, AND AMERICAN LAW* 12–51 (6th ed. 2008); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 138–40 (1991).

⁴⁴ See, e.g., Roberts, *supra* note 22, at 1761–65.

a deeper account of constitutional failure but also a vocabulary for imagining renewal. In that sense, the story remains a vital resource for thinking about constitutional transformation in our unfinished struggle for justice.⁴⁵

I

CONSTITUTIONAL COMETS—THEORETICAL FOUNDATIONS AND HISTORICAL PATTERNS

Constitutional change in the United States has rarely unfolded along a smooth or linear path. Instead, episodes of profound disruption—war, mass mobilization, or cultural rupture—periodically unsettle settled arrangements, briefly opening space for constitutional reimagination before familiar hierarchies reassert themselves. This Part develops the metaphor of the “constitutional comet” to capture that dynamic. Like a comet crossing the sky, such moments are infrequent and dramatic, capable of altering constitutional trajectories, yet often fleeting in their effects.

Section I.A begins by examining W.E.B. Du Bois’s short story *The Comet*, which stages a constitutional thought experiment through speculative fiction: What forms of equality, obligation, and interpretation become possible when ordinary legal and social structures fall away? Section I.B then traces this narrative sequence—rupture, possibility, restoration—across American constitutional history, from Reconstruction through the Civil Rights era. Finally, Section I.C explores the interpretive consequences of the comet framework, showing how it unsettles linear accounts of constitutional progress and instead reveals a recurring cycle of breakthrough and backlash that has long structured American constitutional development.

A. *Du Bois’s Constitutional Theory Through Speculative Fiction*

“He stood a moment on the steps of the bank, watching the human river that swirled down Broadway. Few noticed him. Few ever noticed him save in a way that stung. He was outside the world—‘nothing!’ as he said bitterly.”⁴⁶ So begins W.E.B. Du Bois’s 1920 short story *The Comet*, situating Jim within pre-comet constitutional normalcy—a Black messenger rendered “nothing,” existing outside constitutional

⁴⁵ See JACK M. BALKIN, *LIVING ORIGINALISM* 3–22 (2011) (discussing living constitutionalism and frameworks for future constitutional construction); SANFORD LEVINSON, *OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT)* (2006).

⁴⁶ Du Bois, *supra* note 3, at 253.

recognition despite his physical presence at the center of American commerce. Du Bois's opening dramatizes constitutional exclusion not merely as the denial of formal rights, but as the negation of personhood itself within the constitutional order.

When the comet disrupts social order, it creates space for constitutional reflection outside this entrenched hierarchy.⁴⁷ Questions of equality, rights, and human dignity emerge once the ordinary constraints of constitutional normalcy are suspended. The exchange between Jim and Julia thus becomes a form of constitutional discourse freed from the rules of everyday life.⁴⁸ When Julia admits, "how foolish our human distinctions seem—now," she acknowledges the contingency of racial hierarchy.⁴⁹ Jim's stark reply—"Yes—I was not—human, yesterday"—pushes the insight further, exposing the depth of constitutional exclusion embedded in normal time.⁵⁰ Genuine equality becomes imaginable only when the structures of power that sustain racial domination are momentarily displaced.⁵¹ Their encounter captures the fragile possibility of a social order grounded in mutual recognition rather than hierarchy.⁵²

Du Bois constructs this speculative scenario to illuminate how crisis dissolves inherited arrangements and creates space for reimagining social order. This literary approach exemplifies what I have elsewhere described as a hermeneutic project that reads Black culture as a source of insight into the nature and function of law.⁵³ Du Bois's speculative fiction reveals how legal meaning is culturally produced, exposing dimensions of constitutional life inaccessible to conventional doctrinal analysis. With the ordinary constitutional order suspended, Jim and Julia must constitute themselves anew around principles of mutual aid and recognition.⁵⁴ The comet has not merely destroyed buildings and

⁴⁷ See SHAMOON ZAMIR, *DARK VOICES: W.E.B. DU BOIS AND AMERICAN THOUGHT, 1888–1903*, at 213–45 (1995); BRITT RUSERT, *FUGITIVE SCIENCE: EMPIRICISM AND FREEDOM IN EARLY AFRICAN AMERICAN CULTURE* 196–220 (2017).

⁴⁸ See Frank I. Michelman, *Law's Republic*, 97 *YALE L.J.* 1493, 1526–37 (1988) (discussing how framing civic dialogue as a non-coercive process makes the revision of societal values more credible to citizens).

⁴⁹ Du Bois, *supra* note 3, at 267.

⁵⁰ *Id.* at 268.

⁵¹ See JOHN RAWLS, *A THEORY OF JUSTICE* 118–92 (1971) (discussing the original position as a device for selecting principles of justice).

⁵² See Charles Taylor, *Multiculturalism and the Politics of Recognition*, in *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25–73 (Amy Gutmann ed., 1994) (explaining how human identity is partly shaped by mutual recognition within culture).

⁵³ See, e.g., Toussaint, *supra* note 27, at 155–57.

⁵⁴ On mutual aid and constitutional formation, see generally REBECCA SOLNIT, *A PARADISE BUILT IN HELL: THE EXTRAORDINARY COMMUNITIES THAT ARISE IN DISASTER* (2009) (arguing that disasters temporarily dissolve ordinary social hierarchies and institutional arrangements, generating spontaneous communities organized around mutual aid and recognition rather

bodies; it has temporarily dissolved the legal and social frameworks that sustained racial hierarchy, opening a moment of constitutional possibility.⁵⁵

The rooftop scene captures the extent of this rupture. Julia experiences a vision in which “[s]he was no mere woman. She was neither high nor low, White nor black, rich nor poor. She was primal woman; mighty mother of all men to come and Bride of Life.”⁵⁶ Jim, in turn, is transformed from “a thing apart, a creature below, a strange outcast of another clime and blood” into “her Brother Humanity incarnate, Son of God and great All-Father of the race to be.”⁵⁷ This religious and constitutional language signals how thoroughly the comet has unsettled ordinary categories. Du Bois stages a reimagining of humanity at its origin point, recasting the very foundations of personhood and political community.

This moment exemplifies what Afrofuturist scholars identify as temporal collapse—the suspension of linear time that enables radical reimagining of social relations. By projecting Jim and Julia into a speculative future where racial categories dissolve, Du Bois engages in what Lisa Yaszek calls producing a “history of the future”—that is, using speculative frameworks to expose the contingency of present arrangements and imagine alternative possibilities.⁵⁸ In this way, the comet’s rupture functions as an Afrofuturist technology, making visible the constructed nature of constitutional “normalcy.”

Yet even at the height of rupture, the inevitability of restoration shadows their temporary equality. At the cable office, Du Bois stages a moment of mutual dependency that reveals both the promise and fragility of constitutional recognition. When Jim contemplates suicide—“He pointed down to the waters, and said quietly: ‘The world lies beneath the waters now—may I go?’”—Julia responds not with command but with recognition: “She answered in a voice clear and calm, ‘No.’”⁵⁹ Julia’s authority to deny Jim’s request, and her decision to preserve his life, marks a relationship of equals that exists only because normal constitutional arrangements have been suspended.

That equality, however, remains unstable even within the comet moment. Julia’s fear at the cable office reveals how deeply racial

than existing structures of power—illuminating how moments of catastrophic rupture can reveal alternative forms of social organization that ordinary conditions render invisible).

⁵⁵ See CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5–15 (George Schwab trans., 1985).

⁵⁶ Du Bois, *supra* note 3, at 269.

⁵⁷ *Id.*

⁵⁸ Yaszek, *supra* note 35, at 43.

⁵⁹ Du Bois, *supra* note 3, at 267.

hierarchy is embedded in constitutional consciousness. “For the first time she seemed to realize that she was alone in the world with a stranger, with something more than a stranger,—with a man alien in blood and culture—unknown, perhaps unknowable. It was awful!”⁶⁰ Her terror—followed by flight and return—demonstrates that even when institutions collapse, the cultural categories that structure constitutional meaning persist, poised to reassert themselves once order returns.

Du Bois ultimately underscores the fragility of such moments. When Jim and Julia discover other survivors and learn that civilization has not entirely collapsed, the constitutional protections of Whiteness immediately reassert themselves.⁶¹ Julia’s father forcibly separates them, Jim is returned to Harlem, and White society expresses relief at the restoration of racial order.⁶² The equality that seemed natural in the comet’s aftermath proves unsustainable once normal constitutional time resumes.⁶³

This narrative arc offers a framework for understanding constitutional change as cyclical rather than progressive.⁶⁴ Du Bois suggests that genuine constitutional transformation requires disruption rather than gradual reform, and that even catastrophic rupture may be insufficient to overcome entrenched forces of restoration.⁶⁵ The story thus asks whether true equality can emerge within existing constitutional frameworks or whether it requires more radical reconstitution.⁶⁶

Through speculative fiction, Du Bois explores constitutional possibilities unavailable to formal legal scholarship. His narrative anticipates what Robin West describes as law’s interpretive turn—the recognition that legal meaning emerges through ongoing interpretation rather than the discovery of fixed truths.⁶⁷ Where traditional

⁶⁰ *Id.* at 265.

⁶¹ See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993) (describing Whiteness as a property right that confers social and legal protections and privileges).

⁶² Du Bois, *supra* note 3, at 272–74.

⁶³ Cf. Ackerman, *supra* note 42, at 486–515 (describing how moments of constitutional transformation occur during exceptional moments of rupture and mobilization, outside of ordinary politics).

⁶⁴ See ACKERMAN, *supra* note 6, at 3–31; STEPHEN M. GRIFFIN, *AMERICAN CONSTITUTIONALISM: FROM THEORY TO POLITICS* 35–62 (1996).

⁶⁵ See generally NAOMI KLEIN, *THE SHOCK DOCTRINE: THE RISE OF DISASTER CAPITALISM* (2007) (arguing that powerful economic and political interests systematically exploit moments of catastrophic crisis to impose structural changes that entrench existing hierarchies rather than enabling genuine transformation, demonstrating that rupture alone is insufficient to overcome restoration dynamics when entrenched forces are positioned to capture the moment of disruption).

⁶⁶ See TUSHNET, *supra* note 15, at 154–76; ROBERTO MANGABEIRA UNGER, *WHAT SHOULD LEGAL ANALYSIS BECOME?* 72–109 (1996).

⁶⁷ See Robin L. West, *Adjudication Is Not Interpretation: Some Reservations About the Law-as-Literature Movement*, 54 TENN. L. REV. 203, 203–08 (1987).

constitutional theory operates within inherited categories and precedents, literary imagination can suspend those constraints and explore alternative arrangements.⁶⁸ In this sense, Black culture functions as what I have elsewhere described as a foundational shared legal text in American law: The Black embodied experience operates as a constitutive element of constitutional meaning, even when excluded from formal doctrine.⁶⁹ Du Bois's speculative framework enables what Robert Cover termed *jurisgenesis*—the creation of legal meaning outside institutional boundaries.⁷⁰

To be sure, this literary approach has limits. Narrative coherence can obscure historical complexity, and metaphor risks hardening into determinism.⁷¹ Yet these limitations are outweighed by literature's capacity to illuminate constitutional dynamics that doctrinal scholarship, bound by existing categories, cannot reach.⁷²

B. *The Comet Cycle in American Constitutional History*

The pattern Du Bois dramatizes in *The Comet* illuminates broader rhythms of American constitutional development. Across U.S. history, major constitutional transformations have followed a recurring trajectory: periods of relative stability interrupted by crisis, moments of expanded constitutional possibility, and subsequent restoration of hierarchical arrangements.⁷³ These “comet moments” disrupt ordinary constitutional operations, briefly opening space for reimagining foundational principles that otherwise remain politically or legally unavailable.

The Civil War stands as the nation's first great constitutional comet. Secession and total war shattered existing institutional arrangements and created conditions under which previously unimaginable constitutional change became possible.⁷⁴ The Thirteenth, Fourteenth, and Fifteenth Amendments—abolishing slavery, guaranteeing equal protection, and

⁶⁸ See MARTHA C. NUSSBAUM, *POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE* 72–78 (1995).

⁶⁹ See Toussaint, *supra* note 27, at 157–58, 164.

⁷⁰ Cover, *supra* note 28, at 11–19.

⁷¹ See Richard A. Posner, *Against Ethical Criticism*, 21 *PHIL. & LITERATURE* 1–27 (1997).

⁷² See JAMES BOYD WHITE, *JUSTICE AS TRANSLATION: AN ESSAY IN CULTURAL AND LEGAL CRITICISM* 257–66 (1990); *LAW AND THE HUMANITIES: AN INTRODUCTION* 1–14 (Austin Sarat, Matthew Anderson & Catherine O. Frank eds., 2010).

⁷³ See ACKERMAN, *supra* note 6.

⁷⁴ See ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863–1877*, at 228–80 (1988) (detailing how the Reconstruction Act of 1867 was passed in the wake of the American Civil War); AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 365–80 (2005) (providing context on how southern state protection of the institution of slavery served as the animus for un-republican acts, which became the backdrop for Reconstruction).

protecting voting rights—emerged from this period of profound rupture.⁷⁵ As Frederick Douglass recognized, the crisis itself created constitutional space for transformation that could not have been achieved under normal political conditions.⁷⁶

That moment of possibility, however, proved temporary. The end of Reconstruction marked a constitutional restoration that systematically undermined many of the gains produced by the rupture.⁷⁷ Rather than a steady expansion of rights and inclusion, the comet framework reveals constitutional change as episodic, contingent, and reversible.⁷⁸ Supreme Court decisions such as *The Civil Rights Cases* and *Plessy v. Ferguson* exemplify how constitutional interpretation could reenrench racial hierarchy despite amendments that formally prohibited it.⁷⁹ Although the constitutional text remained altered, constitutional normalcy returned in practice, restoring familiar distributions of power and exclusion. Gains achieved during moments of rupture remain vulnerable once institutional stability returns and ordinary modes of constitutional interpretation resume.⁸⁰

The temporal dimension of these cycles is crucial. During comet moments, constitutional time accelerates. Crisis compresses deliberation, weakens procedural constraints, and creates urgency that permits

⁷⁵ U.S. CONST. amends. XIII, XIV, XV; see, e.g., ACKERMAN, *supra* note 6; Michael W. McConnell, *The Forgotten Constitutional Moment*, 11 CONST. COMMENT. 115, 129 (1994) (detailing the difficulty in attributing the end of Reconstruction to a shift in public opinion or backroom political deals).

⁷⁶ Frederick Douglass, *The Constitution of the United States: Is It Pro-Slavery or Anti-Slavery?*, in 2 THE LIFE AND WRITINGS OF FREDERICK DOUGLASS 467, 480 (Philip S. Foner ed., 1950).

⁷⁷ See C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 67–109 (3d ed. 1974). See generally RAYFORD W. LOGAN, *THE BETRAYAL OF THE NEGRO: FROM RUTHERFORD B. HAYES TO WOODROW WILSON* (1965) (documenting how the federal government's abandonment of Reconstruction-era civil rights commitments between 1877 and the early twentieth century systematically dismantled the constitutional gains of the post-Civil War period, restoring racial hierarchy through law, violence, and political accommodation); KLARMAN, *supra* note 14 (examining how the Supreme Court's narrow construction of the Reconstruction Amendments enabled the constitutional consolidation of Jim Crow, demonstrating that formal constitutional text remained altered while constitutional normalcy returned in practice through judicial restoration of racial hierarchy).

⁷⁸ See WILLIAM J. NOVAK, *THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* 19–42 (1996) (discussing ever-shifting theories used to describe law and governance in the U.S.).

⁷⁹ *The Civil Rights Cases*, 109 U.S. 3 (1883); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁸⁰ See, e.g., Linda Greenhouse & Reva B. Siegel, *Before (and After) Roe v. Wade: New Questions About Backlash*, 120 YALE L.J. 2028, 2028–45 (2011) (examining how constitutional gains achieved during moments of rupture—illustrated through the Roe decision and its aftermath—remain vulnerable to organized backlash once institutional stability returns and ordinary modes of constitutional interpretation resume, demonstrating the structural fragility of transformative constitutional moments).

rapid change. The Reconstruction Amendments were adopted with unprecedented speed by a Congress operating under emergency conditions.⁸¹ A similar dynamic characterized the civil rights era, when sustained protest and political pressure produced swift legislative and constitutional shifts, followed by slower, more contested implementation as movement momentum dissipated.⁸²

The duration and intensity of comet moments vary. Some ruptures produce durable constitutional change, while others fade quickly. These differences turn on factors such as the depth of the precipitating crisis, the organizational capacity of movements pressing for transformation, and the strength of institutional forces invested in restoration.⁸³ Attending to these variables helps explain why some constitutional openings consolidate into lasting change while others close almost as soon as they appear.

Comet cycles also expose tensions between competing conceptions of the Constitution. The textual Constitution—the written document and its formal amendments—may remain unchanged, while its operative meaning shifts dramatically in response to crisis and restoration.⁸⁴ At the same time, what might be called the normative or ‘living’ Constitution—embodied ideals of equality, dignity, and justice rooted in lived experience—becomes more legible during rupture moments and recedes during periods of restoration, when institutional interpretations narrow constitutional meaning.⁸⁵

Not every crisis produces a constitutional comet. The economic depression of the 1890s, for example, generated widespread suffering and instability without producing comparable constitutional transformation.⁸⁶ Comet moments appear to require more than disruption alone.

⁸¹ See ACKERMAN, *supra* note 6, at 99–104; FONER, *supra* note 74, at 228–80.

⁸² See Michael J. Klarman, Brown, *Racial Change, and the Civil Rights Movement*, 80 VA. L. REV. 7, 150–75 (1994).

⁸³ See Jack M. Balkin & Sanford Levinson, *Understanding the Constitutional Revolution*, 87 VA. L. REV. 1045, 1068–85 (2001) (explaining how the duration and intensity of constitutional regimes can depend on the composition of the Court).

⁸⁴ See Karl N. Llewellyn, *The Constitution as an Institution*, 34 COLUM. L. REV. 1, 17–40 (1934) (detailing how constitutional limits are often fluid and prone to shifting during national crises); GRIFFIN, *supra* note 64, at 72–87 (detailing how the three constitutional branches underwent reorganization of their constitutional activities during World War II and the Cold War).

⁸⁵ See RONALD DWORKIN, *FREEDOM’S LAW: THE MORAL READING OF THE AMERICAN CONSTITUTION* 1–38 (1996) (proposing a moral reading of the Constitution that is disciplined by principles of integrity, history, and collective action).

⁸⁶ See Charles W. McCurdy, *The “Liberty of Contract” Regime in American Law*, in *THE STATE AND FREEDOM OF CONTRACT* 161–97 (Harry N. Scheiber ed., 1998); WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 59–97 (1991) (detailing the extent of judicial involvement in the labor movement of the 1890s).

They emerge when crisis exposes deep contradictions between constitutional promise and constitutional practice, and when organized movements are able to articulate alternative constitutional visions and sustain pressure long enough to challenge the forces of restoration.

C. *Theoretical Implications for Constitutional Interpretation*

Understanding constitutional change through the comet framework carries significant implications for constitutional interpretation and for evaluating constitutional arguments. The comet cycle reveals constitutional change as dialectical—defined by expansion and contraction, breakthrough and backlash, moments of revolutionary possibility followed by periods of conservative restoration.⁸⁷ This cyclical account clarifies tensions among competing constitutional conceptions.⁸⁸ The textual Constitution supplies the formal framework, but its meaning depends on the functional Constitution—how constitutional principles operate in practice for different communities. During comet moments, these two may briefly converge as crisis creates pressure to translate textual promises into lived reality.⁸⁹ During restoration, they diverge again, as institutional arrangements reconstruct hierarchy under the banner of formal equality.⁹⁰

The normative Constitution—the aspirational commitments embedded in constitutional language but often unrealized in practice—comes into sharper focus during rupture moments. Movements invoke crisis to argue that constitutional promises demand more expansive interpretation in order to align with basic principles of human dignity and democratic equality.⁹¹ These claims often gain traction during periods of disruption, only to be discounted during restoration, when institutional actors privilege stability over transformation.

The comet framework also reframes protest as jurisgenerative.⁹² During moments of rupture, protest movements participate in producing constitutional meaning rather than merely applying existing

⁸⁷ See ACKERMAN, *supra* note 6, at 3–33; Balkin, *supra* note 13, at 253–57. See generally MARK TUSHNET, *RED, WHITE, AND BLUE: A CRITICAL ANALYSIS OF CONSTITUTIONAL LAW* (1988) (arguing that constitutional doctrine is fundamentally indeterminate and that constitutional outcomes reflect underlying political struggles rather than neutral legal reasoning, supporting the view that constitutional change proceeds through cycles of political contestation rather than linear doctrinal progress).

⁸⁸ See Fallon, *supra* note 41, at 1209–44.

⁸⁹ See ACKERMAN, *supra* note 6, at 255–311.

⁹⁰ See Siegel, *supra* note 16, at 1350–90.

⁹¹ See William E. Forbath, *Constitutional Welfare Rights: A History, Critique, and Reconstruction*, 69 *FORDHAM L. REV.* 1821, 1880–1900 (2001).

⁹² See Cover, *supra* note 28, at 11–19.

principles.⁹³ The abolitionist movement, for example, did not simply uncover an antislavery Constitution; it helped constitute one through sustained argument, organizing, and moral confrontation.⁹⁴ Likewise, the civil rights movement did not merely discover the egalitarian potential of the Fourteenth Amendment; it gave that promise operative content through litigation, mass mobilization, and public discourse.⁹⁵

At the same time, the framework makes clear that constitutional backlash is not anomalous but structural. Just as Du Bois's story depicts temporary equality yielding to restored hierarchy, American constitutional history shows that moments of transformation generate counter-movements aimed at reasserting control.⁹⁶ The constitutional gains of Reconstruction were met with Jim Crow; the achievements of the civil rights era produced the turn to colorblind constitutionalism and the systematic retrenchment of civil rights enforcement.⁹⁷

Recognizing this pattern foregrounds the temporal dimension of constitutional struggle.⁹⁸ Interpretations that appear radical during periods of normalcy may become orthodox during rupture, while meanings that seem settled during restoration may prove vulnerable in the next crisis. Constitutional meaning is therefore contingent not only on text or precedent, but also on political context, social mobilization, and historical timing.⁹⁹

For constitutional interpreters, the comet framework underscores the importance of plural voices in constitutional discourse.¹⁰⁰ During rupture moments, previously marginalized interpretive communities

⁹³ See Balkin & Siegel, *supra* note 17, at 927–50 (“Principles do not become unstuck by themselves. These changes require institutions that disrupt public understandings, contest received framings, and help reshape and reform public opinion. Social movements play a key role in this process.”).

⁹⁴ See JAMES OAKES, *FREEDOM NATIONAL: THE DESTRUCTION OF SLAVERY IN THE UNITED STATES, 1861–1865*, at 145–89 (2013).

⁹⁵ See BROWN-NAGIN, *supra* note 19, at 1–15.

⁹⁶ See Jack M. Balkin, *Constitutional Hardball and Constitutional Crises*, 26 QUINNIPIAC L. REV. 579, 581–95 (2008) (discussing the pattern of “periods of revolutionary change” generating counter-revolutionary responses).

⁹⁷ On Jim Crow backlash, see WOODWARD, *supra* note 14. On colorblind constitutionalism and related rollback of civil rights enforcement, see Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN. L. REV. 1, 2–68 (1991).

⁹⁸ See Balkin, *supra* note 13, at 154.

⁹⁹ See Siegel, *supra* note 18, at 311–16; Balkin & Siegel, *supra* note 17, at 946–50.

¹⁰⁰ See Cover, *supra* note 28, at 11–19 (arguing that legal meaning is generated through interpretive communities operating outside formal institutions); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 401–12 (1987) (examining how marginalized communities reconstruct constitutional meaning from within and against existing frameworks).

gain authority to participate in constitutional meaning-making.¹⁰¹ That authority does not arise from institutional position, but from cultural, social, and performative practices that render constitutional claims visible and urgent—through literature, music, protest speech, performance, visual art, and digital media.¹⁰² These interventions therefore warrant serious constitutional attention not because they offer a single “correct” interpretation, but because they emerge from lived experiences that expose contradictions between constitutional ideals and lived reality.¹⁰³

The comet framework thus challenges conventional accounts of interpretive authority while preserving the possibility of constitutional transformation. Constitutional meaning emerges through struggle rather than expertise, through democratic contestation rather than judicial decree, and through the recurring rhythm of rupture and restoration rather than linear progress.¹⁰⁴ Interpretation is not a technical exercise but a political process of collective self-definition—one that must reckon with both the possibility of transformation and the persistence of backlash. Understanding restoration dynamics can inform strategic efforts to consolidate gains during rupture moments and to build institutional and cultural forms capable of surviving periods of retrenchment. The comet framework does not suggest that change is illusory, but that durable transformation requires attention to constitutional time—to how moments of crisis open possibilities that must be deliberately carried forward if they are to endure.¹⁰⁵

¹⁰¹ See Williams, *supra* note 100, at 401–12; see also Cover, *supra* note 28, at 11–19 (discussing paideic interpretation, or “world-creating” interpretation, which is pedagogic in nature, and how communities outside formal institutional centers gain authority to participate in constitutional meaning-making through sustained interpretive practice).

¹⁰² See Cover, *supra* note 28, at 25–40 (arguing that constitutional meaning is generated through interpretive communities operating outside formal institutional boundaries through cultural and narrative practice); WILLIAM G. ROY, *REDS, WHITES, AND BLUES: SOCIAL MOVEMENTS, FOLK MUSIC, AND RACE IN THE UNITED STATES* 1–33 (2010) (arguing that folk music and collective cultural practice have functioned as vehicles through which marginalized communities make constitutional claims visible beyond formal legal channels); SARAH J. JACKSON, MOYA BAILEY & BROOKE FOUCAULT WELLES, #HASHTAG ACTIVISM: NETWORKS OF RACE AND GENDER JUSTICE 89–125 (2020) (examining how digital media and hashtag activism constitute modes of constitutional meaning-making that operate outside formal institutional structures); see also Sarat, Anderson & Frank, *supra* note 72, at 1–14 (examining how literature and other humanistic practices constitute modes of legal meaning-making that exceed the boundaries of formal doctrine).

¹⁰³ See Lawrence, *supra* note 24, at 317–88; Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

¹⁰⁴ See Robert M. Cover, *Violence and the Word*, 95 YALE L.J. 1601, 1601–29 (1986); FORBATH, *supra* note 86, at 1–19.

¹⁰⁵ See generally ROBERTO MANGABEIRA UNGER, *FALSE NECESSITY: ANTI-NECESSITARIAN SOCIAL THEORY IN THE SERVICE OF RADICAL DEMOCRACY* (1987) (arguing that social arrangements are historically contingent rather than necessary, and that durable transformation requires

II

HISTORICAL COMET CYCLES—FROM ABOLITION TO CIVIL RIGHTS

Having established the theoretical foundations of the comet framework, we now turn to how this pattern has manifested across specific historical moments in American constitutional development. Black protest traditions have stood at the center of comet cycles throughout American constitutional history, developing constitutional interpretations that both expose the contradictions of American democracy and press its promises toward fuller realization. While other movements—labor, women’s rights, LGBTQ+—have experienced their own comet moments,¹⁰⁶ the Black American freedom struggle has most consistently functioned as a central site of constitutional rupture and renewal.¹⁰⁷

This Part examines three historical comet cycles. Section II.A traces the Abolition Comet, where the crisis of slavery produced emancipation and Reconstruction before restoration reasserted racial hierarchy through Jim Crow. Next, Section II.B turns to the Civil Rights Comet, where mass protest and litigation again generated transformative constitutional change, only to be met with backlash and the rise of colorblind constitutionalism. Finally, Section II.C considers the Contemporary Comet of 2020, when George Floyd’s murder triggered a nationwide reckoning that briefly opened new constitutional possibilities before restoration reasserted itself through backlash and retrenchment.

Taken together, these cycles reveal a recurring constitutional rhythm: Rupture enables transformation, protest operates as *jurisgenesis*,

sustained institutional reconstruction rather than reliance on episodic moments of crisis alone); Mark Tushnet, *Constitutional Hardball*, 37 J. MARSHALL L. REV. 523 (2004) (sketching out the contours of high stakes political claims and practices that seek to transform existing constitutional orders into new ones within moments of crisis and transformation).

¹⁰⁶ On labor movement gains, see FORBATH, *supra* note 86, at 128–66 (documenting how the crisis conditions of the New Deal era opened a constitutional comet moment for the labor movement, generating transformative legislative and legal gains that were later constrained as institutional stability returned). On women’s rights during WWII, see SUSAN M. HARTMANN, *THE HOME FRONT AND BEYOND: AMERICAN WOMEN IN THE 1940s*, at 209–16 (1982) (examining how the disruptions of World War II created a comet moment for women’s rights by temporarily suspending ordinary gender arrangements and opening space for expanded participation, gains that were partially rolled back during postwar restoration). On LGBTQ+ progress after AIDS, see PATRICIA A. CAIN, *RAINBOW RIGHTS: THE ROLE OF LAWYERS AND COURTS IN THE LESBIAN AND GAY CIVIL RIGHTS MOVEMENT* (2000) (documenting how the AIDS crisis functioned as a comet moment for LGBTQ+ constitutional claims, generating litigation and advocacy that pressed constitutional protections beyond their prior limits during a period of rupture and social mobilization).

¹⁰⁷ See VINCENT HARDING, *THERE IS A RIVER: THE BLACK STRUGGLE FOR FREEDOM IN AMERICA* xxv–xxxiv (1981).

and restoration reinscribes hierarchy. Attending to these patterns sharpens our understanding of both the power and the fragility of constitutional comet moments.

A. *The Abolition Comet: Slavery's Constitutional Crisis*

The constitutional crisis of slavery represents America's first great comet cycle, closely following the pattern Du Bois dramatized in his speculative fiction. Pre-comet normalcy was defined by constitutional accommodation of slavery through elaborate compromise. The Three-Fifths Clause, the Fugitive Slave Clause, and the Missouri Compromise each reflected a constitutional order that had fully integrated human bondage into its foundational structure.¹⁰⁸ Like the racial hierarchies that appeared natural and unquestioned in Du Bois's pre-comet New York, slavery seemed to many Americans a settled and permanent feature of the constitutional landscape.¹⁰⁹

Yet slavery's internal contradictions produced the conditions for constitutional rupture.¹¹⁰ The institution itself stood in stark opposition to the nation's professed commitments to liberty and justice. As contradictions between constitutional promise and practice deepened, the existing framework became increasingly unable to contain the crisis.¹¹¹ The Kansas-Nebraska Act, the Dred Scott decision, and the election of Abraham Lincoln each marked moments when constitutional arrangements buckled under the weight of their own contradictions, signaling the approach of systemic breakdown.¹¹²

¹⁰⁸ U.S. CONST. art. I, § 2, cl. 3 (Three-Fifths Clause); *id.* art. IV, § 2, cl. 3 (stating Fugitive Slave Clause); Act of Mar. 6, 1820, ch. 22, § 8, 3 Stat. 545, 545 (1820) (Missouri Compromise); see PAUL FINKELMAN, *SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON* 1–33 (2d ed. 2001) (stating how “slavery was sanctioned throughout the Constitution” with clauses from five constitutional articles dealing directly with slavery).

¹⁰⁹ See Paul Finkelman, *The Root of the Problem: How the Proslavery Constitution Shaped American Race Relations*, 4 BARRY L. REV. 1, 4–14 (2003) (describing the early entrenchment of slavery into structure of the Constitution and the way those notions of constitutional structure shaped national politics).

¹¹⁰ See DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN THE AGE OF EMANCIPATION* 27, 33, 45–61 (2014) (describing a belief in racialized persons's “incapacity for freedom in a democracy” that lay at the “heart of the long historical legacy of slavery” in the Americas with a focus on the Haitian Revolution).

¹¹¹ See MICHAEL F. HOLT, *THE FATE OF THEIR COUNTRY: POLITICIANS, SLAVERY EXTENSION, AND THE COMING OF THE CIVIL WAR* 3–18 (2004) (noting that political debates over whether new states would prohibit slavery emblemized larger sectional tensions, including abolitionist arguments that “condemned slavery as immoral, as economically inefficient, as incompatible with free labor, and as an undemocratic source of southern political power in the national government” due to the Constitution's Three-Fifths Clause).

¹¹² Kansas-Nebraska Act, ch. 59, 10 Stat. 277 (1854); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857); see JAMES M. MCPHERSON, *BATTLE CRY OF FREEDOM: THE CIVIL WAR ERA* 145–233 (1988).

Although formally excluded from constitutional authorship and political citizenship, Black Americans were among the most sophisticated constitutional interpreters of the nineteenth century.¹¹³ Frederick Douglass exemplified this paradoxical position: legally deemed property, yet offering one of the era's most penetrating analyses of constitutional meaning.¹¹⁴ In his 1852 speech, *What to the Slave Is the Fourth of July?*, Douglass articulated the constitutional contradiction: "The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me."¹¹⁵ Eight years later, in his 1860 Glasgow address, Douglass went further, positioning Black Americans as the Constitution's most faithful textual readers and arguing that proslavery constitutionalism could be sustained only by abandoning the plain meaning of the document in favor of secret intentions and governmental practice.¹¹⁶

Douglass's constitutional vision illustrates what law and literature scholars identify as the fundamentally textual nature of legal interpretation.¹¹⁷ His close parsing of constitutional language—particularly the document's refusal to name "slavery" and its consistent reference to enslaved people as "persons"—treated constitutional interpretation as a form of literary criticism.¹¹⁸ Through this method, Douglass revealed how alternative constitutional meanings emerge through careful attention to text. As he concluded, "the constitutionality of slavery can be made out only by disregarding the plain and common-sense reading of the Constitution itself."¹¹⁹ This approach challenged proslavery constitutionalism not by abandoning constitutional discourse, but by engaging it more rigorously, treating the

¹¹³ See JONES, *supra* note 20, at 1–15.

¹¹⁴ See DAVID W. BLIGHT, *FREDERICK DOUGLASS: PROPHET OF FREEDOM* 235–67 (2018) (describing Douglass's antislavery constitutionalism and his transformation from formerly enslaved person into political abolitionist wielding the nation's founding document against the institution that had claimed him as property).

¹¹⁵ FREDERICK DOUGLASS, *What to the Slave Is the Fourth of July?*, in 2 *THE FREDERICK DOUGLASS PAPERS, SERIES ONE: SPEECHES, DEBATES, AND INTERVIEWS: 1847–54*, at 359, 368 (John W. Blassingame ed., 1982).

¹¹⁶ Douglass, *supra* note 76, at 477 ("Its language is 'we the people;' not we the white people, not even we the citizens . . . but we the people, we the human inhabitants; and, if Negroes are people, they are included in the benefits for which the Constitution of America was ordained and established."). See generally PETER C. MYERS, *FREDERICK DOUGLASS: RACE AND THE REBIRTH OF AMERICAN LIBERALISM* 79–118 (2008) (analyzing how Douglass's close reading of constitutional text challenged proslavery interpretation by insisting the document be judged by its words alone).

¹¹⁷ See White, *supra* note 11, at 416–19.

¹¹⁸ See Douglass, *supra* note 76, at 474–78.

¹¹⁹ *Id.* at 477.

Constitution as a cultural text requiring interpretive judgment rather than mechanical application.¹²⁰

This constitutional vision finds its fictional analogue in Jim's experience of temporary equality in Du Bois's story. When Jim enters a restaurant in the comet's aftermath and takes food "from dead hands," he reflects, "Yesterday, they would not have served me."¹²¹ The line captures precisely the transformation Douglass imagined: a world in which constitutional equality becomes lived reality rather than abstract promise. The comet accomplishes what Douglass's interpretive method sought—the suspension of racial hierarchy and the recognition of Black humanity. Yet the word "yesterday" lingers uneasily, signaling the fragility of this moment and foreshadowing its reversal. This temporal negotiation—moving between *yesterday* and *today* to imagine a different future—exemplifies the proto-Afrofuturist quality Yaszek identifies in Du Bois's work. By collapsing past exclusion and future possibility into the present moment of rupture, Du Bois creates what Jennings and Fluker would later call the "Future/Past," revealing how constitutional transformation requires imagining alternatives to what seems inevitable.¹²²

The abolitionist movement more broadly demonstrates the jurisgenerative power of protest during constitutional comet moments.¹²³ Newspapers such as *The North Star*—founded in 1847 and later renamed *Frederick Douglass' Paper* in 1851—functioned as alternative constitutional forums, enabling Black Americans to develop and contest constitutional meaning despite their formal exclusion from democratic governance, advancing interpretive frameworks that pressed against the boundaries of proslavery constitutionalism.¹²⁴ These publications enabled Black Americans to participate in constitutional discourse despite their formal exclusion from democratic governance.¹²⁵

The Civil War marked the comet's full arrival: a catastrophic disruption that suspended ordinary constitutional operations and opened space for previously unthinkable transformation.¹²⁶ The Emancipation

¹²⁰ See generally WHITE, *supra* note 25, at 239–44 (arguing that a constitution attempts to "establish and organize a national community," and that the drafters used a collective and empowered voice, making "the People" both the author and audience of the document in order to create a cooperative democracy).

¹²¹ Du Bois, *supra* note 3, at 258.

¹²² Jennings & Fluker, *supra* note 37, at 59.

¹²³ See Cover, *supra* note 28, at 40–44.

¹²⁴ OAKES, *supra* note 94, at 145–89.

¹²⁵ See ROBERT S. LEVINE, *DISLOCATING RACE AND NATION: EPISODES IN NINETEENTH-CENTURY AMERICAN LITERARY NATIONALISM* 89–124 (2008); *THE BLACK PRESS: NEW LITERARY AND HISTORICAL ESSAYS* 1–18 (Todd Vogel ed., 2001).

¹²⁶ See ACKERMAN, *supra* note 8, at 145–252 (describing significant changes in the Court's jurisprudence after the Civil War).

Proclamation and the Reconstruction Amendments emerged from this rupture, briefly realizing the constitutional equality abolitionists had long envisioned.¹²⁷ Like Jim and Julia's recognition of one another's humanity in Du Bois's narrative, Reconstruction created a fleeting constitutional space in which racial equality appeared not only imaginable, but achievable.¹²⁸

As Du Bois anticipated, however, restoration proved as powerful as rupture. The collapse of Reconstruction ushered in a constitutional restoration that effectively neutralized the comet's revolutionary potential.¹²⁹ Jim Crow legislation, the Supreme Court's constricted reading of the Fourteenth Amendment, and the retreat of federal enforcement together reasserted racial hierarchy while leaving the amended constitutional text formally intact.¹³⁰ The comet passed, and constitutional "normalcy" returned with destructive force. The literary parallel is evident. Just as Jim and Julia's momentary equality dissolves when social order reasserts itself, the constitutional possibilities of Reconstruction proved unsustainable once crisis receded.¹³¹ Their forced separation anticipates the constitutional separation imposed by Jim Crow—a system that preserved racial domination while professing fidelity to constitutional equality.¹³²

¹²⁷ Emancipation Proclamation, 12 Stat. 1268 (Jan. 1, 1863); see ALLEN C. GUELZO, *LINCOLN'S EMANCIPATION PROCLAMATION: THE END OF SLAVERY IN AMERICA* 1, 235 (2004).

¹²⁸ See FONER, *supra* note 74, at 281–307.

¹²⁹ See generally MICHAEL PERMAN, *THE ROAD TO REDEMPTION: SOUTHERN POLITICS, 1869–1879* (1984) (thoroughly documenting the downfall of Reconstruction through a study of regional politics of the South following the Civil War); ERIC FONER, *FOREVER FREE: THE STORY OF EMANCIPATION AND RECONSTRUCTION 197–210* (2005) (describing how the Compromise of 1877, Redeemer governments, and disenfranchisement laws systematically dismantled the Reconstruction-era constitutional framework protecting Black citizenship and equal rights).

¹³⁰ On Jim Crow laws, see WOODWARD, *supra* note 77, at 67–109 (tracing how Jim Crow legislation systematically reasserted racial hierarchy through law following Reconstruction's collapse, demonstrating that racial domination reconstituted itself through formal legal mechanisms rather than informal practice alone); LEON F. LITWACK, *TROUBLE IN MIND: BLACK SOUTHERNERS IN THE AGE OF JIM CROW 7–54* (1998) (documenting the lived experience of Black Southerners under Jim Crow, showing how legal segregation operated to restore racial subordination despite the Reconstruction Amendments' formal prohibitions). On Supreme Court interpretation, see PAMELA BRANDWEIN, *RETHINKING THE JUDICIAL SETTLEMENT OF RECONSTRUCTION* (2011) (examining how the Supreme Court's constricted reading of the Fourteenth Amendment enabled the constitutional restoration of racial hierarchy while leaving the amended text formally intact). On federal enforcement withdrawal, see generally XI WANG, *THE TRIAL OF DEMOCRACY: BLACK SUFFRAGE AND NORTHERN REPUBLICANS, 1860–1910* (1997) (documenting how the retreat of federal enforcement of Black voting rights effectively nullified the Fifteenth Amendment's guarantees in practice, completing the constitutional restoration of white supremacy despite formal constitutional change).

¹³¹ Du Bois, *supra* note 3, at 272–74.

¹³² See LITWACK, *supra* note 130, at 218–79 (describing Jim Crow laws as a reaction to Black assertions of social equality).

B. *The Civil Rights Comet: Jim Crow's Constitutional Breakdown*

The civil rights era followed a similar trajectory, illustrating how rupture can briefly unsettle entrenched constitutional arrangements before restoration reasserts hierarchy. Prior to rupture, legal segregation functioned as settled constitutional doctrine.¹³³ *Plessy v. Ferguson* had constitutionalized racial separation, embedding inequality within a framework that justified exclusion through the fiction of “separate but equal.”¹³⁴ That order appeared stable and enduring, much like the racial hierarchy that seemed natural in Du Bois’s pre-comet world.¹³⁵

The rupture began with *Brown v. Board of Education*. By declaring segregated public schools unconstitutional, *Brown* destabilized the prevailing constitutional settlement and produced a crisis that reverberated throughout the South.¹³⁶ Normal constitutional operations gave way to open contestation, as massive resistance exposed the fragility of constitutional consensus.¹³⁷ As in Du Bois’s story, the rupture did not simply announce change; it suspended the assumptions that had made hierarchy appear inevitable.

The civil rights movement emerged as a central interpretive force within this moment of suspension.¹³⁸ Martin Luther King Jr.’s constitutional rhetoric articulated a vision of equality that closely parallels Du Bois’s account of temporary recognition.¹³⁹ In his “I Have a Dream” speech, King framed the movement as a claim internal to constitutional tradition rather than a rejection of it: “When the architects of our republic wrote the magnificent words of the Constitution and

¹³³ See *Plessy v. Ferguson*, 163 U.S. 537, 540–52 (1896) (establishing the “separate but equal” doctrine and constitutionalizing racial segregation under the Equal Protection Clause); see also CHARLES A. LOFGREN, *THE PLESSY CASE: A LEGAL-HISTORICAL INTERPRETATION* (1987) (examining how *Plessy* transformed racial segregation from a contested political practice into an entrenched constitutional settlement).

¹³⁴ 163 U.S. 537 (1896). See generally LOFGREN, *supra* note 133 (examining the legal reasoning and historical context through which the Supreme Court constitutionalized racial segregation under the fiction of “separate but equal” prior to *Brown*).

¹³⁵ Du Bois, *supra* note 3, at 253–56.

¹³⁶ *Brown v. Board of Education*, 347 U.S. 483 (1954). See generally NUMAN V. BARTLEY, *THE RISE OF MASSIVE RESISTANCE: RACE AND POLITICS IN THE SOUTH DURING THE 1950S*, at 58 (1969) (describing how the decision in *Brown v. Board of Education* precipitated a constitutional and political crisis in the South as state leaders mobilized “massive resistance” to school desegregation).

¹³⁷ See, e.g., JAMES T. PATTERSON, *BROWN V. BOARD OF EDUCATION: A CIVIL RIGHTS MILESTONE AND ITS TROUBLED LEGACY* 81–123 (2001) (describing the breakdown of legal order as southern states used violence and legislation to suspend the operation of the *Brown* decision).

¹³⁸ See BROWN-NAGIN, *supra* note 19, at 1–15 (using the Atlanta movement to illustrate how local activists acted as “law interpreters” and “law shapers” who defined the meaning of constitutional equality).

¹³⁹ See *id.* at 1–15 (describing King’s philosophy of “anyone can serve”); Klarman, *supra* note 82, at 7–50.

the Declaration of Independence, they were signing a promissory note to which every American was to fall heir.”¹⁴⁰ This move positioned civil rights activists not as constitutional outsiders but as its most faithful claimants, insisting that constitutional meaning be measured against lived exclusion.¹⁴¹ In this sense, Black Americans again occupied a paradoxical position—formally marginalized from legal authority yet among the most incisive interpreters of constitutional promise, revealing what might best be understood as a “hidden transcript” of constitutional meaning that challenges dominant interpretations while maintaining constitutional fidelity.¹⁴²

King’s “Letter from Birmingham Jail” sharpened this interpretive stance at the height of the rupture.¹⁴³ Writing against claims that protest was untimely, King invoked the Fourteenth Amendment to expose the moral incoherence of constitutional patience in the face of sustained injustice: “We have waited for more than 340 years for our constitutional and God-given rights.”¹⁴⁴ His distinction between just and unjust laws operates less as doctrinal analysis than as interpretive critique of positive law, revealing constitutional meaning through moral and rhetorical argument.¹⁴⁵ In James Boyd White’s terms, the letter exemplifies the “rhetorical structure of the law”—language that forms political community by rearticulating shared constitutional commitments.¹⁴⁶ It also reflects paideic interpretation, through which constitutional meaning is taught, contested, and renewed through principled resistance.¹⁴⁷

Movement lawyering during this period reflected comparable interpretive sophistication.¹⁴⁸ The NAACP Legal Defense Fund’s (LDF) litigation strategy treated *Brown* not as a revolutionary departure but as a

¹⁴⁰ MARTIN LUTHER KING JR., *I Have a Dream*, in *A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR.* 81, 85 (Clayborne Carson & Kris Shepard eds., 2001).

¹⁴¹ See GARY S. SELBY, *MARTIN LUTHER KING AND THE RHETORIC OF FREEDOM: THE EXODUS NARRATIVE IN AMERICA’S STRUGGLE FOR CIVIL RIGHTS* 91–114 (2008).

¹⁴² See Toussaint, *supra* note 27, at 164 (defining the “hidden transcript” as the unacknowledged legal texts and contributions produced by silenced communities).

¹⁴³ MARTIN LUTHER KING, JR., *Letter from Birmingham Jail*, in *WHY WE CAN’T WAIT* 77 (1964).

¹⁴⁴ KING, *supra* note 140, at 82.

¹⁴⁵ See Anthony E. Cook, *The Spiritual Movement Towards Justice*, 92 U. ILL. L. REV. 1007, 1008–35 (1993).

¹⁴⁶ WHITE, *supra* note 25, at 231–74 (“The rhetorical structure of the law makes a place for each party and defines a relation between them by establishing the ways they may talk; in doing this it suggests a conception of justice as equality . . .”).

¹⁴⁷ Cover, *supra* note 28, at 12–18 (discussing paideic versus imperial interpretation).

¹⁴⁸ Brief for Appellants at 4–15, *Brown v. Board of Education*, 347 U.S. 483 (1954) (No. 1) (framing *Brown* as a recovery of the Amendment’s egalitarian promise rather than a constitutional departure).

recovery of the Fourteenth Amendment's original egalitarian promise.¹⁴⁹ Through carefully constructed arguments, LDF attorneys framed segregation as a constitutional deviation rather than an accepted norm.¹⁵⁰ Subsequent cases, including *Boynton v. Virginia*, extended this approach, using existing constitutional provisions to dismantle segregation's legal architecture from within.¹⁵¹

At the same time, constitutional interpretation extended well beyond courts and briefs. Grassroots activists deliberately mobilized constitutional language and symbolism to situate protest within the nation's foundational commitments. Civil rights protesters explicitly framed their actions in constitutional terms: Sit-in participants invoked the Fourteenth Amendment's Equal Protection Clause when demanding service at lunch counters,¹⁵² Freedom Riders cited Supreme Court decisions protecting interstate commerce when challenging segregated travel,¹⁵³ and Birmingham campaign leaders, including Martin Luther King Jr., invoked First Amendment protections of assembly and petition to justify their marches and demonstrations.¹⁵⁴ These practices treated constitutional meaning as something enacted and claimed in public space, not merely announced by institutions.

For a brief period, these efforts produced moments of recognition that echoed Du Bois's vision of temporary equality. Constitutional principles appeared capable of transcending racial hierarchy, at least provisionally. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 marked the comet's peak—federal interventions that disrupted

¹⁴⁹ See generally MARK TUSHNET, *THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925–1950* (2005) (documenting how NAACP lawyers developed carefully constructed arguments that incrementally built the doctrinal foundation for challenging segregation's constitutional legitimacy).

¹⁵⁰ Brief for Appellants at 4–15, *Brown v. Board of Education*, 347 U.S. 483 (1954) (No. 1) (arguing that racial segregation in public schools violated the Fourteenth Amendment's equal protection guarantee by stigmatizing Black children and denying them equal educational opportunity, and contending that the “separate but equal” doctrine had normalized a constitutional deviation that the Fourteenth Amendment's text and purpose prohibited).

¹⁵¹ *Boynton v. Virginia*, 364 U.S. 454, 454 (1960).

¹⁵² See WILLIAM H. CHAFE, *CIVILITIES AND CIVIL RIGHTS: GREENSBORO, NORTH CAROLINA, AND THE BLACK STRUGGLE FOR FREEDOM* 71–98 (1981) (documenting how sit-in participants invoked Fourteenth Amendment principles); Klarman, *supra* note 82, at 59.

¹⁵³ See RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE* 92–95 (2006) (explaining how Freedom Riders explicitly invoked Supreme Court Commerce Clause jurisprudence).

¹⁵⁴ See KING, *supra* note 143, at 83 (“We have waited for more than 340 years for our constitutional and God-given rights.”); Dawn C. Nunziato, *First Amendment Protections for “Good Trouble,”* 72 EMORY L.J. 1187, 1191 (2023) (discussing how civil rights activists shaped First Amendment doctrines applying to protest).

settled practices and created space for more substantive equality.¹⁵⁵ But, as in Du Bois's narrative, restoration followed rupture. Resistance to desegregation, the retrenchment of federal enforcement, and the rise of colorblind constitutionalism together reasserted hierarchy under the guise of neutrality.¹⁵⁶ Supreme Court decisions such as *Milliken v. Bradley* and *Washington v. Davis* signaled a retreat from robust equality claims, initiating a prolonged period of constitutional restoration.¹⁵⁷

Colorblind constitutionalism proved especially durable because it framed restoration as fidelity rather than retreat.¹⁵⁸ By prohibiting explicit racial classifications while disregarding structural inequality, it preserved racial hierarchy through interpretation rather than amendment.¹⁵⁹ In doing so, it revealed how constitutional meaning is produced not only through text and doctrine but through cultural assumptions that render inequality ordinary and inevitable.¹⁶⁰ The figure of the Black racial subject—shaped by historical narratives and social practices—continued to structure legal outcomes even as formal constitutional language disavowed racial distinction.¹⁶¹

¹⁵⁵ Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241; Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437; see HUGH DAVIS GRAHAM, *THE CIVIL RIGHTS ERA: ORIGINS AND DEVELOPMENT OF NATIONAL POLICY, 1960–1972*, at 125–75 (1990).

¹⁵⁶ On massive resistance, see generally MATTHEW D. LASSITER, *THE SILENT MAJORITY: SUBURBAN POLITICS IN THE SUNBELT SOUTH* (2006) (examining how White suburban resistance to desegregation consolidated racial hierarchy through ostensibly neutral political and legal mechanisms rather than the explicit racial exclusion). On colorblind constitutionalism, see generally Gotanda, *supra* note 97 (arguing that colorblind constitutional interpretation preserves racial hierarchy by prohibiting explicit racial classifications while disregarding structural inequality, framing restoration as fidelity to constitutional neutrality rather than retreat from equality). On enforcement rollback, see generally KLARMAN, *supra* note 14 (documenting how federal enforcement of civil rights guarantees was systematically retrenched following Civil Rights Act, enabling the restoration of racial hierarchy under formally neutral constitutional frameworks).

¹⁵⁷ *Milliken v. Bradley*, 418 U.S. 717, 782 (1974) (holding that federal courts cannot impose multidistrict desegregation remedies across city); *Washington v. Davis*, 426 U.S. 229, 239 (1976) (holding that a law having a racially disproportionate impact does not violate the Equal Protection Clause).

¹⁵⁸ See Siegel, *supra* note 16, at 1347 (arguing that originalism and colorblindness have functioned as legal and political strategies that use the language of constitutional restoration to rally opposition to civil rights gains, reframing retrenchment as fidelity to constitutional principle).

¹⁵⁹ See Reva B. Siegel, *Discrimination in the Eyes of the Law: How “Color Blindness” Discourse Disrupts and Rationalizes Social Stratification*, 88 CALIF. L. REV. 77, 78 (2000) (arguing that color blindness serves as a symbolic claim of neutrality that often operates to justify existing social hierarchies).

¹⁶⁰ See Toussaint, *supra* note 27, at 157–58.

¹⁶¹ See Lawrence, *supra* note 24, at 317–88 (arguing that unconscious racism embedded in cultural narratives and social practices continues to structure legal outcomes even when formal constitutional doctrine disavows explicit racial classification); Crenshaw, *supra* note 103, at 1331–87 (examining how antidiscrimination law's formal neutrality preserves racial

C. *The Contemporary Comet: 2020 and the Fragility of Constitutional Progress*

The pattern established during the civil rights era—rupture, possibility, restoration—would repeat itself in the twenty-first century. The events of 2020 represent the most recent comet cycle, demonstrating how the pattern Du Bois dramatized continues to shape contemporary constitutional development.¹⁶² Pre-comet normalcy was characterized by colorblind racism as the dominant constitutional framework—a system that formally acknowledged constitutional equality while systematically maintaining racial hierarchy through facially neutral policies and practices.¹⁶³ Within this framework, police violence against Black Americans had become normalized, treated as individual aberrations rather than systemic constitutional violations.¹⁶⁴

George Floyd's murder produced a rupture that temporarily unsettled that constitutional order.¹⁶⁵ The video of Derek Chauvin kneeling on Floyd's neck for more than nine minutes functioned as a constitutional shock, laying bare the distance between constitutional promises and lived realities.¹⁶⁶ Like the comet's toxic gases in Du Bois's

hierarchy by refusing to account for the cultural and social practices through which racial subordination operates); Toussaint, *supra* note 27, at 159–60.

¹⁶² See VICTOR RAY, *ON CRITICAL RACE THEORY: WHY IT MATTERS & WHY YOU SHOULD CARE* 130–45 (2022); Jamillah Williams, Naomi Mezey & Lisa Singh, *#BlackLivesMatter: From Protest to Policy*, 28 *WM. & MARY J. RACE GENDER & SOC. JUST.* 103, 119–45 (2021) (describing legal and policy change toward racial justice resulting from the 2020 protests online and on the ground). See generally KEEANGA-YAMAHTTA TAYLOR, *FROM #BLACKLIVESMATTER TO BLACK LIBERATION* (2016) (examining the recurring pattern of Black protest movements generating moments of constitutional rupture that briefly unsettle racial hierarchy before restoration reasserts itself, providing the analytical framework through which the 2020 moment can be understood as the latest iteration of this cycle).

¹⁶³ See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA* 25–52 (5th ed. 2017).

¹⁶⁴ See PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* 1–25 (2017) (arguing that the Supreme Court prevents challenges to systemic police violence by treating lethal force as a series of individual incidents); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 95–136 (2010) (arguing that the Supreme Court effectively immunized the justice system by demanding proof of conscious bias in each specific case). See generally DEVON W. CARBADO, *UNREASONABLE: BLACK LIVES, POLICE POWER, AND THE FOURTH AMENDMENT* (2022) (documenting the ways in which Fourth Amendment jurisprudence significantly expanded police power, justifying systematic police violence against Black Americans).

¹⁶⁵ See WESLEY LOWERY, *AMERICAN WHITELASH: A CHANGING NATION AND THE COST OF PROGRESS* 1–27 (2023) (documenting the relentless cycle of racial violence and political backlash that follows moments of civil rights progress in America, examining how Trayvon Martin's murder and the subsequent Black Lives Matter protests generated an organized white supremacist and political response that sought to restore the racial status quo).

¹⁶⁶ See *State v. Chauvin*, 955 N.W.2d 684 (Minn. Ct. App. 2021); see RADLEY BALKO, *RISE OF THE WARRIOR COP: THE MILITARIZATION OF AMERICA'S POLICE FORCES* 337–61 (2013).

story, Floyd's death created a moment of constitutional crisis in which previously unthinkable changes suddenly appeared possible.

The racial reckoning of 2020 resembled the moment of recognition between Jim and Julia.¹⁶⁷ Corporate institutions adopted diversity initiatives, police departments announced reform efforts, and political leaders who had long defended law enforcement began to acknowledge systemic racism.¹⁶⁸ Protest reopened constitutional questions that had been marginalized during ordinary constitutional time, creating space for sustained public engagement with police violence, structural racism, and the constitutional dimensions of state power.¹⁶⁹

Black Lives Matter ranked among the most sophisticated constitutional interpreter of this rupture moment.¹⁷⁰ The Movement for Black Lives policy platform articulated constitutional arguments that both invoked and challenged prevailing constitutional doctrine.¹⁷¹ Its call to "End the War on Black People" framed routine police practices as Fourth Amendment violations, arguing that constitutional protections against unreasonable searches and seizures have been rendered meaningless in communities of color.¹⁷² Rather than rejecting the Constitution, the platform demanded its proper enforcement.¹⁷³ The movement's constitutional discourse exemplifies how Black culture consistently challenges the limitations of liberal legalism while advancing legal reform through what can be understood as "cultural-legal" analysis that blends lived experience with constitutional critique.¹⁷⁴

This mode of constitutional critique reflects what Reynaldo Anderson and Charles E. Jones describe as Afrofuturism's critical methodology: combining speculative imagination with lived experience to challenge dominant narratives and envision liberatory alternatives.¹⁷⁵

¹⁶⁷ Du Bois, *supra* note 3, at 267–69.

¹⁶⁸ See RAY, *supra* note 162, at 130–45; Williams, Mezey & Singh, *supra* note 162, at 128–42 (discussing lawmakers' efforts to reform police departments in the wake of the Black Lives Matter movement).

¹⁶⁹ See TAYLOR, *supra* note 162, at 215–34; RAY, *supra* note 162, at 130–45; Williams, Mezey & Singh, *supra* note 162, at 115–30.

¹⁷⁰ See PATRISSE KHAN-CULLORS, *WHEN THEY CALL YOU A TERRORIST: A BLACK LIVES MATTER MEMOIR* 189–215 (2018) (chronicling the Black Lives Matter movement's responses to social moments).

¹⁷¹ *Vision for Black Lives*, MOVEMENT 4 BLACK LIVES (2016), <https://m4bl.org/policy-platforms> [<https://perma.cc/8G3X-HAGK>].

¹⁷² *Id.*

¹⁷³ See Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U.L. REV. 405 (2018).

¹⁷⁴ See Toussaint, *supra* note 27, at 157–59 (describing how cultural-legal studies could unravel dynamics that lead to broader cultural narratives and racialization, exposing how "law operates in lived experiences" and a "deeper understanding of how law is culturally produced and interpreted").

¹⁷⁵ Anderson & Jones, *supra* note 39, at 9–12.

Black Lives Matter's platform operates within the Afrofuturist tradition by refusing to accept present constitutional arrangements as inevitable, instead projecting alternative futures where Fourth Amendment protections and equal protection guarantees function meaningfully for Black communities. Like Du Bois's comet, the movement uses the rupture of 2020 to make visible constitutional possibilities typically obscured during periods of normalcy.

The movement's arguments also displayed the jurisgenerative power characteristic of earlier comet moments. Demands to limit qualified immunity were framed as constitutional correctives rather than extra-constitutional policy preferences.¹⁷⁶ Calls for reparations similarly invoked the Fourteenth Amendment's guarantees of equal protection, positioning reparative justice as a constitutional response to state violence and racialized deprivation rather than a departure from constitutional principle.¹⁷⁷ Activists deliberately situated protest within constitutional frameworks, echoing the strategies of earlier movements. Testifying before Congress, Philonise Floyd asked: "George wasn't hurting anyone that day. He didn't deserve to die over twenty dollars. I am asking you, is that what a Black man's life is worth? Twenty dollars?"¹⁷⁸ The testimony implicitly invoked constitutional limits on punishment and state violence, recasting police killing as a constitutional failure rather than a policy dispute.¹⁷⁹

The literary parallel to Du Bois's story is evident in how the 2020 moment created temporary possibilities for constitutional recognition.

¹⁷⁶ See generally William Baude, *Is Qualified Immunity Unlawful?*, 106 CALIF. L. REV. 45 (2018) (describing qualified immunity as inconsistent with "[t]he Law of Interpretation" and lacking a legal basis); Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 11 (2017) ("[Q]ualified immunity doctrine has been roundly criticized as incoherent, illogical, and overly protective of government officials who act unconstitutionally and in bad faith.").

¹⁷⁷ See, e.g., Zinaida Miller, *The Injustices of Time: Rights, Race, Redistribution, and Responsibility*, 52 COLUM. HUM. RTS. L. REV. 647 (2021) (analyzing how legal and political actors invoke temporal frameworks of past violence, present inequality, and future redistribution in debates around race and reparations); Brando Simeo Starkey, *Why the Black Lives Matter Movement Should Claim the 14th Amendment*, ANDSCAPE (July 30, 2020), <https://andscape.com/features/why-the-black-lives-matter-movement-should-claim-the-14th-amendment> [<https://perma.cc/U59S-S63K>] (arguing that the movement must claim the Equal Protection Clause to transform the Constitution into an instrument of racial justice).

¹⁷⁸ *Police Accountability: Hearing Before the H. Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the Comm. on the Judiciary*, 116th CONG. 2 (2020) (statement of Philonise Floyd).

¹⁷⁹ U.S. CONST. amend. VIII. On Eighth Amendment and police violence, see Rachel A. Harmon, *The Problem of Policing*, 110 MICH. L. REV. 761, 761–80 (2012) (arguing that existing constitutional doctrine—including Eighth Amendment limits on punishment and Fourth Amendment constraints on unreasonable force—fails to adequately regulate routine police conduct, leaving a structural gap between constitutional promises of protection from state violence and the lived reality of over-policed communities).

Like Julia's admission that "your people were not my people . . . but today,"¹⁸⁰ the racial reckoning created space—however briefly—for White institutions to acknowledge Black constitutional claims. Corporate statements, police reform debates, and political rhetoric about systemic racism reflected moments in which constitutional principles appeared capable of transcending racial hierarchy.¹⁸¹ Yet restoration followed with familiar force. Backlash against diversity initiatives, attacks on critical race theory, and the rollback of police reform efforts all functioned as mechanisms of constitutional restoration, preserving racial hierarchy while formally reaffirming constitutional equality.¹⁸² The Supreme Court's decision in *Students for Fair Admissions v. Harvard College*, which dismantled affirmative action, exemplifies how constitutional interpretation can restore hierarchy through claims of constitutional fidelity.¹⁸³

The violence of this restoration mirrors the crowd's response in Du Bois's story. When Jim emerges after rescuing Julia, the crowd responds: "'A White girl and a nigger—there she goes.' 'A nigger? Where is he? Let's lynch the damned—' 'Shut up—he's all right—he saved her.' 'Saved hell! He had no business—.'"¹⁸⁴ Even heroic action cannot legitimize Black presence in White spaces. The near-lynching reveals that restoration requires not only institutional reassertion but the threat of violence to enforce racial boundaries. Similarly, contemporary backlash after the 2020 protests followed the same pattern, combining legal retrenchment with aggressive policing of protest and legislative efforts to criminalize tactics long associated with Black political resistance.

The story's final image reveals what constitutional "normalcy" actually meant for Jim—and what it continues to mean for Black

¹⁸⁰ Du Bois, *supra* note 3, at 268.

¹⁸¹ See KHIARA M. BRIDGES, *CRITICAL RACE THEORY: A PRIMER* 145–70 (2019) (defining structural/institutional racism while noting criticisms that the term, since its inception in the civil rights era, has not been fully defined and remains more of a "political slogan" than anything else); Williams, Mezey & Singh, *supra* note 162 (arguing that the digital Black Lives Matter movement created a broader cultural shift in the baseline understanding of inequality and drove legal and political change in 2020).

¹⁸² See Leah M. Watson, *The Anti-"Critical Race Theory" Campaign – Classroom Censorship and Racial Backlash by Another Name*, 58 HARV. C.R.-C.L. L. REV. 487 (2023); Danielle M. Conway, *The Assault on Critical Race Theory as Pretext for Populist Backlash on Higher Education*, 66 ST. LOUIS U. L.J. 707 (2022).

¹⁸³ *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023); see Devon W. Carbado & Russell K. Robinson, *SFFA: Bakke's Chickens Coming Home to Roost*, 113 CALIF. L. REV. 1031, 1057–64 (2025) (analyzing how Chief Justice Roberts interpreted *Bakke* and Equal Protection jurisprudence to effectively end affirmative action); April Shaw, *How Students for Fair Admissions v. Harvard College Fuels Structural Racism and Undercuts Efforts to Achieve Racial Health Equity*, 17 NE. U. L. REV. 75, 100–06 (2025) (arguing that the denial of structural racism begets further structural racism and that *SFFA* is an example of this paradigm).

¹⁸⁴ Du Bois, *supra* note 3, at 273.

Americans today. Standing beneath the crowd's gaze, Jim examines the money Julia's father has given him: "[S]lowly he put his other hand into his pocket and brought out a baby's filmy cap, and gazed again."¹⁸⁵ The detail, withheld until the story's end, reframes the entire narrative. The comet killed Jim's family, including his infant child. His journey through the empty city was not merely allegorical but a father's desperate search for the dead. When he returned to Harlem with "something film-like in his hand," we understand that he had found his baby's corpse.¹⁸⁶

Restoration does not return Jim to a neutral baseline; it returns him to grief. Julia's father survives. Her fiancé survives. Her world reconstitutes itself around her. Jim's does not. Constitutional order resumes without accounting for Black loss. That asymmetry reveals that constitutional normalcy is itself a form of violence—one that the temporary equality of the comet moment briefly suspended but could not transform. When a Black woman "with a baby's corpse in her arms" finally embraces Jim, the restoration is complete: Black people returned to Black suffering, White people returned to White prosperity, the constitutional hierarchy fully reasserted despite the comet's revolutionary potential.

This structure echoes in the aftermath of George Floyd's murder. Floyd's death, like the death of Jim's baby, exposed the catastrophe that ordinary constitutional order represents for Black Americans.¹⁸⁷ The brief moment of national reckoning—like the comet's temporary equality—made these constitutional injuries visible. But restoration has rendered them invisible again, relegating them to the private sphere of Black grief rather than the public sphere of constitutional concern. The comet's transformative moment has passed, and constitutional normalcy has reasserted itself with familiar patterns of hierarchy and exclusion.

This contemporary comet cycle demonstrates the enduring relevance of Du Bois's insights about constitutional temporality.¹⁸⁸ Rupture can expose contradiction and open space for transformation, but

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 262.

¹⁸⁷ See LOWERY, *supra* note 165, at 1–27 (documenting how Trayvon Martin's murder exposed the relentless cycle of racial violence and backlash that defines ordinary constitutional order for Black Americans); see also BUTLER, *supra* note 164, at 1–25 (examining how routine police violence against Black men reflects the structural normalization of state violence within existing constitutional arrangements).

¹⁸⁸ See Balkin, *supra* note 12, at 253–57 (identifying recurring cycles of constitutional time that structure how moments of crisis open and close constitutional possibilities). See generally Bruce Ackerman, *The Living Constitution*, 120 HARV. L. REV. 1737 (2007) (arguing that constitutional meaning evolves through sustained political mobilization during moments of crisis rather than formal amendment alone, making constitutional temporality central to understanding how transformative possibilities emerge and recede).

those possibilities remain fragile. Without sustained reconfiguration of constitutional power, restoration prevails. The constitutional comet still appears—rare, brilliant, unsettling—but its light fades, leaving hierarchy intact.

III

RADICAL COMETS AND ALTERNATIVE FRAMEWORKS

The recurring pattern of rupture and restoration traced across these historical moments raises a deeper question: Does the comet framework itself have limits? Du Bois's *The Comet* suggests that rupture and restoration may not exhaust the story—that true transformation might require a comet so powerful it suspends not only normal constitutional operations but the very structures that make restoration inevitable. In this sense, the story anticipates the Black radical tradition's skepticism about the limits of constitutional reform.

Section III.A explores the limits of constitutional engagement, examining how protest movements both uncover and generate constitutional meaning while confronting the possibility that constitutional discourse itself is structurally inadequate. Next, Section III.B turns to literary comets, showing how speculative fiction and other creative forms function as constitutional critique by imagining possibilities beyond doctrine. Section III.C then analyzes contemporary radical movements, focusing on free speech, protest, and Palestine solidarity as case studies in how alternative frameworks challenge constitutional boundaries while generating transnational constitutional discourse. Finally, Section III.D concludes by reflecting on the persistent comet pattern, showing how even radical challenges oscillate between rupture and restoration while nonetheless creating democratic experiments that expand our constitutional imagination.

Together, these sections reveal how radical comet frameworks illuminate both the fragility and the promise of constitutional transformation. They press us to ask whether genuine equality can be realized within existing constitutional structures—or whether the comet's true lesson is that alternative frameworks must be built beyond them.

A. *When Comets Don't Come: The Limits of Constitutional Reform*

Du Bois's *The Comet* expresses a deep pessimism about constitutional transformation that runs beyond the cyclical pattern of rupture and restoration.¹⁸⁹ The story suggests that genuine equality may

¹⁸⁹ See ZAMIR, *supra* note 47, at 213–30.

require not a temporary suspension of constitutional arrangements, but complete social transformation—a true radical reconstruction rather than incremental reform.¹⁹⁰ When Jim and Julia’s temporary equality dissolves the moment social structure returns, Du Bois offers a sharp critique of American constitutional possibility under existing arrangements. The lesson of the comet is clear: Within ordinary constitutional frameworks, racial hierarchy will inevitably reassert itself.¹⁹¹

This literary meditation on constitutional limits complements the more explicit theoretical interventions of the Black radical tradition.¹⁹² While the comet cycles traced in Part II show how constitutional interpretation can expand during moments of rupture, radical frameworks question whether constitutional discourse itself can ever escape its foundational constraints.¹⁹³ Literary scholars have identified *The Comet* as dramatizing Du Bois’s skepticism about whether meaningful equality can emerge within existing constitutional arrangements, even when the legal and social structures upholding racial hierarchy are temporarily suspended.¹⁹⁴

1. *Beyond Discovery: Constitutional Creation and Contestation*

Understanding these limits requires confronting a persistent tension in constitutional engagement: Does protest merely uncover preexisting constitutional truths, or does it actively create new constitutional meanings?¹⁹⁵ Framed this way, the question presents a false binary. As

¹⁹⁰ On complete transformation versus incremental reform, see CEDRIC J. ROBINSON, *BLACK MARXISM: THE MAKING OF THE BLACK RADICAL TRADITION* 177, 188–90 (1983) (arguing that Black liberation requires the creation of new forms of collective life that exceed constitutional categories of recognition).

¹⁹¹ See BELL, *supra* note 20, at 51–74 (depicting an allegorical conversation where, at the climax of that conversation, a character disclaims that “[i]t is simply too comforting for many white people to ignore the facts, to hearken to their fears, and say with real belief that blacks are demanding privileges they have not earned to remedy injustices they have not suffered”).

¹⁹² See, e.g., ROBIN D.G. KELLEY, *FREEDOM DREAMS: THE BLACK RADICAL IMAGINATION* 1–35 (2002).

¹⁹³ See, e.g., ANGELA Y. DAVIS, *ARE PRISONS OBSOLETE?* 20–35 (2003) (arguing that prisons are so structurally embedded in racial capitalism and social inequality that conventional legal reform—including constitutional litigation—cannot address their foundational injustice, requiring instead a radical reimagining of social responses to harm that exceeds constitutional categories); RUTH WILSON GILMORE, *GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA* 10–27 (2007) (analyzing how California’s prison expansion emerged from surpluses of land, labor, capital, and state capacity rather than rising crime rates, arguing that mass incarceration cannot be remedied through conventional legal reform that leaves underlying economic structures intact).

¹⁹⁴ See RUSERT, *supra* note 47, at 196–220; see also Elia, *supra* note 7, at 181 (noting that Julia remained racist even in the extraordinary circumstances of the story).

¹⁹⁵ See STEVEN D. SMITH, *LAW’S QUANDARY* 98–108 (2004) (examining the philosophical tension in legal positivism between the view that law exists as a pre-given set of truths awaiting discovery and the view that legal meaning is actively constructed through interpretive

Robert Cover argued through his concept of *jurisgenesis*, constitutional meaning is produced through interpretive struggle—through communities that contest, revise, and rearticulate legal norms in pursuit of legitimacy.¹⁹⁶

Black protest movements neither simply discover constitutional meaning nor invent it wholesale. Instead, they participate in ongoing processes of constitutional contestation, advancing interpretations grounded in text, history, and lived experience while challenging dominant readings. When abolitionists argued that the Constitution prohibited slavery, they were neither uncovering a hidden truth nor creating a new meaning *ex nihilo*. They were instead advancing an interpretation that aligned constitutional language with the moral and political principles the document claimed to embody, directly contesting proslavery constitutionalism.¹⁹⁷ That interpretation gained force not because it was abstractly “correct,” but because it exposed the incoherence of slavery with the Constitution’s professed commitments.

This framework helps explain why some movements ultimately turn away from constitutional engagement altogether.¹⁹⁸ When interpretive contestation proves insufficient, radical alternatives emerge. During the Black Power era, intellectual traditions developed that questioned not merely the interpretation of the Constitution but its capacity to deliver justice at all.¹⁹⁹ Thinkers such as Cedric Robinson articulated critiques that understood American constitutionalism not as a flawed yet redeemable project, but as a central mechanism of racial capitalism and colonial domination.²⁰⁰ Robinson’s account of the Black radical tradition offers an alternative political imagination—one oriented not toward recognition within existing structures, but toward the creation of new forms of collective life.²⁰¹

practice, a tension that underlies debates about whether social movements uncover or create constitutional meaning).

¹⁹⁶ Cover, *supra* note 28, at 11–19.

¹⁹⁷ See PAUL FINKELMAN, *AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY* 285–316 (1981) (arguing that on the eve of the Civil War, pro- and anti-slavery activists each employed and interpreted the Constitution in favor of their arguments).

¹⁹⁸ See PENIEL E. JOSEPH, *WAITING 'TIL THE MIDNIGHT HOUR: A NARRATIVE HISTORY OF BLACK POWER IN AMERICA* 1–33 (2006) (chronicling the development of Black political movements in the 1950s).

¹⁹⁹ See WILLIAM L. VAN DEBURG, *NEW DAY IN BABYLON: THE BLACK POWER MOVEMENT AND AMERICAN CULTURE, 1965–1975*, at 162–89 (1992) (describing the ideologies of Black Power).

²⁰⁰ ROBINSON, *supra* note 190, at 9–28 (mapping how European civilizations underwent political reformations without upsetting racial capitalism).

²⁰¹ *Id.* at 185–240 (providing an intellectual biography of W.E.B. Du Bois and C.L.R. James, and in turn giving a rich description of the formation of a new vision for economic and social relations from their historical writings); see also ROBIN D.G. KELLEY, *RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS* 1–16 (1994) (examining how Black working-class communities created spaces of cultural resistance and alternative political imagination outside formal movement structures).

In Robinson's formulation, liberation cannot be achieved through constitutional reform alone. It requires a reimagining of social relations, economic organization, and political belonging that exceeds constitutional categories.²⁰² The Black radical tradition thus represents not constitutional interpretation but constitutional transcendence.²⁰³ It exposes the limits of incrementalism by insisting that constitutional frameworks are not neutral vessels for justice, but structures deeply shaped by racial and economic power.²⁰⁴

2. *Addressing Constitutional Counterarguments*

Radical critiques of constitutional engagement often target the limits of legal reform as a vehicle for justice, particularly in the context of Black protest movements.²⁰⁵ These critiques are sometimes misread as claims that the Constitution itself is static or irrelevant. More accurately, they challenge the assumption that constitutional change reliably produces justice, rather than asserting that constitutional text is fixed or inert. Originalist scholars such as Justice Antonin Scalia and Robert Bork explicitly treat constitutional meaning as bounded by original public meaning at ratification.²⁰⁶ From that perspective, claims that protest movements can uncover constitutional truths beyond

²⁰² ROBINSON, *supra* note 190, at 241–88 (arguing that Black liberation requires new forms of collective life and social organization that exceed constitutional categories of recognition); *see also* Sylvia Wynter, *Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the Human, After Man, Its Overrepresentation—An Argument*, 3 CR: NEW CENTENNIAL REV. 257, 257–337 (2003) (arguing for a new understanding of the human that transcends the European colonial construction of “Man,” calling for a post-colonial political imagination that cannot be achieved through liberal constitutional reform alone).

²⁰³ *See* STEFANO HARNEY & FRED MOTEN, *THE UNDERCOMMONS: FUGITIVE PLANNING & BLACK STUDY* 1–31 (2013) (theorizing “the undercommons” as a space of fugitive planning and Black study existing beneath institutional structures, enabling alternative forms of collective life and democratic practice that resist absorption into mainstream political frameworks).

²⁰⁴ *See generally* Harris, *supra* note 61 (arguing that Whiteness has historically functioned as a legally protected property interest embedded within constitutional doctrine, demonstrating that constitutional frameworks reflect racial and economic power rather than neutral principles of justice, and that incremental reform within existing constitutional structures cannot address this foundational inequality without confronting the racial property interests the law protects).

²⁰⁵ *See, e.g.*, ROBINSON, *supra* note 190 (arguing that racial domination is foundational to Western constitutionalism rather than incidental to it, making legal reform an insufficient vehicle for Black liberation); BELL, *supra* note 20, at 51–74 (documenting how constitutional reform efforts have repeatedly failed to deliver justice for Black Americans, revealing the structural limits of legal reform as a vehicle for racial equality).

²⁰⁶ *See* ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 37–47 (1997) (explaining his constitutional interpretation methods and the strengths of originalism); ROBERT H. BORK, *The Original Understanding, in* THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW 143–85 (1990) (same).

that meaning appear illegitimate.²⁰⁷ Yet historical practice complicates this view.

Black activists have long engaged constitutional texts in ways that both honored their historical meaning and challenged the exclusions those texts had been used to enforce.²⁰⁸ Frederick Douglass's 1860 Glasgow speech offers a clear example. There, grounding his claim in close textual analysis, Douglass argued that "the first utterance of the instrument itself is gloriously on the side of liberty, and diametrically opposed to the thing called slavery in the United States."²⁰⁹ Similarly, as historian Martha Jones documents in *Birthright Citizens*, Black Americans actively participated in constitutional discourse from the Republic's earliest years, challenging narrow conceptions of citizenship and rights.²¹⁰ Black Americans' constitutional arguments were not radical inventions divorced from the text; they recovered and reinterpreted constitutional meanings present—though often obscured—in founding-era debates.²¹¹

Seen this way, radical critiques of constitutional engagement do not reject constitutional interpretation outright.²¹² Instead, they illuminate the ways that constitutional interpretation—whether by courts, scholars, or social movements—can both reveal and constrain justice, and how Black protest movements have historically navigated this tension, sometimes working within constitutional discourse, sometimes pushing beyond it, and sometimes refusing its terms altogether.²¹³

²⁰⁷ See, e.g., Richard F. Duncan, *Justice Scalia and the Rule of Law: Originalism vs. the Living Constitution*, 29 REGENT U. L. REV. 9 (2016) (explaining and lauding Scalia's disdain for constitutional evolution or the concept of a "living constitution").

²⁰⁸ See AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 138–62 (1998) (arguing that the Fourteenth Amendment fundamentally transformed the Bill of Rights by extending its protections against state governments, demonstrating how constitutional text can be engaged faithfully while simultaneously pressing against the exclusions embedded in its original application).

²⁰⁹ The American Constitution and the Slave: an Address Delivered in Glasgow, Scotland, on March 26, 1860, FREDERICK DOUGLASS PAPERS, <https://frederickdouglasspapersproject.com/s/digitaledition/item/10134> [<https://perma.cc/4J9C-NRJJ>]. See generally MYERS, *supra* note 116, at 91–92 (describing Douglass's close reading of constitutional text in the context of slavery).

²¹⁰ JONES, *supra* note 20, at 16–49 (giving the history of the *Freedom's Journal*, a Black Baltimorean publication which provided constitutional legal tools to challenge racism in the antebellum period).

²¹¹ See AKHIL REED AMAR, *AMERICA'S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY* 155–89 (2012) (arguing that constitutional meaning extends beyond the written text to include structural principles and practices present in founding-era debates, and that recovering these obscured meanings through principled interpretation is consistent with—rather than a departure from—fidelity to the constitutional text).

²¹² See H. Jefferson Powell, *The Original Understanding of Original Intent*, 98 HARV. L. REV. 885, 885–948 (1985) (discussing historical debates over interpretation).

²¹³ This history reveals a complex relationship between originalism and radical critique. Both originalists and radical critics may appear to treat the Constitution as bounded—but

B. *Literary Comets: Fiction as Constitutional Critique*

One way movements have pushed beyond conventional constitutional discourse is through creative expression—what Afrofuturist scholars recognize as central to the tradition’s liberatory project. *The Comet* offers a methodological model for thinking about constitutional alternatives that remain inaccessible to formal legal scholarship.²¹⁴ By turning to speculative fiction, Du Bois explores constitutional possibility through imagination rather than doctrine, using narrative to transcend the constraints of existing legal categories and precedents.²¹⁵ This exemplifies what Anderson and Jones characterize as Afrofuturism 2.0’s applied, transdisciplinary orientation toward imagining liberatory futures beyond dominant frameworks.²¹⁶

Du Bois’s method, as Alondra Nelson observes of Afrofuturist works more broadly, “excavate[s] and create[s] original narratives of identity, technology, and the future” while remaining “grounded in the histories of black communities, rather than seeking to sever all connections to them.”²¹⁷ The comet functions both as literal catastrophe and as a narrative device that suspends ordinary constitutional operations, allowing Du Bois to imagine alternative social arrangements once familiar legal structures disappear.²¹⁸

This literary method anticipates the ways protest movements have long used creative expression as a form of constitutional interpretation.²¹⁹ During moments of rupture, protest movements have relied on marches, songs, performances, and visual art to articulate constitutional

for different reasons. Originalists emphasize stability and textual fidelity; radical critics emphasize the limits of legal remedies within systems structured by racial domination. The divergence lies not in whether the Constitution has boundaries, but in what those boundaries signify. *See* BORK, *supra* note 213, at 1–20; RANDY E. BARNETT, *RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY* 89–130 (2004) (noting that because the Constitution was written, its meaning must remain fixed).

²¹⁴ *See* AUSTIN SARAT, *LAW IN THE LIBERAL ARTS* 1–25 (2004).

²¹⁵ *See* WHITE, *supra* note 25, at 257–66.

²¹⁶ *See* Anderson & Jones, *supra* note 39, at vi–vii (characterizing Afrofuturism 2.0 as a transdisciplinary pan-African social philosophy that expands earlier formulations to include religion, visual art, and philosophy, reflecting its growth as a global creative and critical phenomenon oriented toward Black liberation).

²¹⁷ Nelson, *supra* note 34, at 9.

²¹⁸ *See* Cover, *supra* note 28, at 4–11 (arguing that law operates within a “nomos”—a normative universe created through narrative and interpretation—and that legal meaning is generated through interpretive communities rather than institutional pronouncements alone, making literary imagination a legitimate source of constitutional meaning).

²¹⁹ *See* Forbath, *supra* note 21, at 3–4, 89–91 (arguing that protest constitutes an indispensable mode of constitutional interpretation through which excluded communities articulate constitutional visions outside formal institutional channels); *see also* White, *supra* note 11, at 434 (arguing that literary imagination functions as a generative rather than merely illustrative mode of legal meaning-making).

visions that exceed institutional channels.²²⁰ These practices reflect what Robert Cover described as *jurisgenerative* processes—the creation of constitutional meaning through interpretive communities rather than courts alone.²²¹

The abolitionist movement offers an early and sophisticated example of this approach.²²² Frederick Douglass's autobiographical narratives operated as constitutional texts in their own right, challenging prevailing legal definitions of personhood and citizenship.²²³ Harriet Beecher Stowe's *Uncle Tom's Cabin* likewise intervened in constitutional discourse through moral and emotional appeal, mobilizing constitutional claims that formal legal argument could not reach.²²⁴ These works did not merely illustrate constitutional principles; they actively reshaped constitutional meaning through narrative engagement.²²⁵

Creative constitutional interpretation remained central during the civil rights era. Freedom songs functioned as constitutional argument

²²⁰ See ROY, *supra* note 102, at 1–33 (demonstrating the relationship between folk music and the social movements of the twentieth century).

²²¹ Cover, *supra* note 28, at 11–19.

²²² See GREGG D. CRANE, RACE, CITIZENSHIP, AND LAW IN AMERICAN LITERATURE 56–130 (2002) (examining how nineteenth-century abolitionist writers engaged constitutional questions of personhood and citizenship through literary form, treating narrative as a constitutive site of legal meaning-making that exceeded the boundaries of formal doctrine).

²²³ FREDERICK DOUGLASS, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE (Anti-Slavery Off., 1845) (documenting the conditions of slavery through first-person testimony that challenged prevailing legal definitions of personhood and property, functioning as a counter-narrative to proslavery constitutional arguments by asserting Black humanity and subjecthood in direct tension with the law's treatment of enslaved people as chattel); see ROBERT S. LEVINE, MARTIN DELANY, FREDERICK DOUGLASS, AND THE POLITICS OF REPRESENTATIVE IDENTITY 89–130 (1997) (analyzing how Douglass's autobiographical writings constructed a politics of Black representative identity that pressed against legal definitions of citizenship and personhood, positioning his narrative as a claim to constitutional subjecthood that formal law denied).

²²⁴ HARRIET BEECHER STOWE, UNCLE TOM'S CABIN (John P. Jewett & Co., 1852) (deploying moral and emotional narrative to mobilize antislavery constitutional claims that formal legal argument could not reach, exposing the contradiction between the Constitution's professed commitments to liberty and justice and the legal regime of slavery). See generally THOMAS F. GOSSETT, UNCLE TOM'S CABIN AND AMERICAN CULTURE (1985) (examining how Stowe's novel intervened in public discourse about slavery by mobilizing moral and emotional arguments that exceeded the reach of formal legal debate, reshaping public understanding of slavery's constitutional legitimacy).

²²⁵ See generally BROOK THOMAS, CROSS-EXAMINATIONS OF LAW AND LITERATURE: COOPER, HAWTHORNE, STOWE, AND MELVILLE 141–78 (1987) (examining how nineteenth-century literary works by Cooper, Hawthorne, Stowe, and Melville actively engaged constitutional questions of personhood, citizenship, and rights, reshaping legal meaning through narrative form rather than merely illustrating existing doctrine); see also CRANE, *supra* note 222, at 47–65 (arguing that abolitionist writing by Stowe, Emerson, Douglass, and Sumner worked to redefine definitions of citizenship and justice).

set to music.²²⁶ Songs such as “We Shall Overcome” and “Precious Lord” articulated visions of equality and justice that resisted translation into legal language alone.²²⁷ The March on Washington itself operated as constitutional theater. Its choreography—from the Lincoln Memorial toward the Capitol—positioned civil rights activists as rightful inheritors of the constitutional tradition, advancing claims through embodied performance rather than textual analysis.²²⁸

Contemporary movements continue this tradition. Black Lives Matter employs social media, street art, and performance to contest interpretive authority and generate constitutional meaning in public space.²²⁹ Murals such as the “Say Their Names” wall paintings,²³⁰ installations like the Freedom Wall,²³¹ coordinated protest choreography,²³² and songs like Janelle Monáe’s *Hell You Talmbout*—which chants the names of Black men and women killed by state violence²³³—make constitutional claims about justice and equality that exceed the boundaries of formal legal discourse. Through hashtags, visual imagery, and collective performance, the movement advances constitutional arguments about police violence, systemic racism, and equal protection that formal legal discourse alone cannot contain.²³⁴

²²⁶ See, e.g., BERNICE JOHNSON REAGON, VOICES OF THE CIVIL RIGHTS MOVEMENT: BLACK AMERICAN FREEDOM SONGS 1960–1966 (Smithsonian Folkways Recordings 1980).

²²⁷ See *id.*; ROY, *supra* note 102, at 1–33 (arguing that freedom songs were embedded into the social relationships that drove the civil rights movement).

²²⁸ See LUCY G. BARBER, MARCHING ON WASHINGTON: THE FORGING OF AN AMERICAN POLITICAL TRADITION 168 (2002) (“The speakers also . . . continued to connect [the protest] to American history. Half of the leaders referred to what they say as the unfulfilled promise of Emancipation Proclamation . . . John Lewis declared the march part of an effort to complete the American [R]evolution of 1776.”).

²²⁹ See, e.g., Sean Flores, Comment, “*You Write in Cursive, I Write in Graffiti*”: How #BlackLivesMatter Reorients Social Movement Legal Theory, 67 UCLA L. REV. 1022, 1046–54 (2020) (describing the impact of social media in the Black Lives Matter movement).

²³⁰ Aileen Farshi, *Today in Street Art: Stacks Squares’ “Say Their Names” Memorializes Black Lives Lost*, ARTSATL (Jan. 22, 2021), <https://www.artsatl.org/today-in-street-art-stacks-squares-say-their-names-memorializes-black-lives-lost> [<https://perma.cc/7BRY-WL7C>].

²³¹ Katy Donoghue, *Say Their Names: A Public Art Memorial Project*, WHITEWALL.ART (Dec. 8, 2020), <https://www.whitewall.art/whitewaller/say-their-names-a-public-art-memorial-project> [<https://perma.cc/4FUE-2XYD>].

²³² Ashley Domingo Hendricks, *What Is Dance Activism?*, DAILY JSTOR (July 7, 2022), <https://daily.jstor.org/what-is-dance-activism> [<https://perma.cc/65RC-BZL5>].

²³³ Eric Torres, *Janelle Monáe and Wondaland Records Share Protest Song “Hell You Talmbout,”* PITCHFORK (Aug. 13, 2015), <https://www.pitchfork.com/news/60790-janelle-monae-and-wondaland-records-share-protest-song-hell-you-talmbout> [<https://perma.cc/ZS5Q-KQ92>].

²³⁴ See JACKSON, *supra* note 102, at 89–125 (2020) (providing examples of online hashtags and images being used to discuss and bring awareness to instances of police killings and the broader Black Lives Matter movement).

C. *Contemporary Radical Possibilities: Free Speech, Protest, and Palestine*

The comet framework helps illuminate contemporary movements that seek not constitutional reform but a more fundamental reimagining of political organization. Palestine solidarity movements on college campuses demonstrate this dynamic clearly. These movements invoke constitutional protections while simultaneously challenging the boundaries of acceptable political discourse and articulating transnational frameworks that exceed domestic constitutional categories. These movements resemble potential comet moments—ruptures that suspend ordinary institutional operations and open space for alternative arrangements.²³⁵ At the same time, they expose the countervailing institutional forces that work to restore constitutional normalcy and contain radical possibility.

Supreme Court doctrine offers familiar examples. In *Milliken v. Bradley* in 1974, the Court sharply limited metropolitan desegregation remedies, reinforcing district-bound structures that insulated racial inequality from systemic challenge.²³⁶ In the First Amendment context, decisions such as *Frisby v. Schultz* in 1988 upheld restrictions on protest activity outside private homes, illustrating how legal doctrine polices the spatial and tactical boundaries of dissent.²³⁷

Rather than simply rejecting constitutional discourse outright, many contemporary movements operate as unrecognized members of the constitutional textual community, articulating constitutional meanings that formal institutions refuse to hear.²³⁸ Even radical critiques frequently emerge precisely because movements take constitutional promises seriously, pressing them to their limits and revealing the inadequacy of conventional reform through sustained engagement with constitutional principles.

1. *Free Speech and Its Contestations*

The contemporary protest landscape provides especially fertile ground for examining the tension between constitutional continuity and rupture. Nowhere is this more visible than in debates over free speech surrounding protests related to Palestine and Gaza.²³⁹ Recent campus

²³⁵ See MARIAME KABA, *WE DO THIS 'TIL WE FREE US: ABOLITIONIST ORGANIZING AND TRANSFORMING JUSTICE* 1–19 (2021) (arguing for the abolition of the prison-industrial complex).

²³⁶ *Milliken v. Bradley*, 418 U.S. 717 (1974).

²³⁷ *Frisby v. Schultz*, 487 U.S. 474 (1988).

²³⁸ See Toussaint, *supra* note 27, at 155–59.

²³⁹ See, e.g., Martha Rubin, *Free Speech Restrictions on College Campuses: When Maintaining the Status Quo Demands Complacency in the Genocide of Oppressed Peoples*, 30 *PUB. INT. L. REP.* 34 (2024).

demonstrations opposing Israel's military actions in Gaza have revived foundational questions about the scope and limits of First Amendment protection.²⁴⁰ These protests lay bare the complex interplay among constitutional text, institutional interpretation, and lived experience.²⁴¹ Although the First Amendment formally guarantees "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances," its application remains deeply contested—particularly where expression is politically controversial or associated with marginalized groups.²⁴²

Campus protests also exemplify how constitutional interpretation can be enacted through embodied action rather than textual analysis—what Butler describes as the performative power of political speech to constitute new social and legal meanings.²⁴³ When pro-Palestinian protesters occupy buildings or experiment with alternative forms of governance, they engage in what Robert Cover termed *paideic* constitutional interpretation—learning, teaching, and contesting constitutional meaning through lived practice.²⁴⁴ These actions simultaneously assert First Amendment rights and reimagine their scope, pressing against dominant interpretations that prioritize order and institutional convenience over substantive political expression.

Such movements inevitably encounter what Austin Sarat describes as law's violence—the point at which institutional authority responds to alternative constitutional visions with force rather than dialogue.²⁴⁵ Mass arrests at Columbia University and other campuses, along with suspensions and restrictive protest policies, are not neutral exercises of administrative authority. They reflect competing interpretations of constitutional meaning, enforced through institutional power.²⁴⁶ The

²⁴⁰ U.S. CONST. amend. I.; see Rubin, *supra* note 239 (detailing tensions between university discipline against student protestors and First Amendment rights on college campuses).

²⁴¹ See MARI J. MATSUDA, CHARLES R. LAWRENCE III, RICHARD DELGADO & KIMBERLÉ W. CRENSHAW, *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* 1–33 (1993).

²⁴² U.S. CONST. amend. I; see JEREMY WALDRON, *THE HARM IN HATE SPEECH* 105–06 (2012) (debating and defending the need for hate speech laws as a restriction on free speech because of the need to defend dignity and protect the good standing of marginalized members of society).

²⁴³ See generally JUDITH BUTLER, *EXCITABLE SPEECH: A POLITICS OF THE PERFORMATIVE* 1–42 (1997) (arguing that speech acts do not merely describe social reality but actively constitute it, and that political speech in particular performs and transforms the legal and social relations it addresses).

²⁴⁴ Cover, *supra* note 28, at 12–18.

²⁴⁵ Austin Sarat, *Violence, Representation, and Responsibility in Capital Trials: The View from the Jury*, 70 IND. L.J. 1103, 1109 n.43 (1995).

²⁴⁶ See ERWIN CHEMERINSKY & HOWARD GILLMAN, *FREE SPEECH ON CAMPUS* 89–125 (2017) (discussing tension between the Supreme Court's decisions limiting hate speech regulation and colleges and universities attempts to prohibit hate speech).

pattern is a familiar one: Moments of constitutional openness surface during crisis, only to close as institutions reassert hierarchy under the banner of procedural neutrality. As Du Bois observed, “the slave went free; stood for a brief moment in the sun; then moved back again toward slavery.”²⁴⁷ These cycles reflect an enduring struggle over whose constitutional vision will prevail, for, as Du Bois wrote, “the history of the American Negro is the history of this strife.”²⁴⁸

2. *Criminalization of Protest and Constitutional Contradiction*

The response to Gaza-related protests highlights enduring tensions between constitutional promise and constitutional practice. Since 2016, more than forty states have enacted legislation restricting protest activity, including enhanced penalties for blocking traffic, bans on campus encampments, and special protections shielding certain industries from protest activities.²⁴⁹ Many of these measures directly target tactics historically associated with Black protest movements and now deployed by pro-Palestinian activists.

These developments expose a central constitutional contradiction. Courts routinely affirm free speech rights in the abstract, even as legislative and executive actions increasingly constrain their practical exercise.²⁵⁰ This gap between formal recognition and material enforcement mirrors historical patterns in which Black protesters’ constitutional rights were acknowledged in principle but denied in practice.

In response, Palestinian rights activists have turned directly to constitutional argument, contending that anti-protest legislation violates not only the First Amendment but also due process guarantees when selectively enforced.²⁵¹ Their claims underscore the continued

²⁴⁷ W.E.B. DU BOIS, *BLACK RECONSTRUCTION* 30 (1935).

²⁴⁸ W.E.B. DU BOIS, *THE SOULS OF BLACK FOLK* 9 (1903).

²⁴⁹ See, e.g., Timothy Zick, *Public Protest and Civil Unrest*, 67 *ARIZ. L. REV.* 459 (2025) (examining recent state responses to protest and civil-unrest, including escalation of punitive laws); Allison M. Freedman, *Arresting Assembly: An Argument Against Expanding Criminally Punishable Protest*, 68 *VILL. L. REV.* 171 (2023) (discussing state legislative efforts to restrict protest).

²⁵⁰ See FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL ENQUIRY* 89–124 (1982) (discussing the distinction between covering and protecting First Amendment rights).

²⁵¹ See, e.g., Complaint at 18–23, *Rosenfeld et al. v. University of Colorado*, No. 1:2025-CV-00107 (D. Colo. Jan. 13, 2025), Dkt. No. 1 (alleging several First Amendment claims and Fourteenth Amendment Due Process claims against University of Colorado, Boulder for instituting a campus ban on pro-Palestine protestors); cf. *Yick Wo v. Hopkins*, 118 U.S. 356, 367–74 (1886) (finding selective enforcement of race-neutral law violative of the Fourteenth Amendment). See generally DAVID COLE, *NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM* 8–11, 27–55, 158–61 (1999) (arguing that the American criminal justice system applies systematically different standards to minority and low-income defendants, demonstrating how facially neutral laws are selectively enforced to

relevance of constitutional contestation as a mechanism for challenging institutional limits on dissent.

3. *Intersections with the Black Protest Tradition*

The connections between Palestinian solidarity movements and the Black protest tradition extend beyond tactical similarities to shared constitutional critiques.²⁵² Organizations such as Black Lives Matter have explicitly linked their constitutional claims to Palestinian solidarity, identifying common patterns of state violence and suppression of political dissent.²⁵³ As Robin D.G. Kelley documents, the Movement for Black Lives' 2016 policy platform explicitly linked Palestinian solidarity to domestic constitutional rights, arguing that anti-BDS legislation posed a direct threat to the constitutional right to free speech and protest.²⁵⁴

These intersections have generated hybrid constitutional arguments that draw from multiple protest traditions.²⁵⁵ When Atlanta police arrested student protesters at Emory University in April 2024, defense attorneys invoked both First Amendment precedents from the Civil Rights era, such as *Edwards v. South Carolina*, and more recent Fourth Amendment arguments developed in Black Lives Matter litigation challenging surveillance and arbitrary arrest.²⁵⁶

perpetuate racial inequality in violation of equal protection principles); Freedman, *supra* note 249, at 185–211 (arguing against expanding criminally punishable protest activity and examining how anti-protest legislation selectively targets tactics historically associated with marginalized political movements, raising equal protection concerns).

²⁵² See ANGELA Y. DAVIS, FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT 4–33 (2016) (describing various conceptual connections between Black Power and Palestine liberation movements).

²⁵³ *Vision for Black Lives*, *supra* note 171; see, e.g., James R. Thomas, *The Intersection of Palestine with Ferguson, Missouri*, 55 J. ECUMENICAL STUD. 82 (2020) (comparing state-sponsored violence and oppression in Gaza with policing of protests in Ferguson, Missouri, and identifying parallels in the suppression of the right to free assembly, expression, and association).

²⁵⁴ Robin D.G. Kelley, *What Does Black Lives Matter Want?*, BOS. REV. (Aug. 17, 2016), <https://www.bostonreview.net/articles/robin-d-g-kelley-movement-black-lives-vision> [<https://perma.cc/N7K8-V9DW>] (analyzing the M4BL 2016 platform's linkage of Palestinian solidarity to domestic constitutional rights, including its argument that anti-BDS legislation poses a direct threat to First Amendment free speech and protest rights); see also Hamid Dabashi, *Black Lives Matter and Palestine: A Historic Alliance*, AL JAZEERA (Sep. 6, 2016), <https://www.aljazeera.com/opinions/2016/9/6/black-lives-matter-and-palestine-a-historic-alliance> [<https://perma.cc/YR93-6P23>] (discussing the M4BL platform's explicit linkage of Palestinian solidarity to constitutional free speech and protest rights).

²⁵⁵ See Kelley, *supra* note 254; DAVIS, *supra* note 252, at 1–22.

²⁵⁶ Timothy Pratt, “*Like a War Zone*”: *Emory University Grapples with Fallout from Police Response to Protest*, GUARDIAN (Apr. 27, 2024), <https://www.theguardian.com/us-news/2024/apr/27/emory-university-georgia-police-campus-protests> [<https://perma.cc/563K-AVY7>]; *Edwards v. South Carolina*, 372 U.S. 229 (1963). On BLM Fourth Amendment litigation, see

The constitutional discourse surrounding these movements reflects the same dialectic of continuity and rupture traced throughout this Essay. Protesters invoke existing constitutional protections even as they challenge their narrow application, demanding that constitutional commitments be realized rather than merely proclaimed.²⁵⁷

4. *Transnational Constitutional Discourse*

Perhaps the most consequential development in contemporary protest movements is their increasingly transnational orientation, which challenges traditional boundaries of constitutional discourse.²⁵⁸ Pro-Palestinian activists link domestic claims about free speech and equal protection to international human rights frameworks concerning self-determination, genocide, and apartheid.²⁵⁹ This transnational framing raises profound questions about the relationship between domestic constitutional principles and international norms.²⁶⁰

The movement's invocation of international law alongside constitutional rights represents a sophisticated development of earlier approaches.²⁶¹ Civil rights activists similarly appealed to international human rights frameworks, with W.E.B. Du Bois and the NAACP submitting "An Appeal to the World" to the United Nations in 1947, arguing that U.S. racial segregation violated international human rights standards.²⁶²

Contemporary movements extend this strategy by insisting that fidelity to constitutional principles requires engagement with international legal obligations.²⁶³ This transnational constitutional discourse embodies

Rachel A. Harmon, *Federal Programs and the Real Costs of Policing*, 90 N.Y.U. L. REV. 870, 870–931 (2015).

²⁵⁷ See Forbath, *supra* note 21, at 23–25, 89–91.

²⁵⁸ See SIDNEY TARROW, *THE NEW TRANSNATIONAL ACTIVISM* 1–28 (2005).

²⁵⁹ See NOURA ERAKAT, *JUSTICE FOR SOME: LAW AND THE QUESTION OF PALESTINE* 1–33 (2019) (analyzing how international legal forums and instruments have been strategically deployed in the Palestinian struggle for liberation); Kelley, *supra* note 254 (analyzing the M4BL platform's linkage of Palestinian solidarity to domestic constitutional rights, including its argument that anti-BDS legislation poses a direct threat to First Amendment free speech and protest rights).

²⁶⁰ See Harold Hongju Koh, *Jefferson Memorial Lecture Transnational Legal Process After September 11*, 22 BERKELEY J. INT'L L. 337 (2004).

²⁶¹ See CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS, 1944–1955*, at 1–33 (2003).

²⁶² W.E.B. DU BOIS, *AN APPEAL TO THE WORLD: A STATEMENT ON THE DENIAL OF HUMAN RIGHTS TO MINORITIES IN THE CASE OF CITIZENS OF NEGRO DESCENT IN THE UNITED STATES OF AMERICA AND AN APPEAL TO THE UNITED NATIONS FOR REDRESS* (1947); see ANDERSON, *supra* note 261, at 58–97 (explaining the journey civil rights activists took with the United Nations to create and publish "An Appeal to the World").

²⁶³ See PETER J. SPIRO, *BEYOND CITIZENSHIP: AMERICAN IDENTITY AFTER GLOBALIZATION* 89–125 (2008) (explaining that as democratic constitutional values become embraced globally, global forms of governance gain normative authority).

both continuity and rupture: continuity in its reliance on enduring constitutional ideals, and rupture in its challenge to purely domestic accounts of constitutional meaning.²⁶⁴

D. *The Persistent Comet Pattern*

Campus movements for Palestinian solidarity illustrate how contemporary struggles can generate constitutional ruptures that exceed traditional frameworks.²⁶⁵ When students occupy buildings, establish encampments, and disrupt ordinary university operations, they temporarily suspend institutional authority and create space for alternative forms of collective decisionmaking.²⁶⁶ These actions challenge not only discrete policies but the deeper structure of institutional governance itself, advancing demands for more democratic and accountable forms of organization.²⁶⁷

The institutional response to Palestine solidarity movements, however, reveals the dynamics of restoration that Du Bois dramatized in *The Comet*.²⁶⁸ University administrations, law enforcement, and political authorities move quickly to reassert “order” through suspensions, arrests, and policy revisions designed to restrict future protest.²⁶⁹ This process of restoration demonstrates how institutions absorb radical challenges and neutralize their transformative potential, preserving existing power arrangements while appearing to respond to legitimate grievances.²⁷⁰

²⁶⁴ See Neil Walker, *The Idea of Constitutional Pluralism*, 65 MOD. L. REV. 317 (2002).

²⁶⁵ See HARNEY & MOTEN, *supra* note 203, at 29–39 (theorizing modes of collective study and planning that operate beneath institutional structures, creating spaces for alternative democratic practice and collective governance that resist absorption into mainstream political frameworks).

²⁶⁶ See generally Zick, *supra* note 249 (analyzing recent state and municipal efforts to restrict public protest through heightened penalties, expanded police authority, and new regulatory barriers); JAMES C. SCOTT, *DOMINATION AND THE ARTS OF RESISTANCE: HIDDEN TRANSCRIPTS* 1–54 (1990) (exploring how subordinate groups express resistance through concealed narratives that operate alongside public obedience).

²⁶⁷ See generally Tabatha Abu El-Haj, *A Right of Peaceable Assembly*, 125 COLUM. L. REV. 1049 (2025) (arguing that the Court’s focus on speech in First Amendment law has eclipsed the distinct constitutional value of collective assembly).

²⁶⁸ DU BOIS, *supra* note 3, at 270–74.

²⁶⁹ See, e.g., Sunita Patel, *Policing Campus Protest*, 125 COLUM. L. REV. 1277 (2025); see KLEIN, *supra* note 65, at 1–25.

²⁷⁰ See FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* 1–40 (1977) (arguing that movements achieve leverage through disruptive defiance but lose it when incorporated into institutional channels, as elites respond with concessions calibrated to restore order rather than redistribute power).

Yet these movements also reveal the comet's democratic promise.²⁷¹ During moments of occupation, students experiment with alternative forms of governance that exceed established institutional categories.²⁷² They create collective decisionmaking structures, forge new solidarities, and articulate visions of democratic participation that cannot be reduced to liberal administrative frameworks.²⁷³ Even when fleeting, these experiments in collective life function as genuine constitutional alternatives rather than symbolic protest alone.

Seen through the comet framework, constitutional transformation requires more than episodic institutional reform. It depends on sustained struggle to create, preserve, and reactivate alternative forms of collective life.²⁷⁴ Contemporary campus movements demonstrate this possibility by generating new practices of solidarity, participation, and democratic deliberation that reach beyond existing constitutional frameworks. Their temporary nature does not negate their significance; instead, it reveals the fragility of constitutional openness under conditions of institutional power.

The utility of the comet framework extends beyond movements centered on racial justice or Palestine solidarity. Climate activism has similarly sought to generate constitutional rupture around environmental degradation, while immigration rights movements have challenged constitutional boundaries of membership and belonging.²⁷⁵ These parallel struggles underscore the framework's broader relevance, even as they reveal the distinct obstacles different movements face in sustaining transformative momentum.

Taken together, these contemporary struggles highlight both the comet's transformative potential and its inherent limits. Moments

²⁷¹ See, e.g., MARINA A. SITRIN, *EVERYDAY REVOLUTIONS: HORIZONTALISM AND AUTONOMY IN ARGENTINA* 1–33 (2012) (showing Argentina as an example).

²⁷² See DAVID GRAEBER, *THE DEMOCRACY PROJECT: A HISTORY, A CRISIS, A MOVEMENT* 89–125 (2013) (arguing that advanced industrial society neutralizes radical opposition by absorbing challenges into existing institutional frameworks, foreclosing transformative possibilities while appearing to respond to legitimate grievances).

²⁷³ *Id.*; SITRIN, *supra* note 271, at 1–33; HARNEY & MOTEN, *supra* note 203, at 26–46.

²⁷⁴ See, e.g., PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 43–69 (Myra Bergman Ramos trans., Continuum 2005) (1970) (arguing that liberation from oppression is an ongoing praxis through which the oppressed transform the social relations that dehumanize them).

²⁷⁵ See, e.g., Benjamin T. Sharp, Note, *Stepping into the Breach: State Constitutions as a Vehicle for Advancing Rights-Based Climate Litigation*, 14 DUKE J. CONST. L. & PUB. POL'Y SIDEBAR 39 (2019). On climate activism, see generally NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE* (2014) (arguing that climate change requires fundamental transformation of existing economic and political structures rather than incremental reform, generating the kind of systemic challenge to existing constitutional arrangements that characterizes a constitutional comet moment). On immigration rights, see MAE M. NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* 1–26 (2004).

of rupture can open real space for alternative arrangements, but the forces of restoration remain resilient and adaptive. The lesson of the comet, however, is not despair. It is the recognition that constitutional transformation is an ongoing project rather than a single moment of breakthrough. Each comet moment creates possibilities that exceed existing frameworks, even when those possibilities are short-lived. The task is not to prevent restoration, but to remain prepared for the next rupture—to preserve alternative visions and practices that can expand when the next constitutional comet appears.²⁷⁶

CONCLUSION

These contemporary struggles demonstrate the comet framework's ongoing relevance and reveal both its analytical power and its limitations. More than a century after its publication, W.E.B. Du Bois's *The Comet* continues to illuminate the central tensions of American constitutional development. Through its three-part structure of normalcy, rupture, and restoration, the story offers a framework for understanding both the cyclical nature of constitutional change and the persistent gap between constitutional promises and lived realities.²⁷⁷ This analysis has traced how Du Bois anticipated patterns that would recur across American history—from the abolitionist movement through Civil Rights to contemporary struggles for justice.²⁷⁸

The comet framework reveals constitutional interpretation as an ongoing, contested process rather than a fixed body of doctrine. Each historical period examined—abolition, civil rights, and contemporary social movements—demonstrates how crisis opens space for constitutional reimagining, while restoration reasserts hierarchical arrangements that formal amendments appear to prohibit.²⁷⁹ Yet Du Bois's

²⁷⁶ Cf. REBECCA SOLNIT, *HOPE IN THE DARK: UNTOLD HISTORIES, WILD POSSIBILITIES* 2–4 (2004) (describing the triumphs and setbacks of the antinuclear movement in the United States over decades as an example of the unpredictable forms that progressive transformation takes).

²⁷⁷ See ACKERMAN, *supra* note 6, at 3–31 (arguing that constitutional change in the United States proceeds through episodic moments of rupture rather than linear progress, with periods of crisis opening space for transformative constitutional revision followed by consolidation and restoration); Balkin, *supra* note 13, at 253–57 (identifying recurring cycles of constitutional time—regime rise and fall, polarization and depolarization, and constitutional rot and renewal—that structure the relationship between crisis and constitutional development); BELL, *supra* note 20, at 51–74 (documenting the persistent gap between the Constitution's formal promises of equality and the lived realities of Black Americans, arguing that constitutional progress has been consistently undermined by institutional restoration of racial hierarchy).

²⁷⁸ See DAVID LEVERING LEWIS, *W.E.B. DUBOIS: THE FIGHT FOR EQUALITY AND THE AMERICAN CENTURY, 1919–1963*, at 15–45 (2000).

²⁷⁹ See Ackerman, *supra* note 6, at 3–31 (arguing that constitutional change proceeds through episodic moments of crisis that open space for transformative revision); Siegel,

story also exposes the limits of constitutional reform within existing frameworks.²⁸⁰ The forced separation of Jim and Julia, when social order returns, metaphorically illustrates how institutional arrangements systematically undermine constitutional possibilities once crisis passes.

The literary dimension of this analysis demonstrates how creative expression functions as constitutional interpretation during comet moments.²⁸¹ Du Bois's use of speculative fiction to explore alternative constitutional arrangements prefigures contemporary movements' use of marches, songs, performances, and visual art to articulate constitutional visions beyond the constraints of formal legal discourse.²⁸² These practices expand constitutional meaning through interpretive communities that challenge traditional authority while maintaining constitutional engagement.²⁸³

Contemporary movements—from campus protests for Palestine solidarity to responses to police violence—continue to embody the comet pattern, creating temporary ruptures that suspend institutional operations while provoking counter-revolutionary responses that restore hierarchy.²⁸⁴ The COVID-19 pandemic similarly demonstrated both the transformative possibilities available during crisis and the resilience of institutional forces that reassert normal arrangements once emergency conditions subside.²⁸⁵

The radical alternatives discussed in Part III suggest that genuine constitutional transformation may require more than incremental reform.²⁸⁶ When conventional contestation proves insufficient, movements often turn toward frameworks that exceed established categories of constitutional discourse. Yet even these radical critiques arise precisely because movements have taken constitutional promises

supra note 16, at 1347 (arguing that restoration dynamics use the language of constitutional fidelity to reassert hierarchical arrangements that formal amendments were designed to prohibit).

²⁸⁰ See BELL, *supra* note 20, at 51–74.

²⁸¹ See WHITE, *supra* note 25, at 257–66.

²⁸² See ROY, *supra* note 102, at 1–33 (arguing that collective cultural practice functions as a vehicle for making constitutional claims visible beyond formal legal channels); KELLEY, *supra* note 192, at 1–35 (arguing that Black radical imagination and creative expression generate political and constitutional visions that exceed the constraints of formal legal discourse).

²⁸³ Cover, *supra* note 28, at 11–19 (“The precepts we call law are marked off by social control over their provenance, their mode of articulation, and their effects. But the narratives that create and reveal the patterns of commitment, resistance, and understanding—patterns that constitute the dynamic between precept and material universe—are radically uncontrolled.”).

²⁸⁴ See KABA, *supra* note 235, at 21–24 (discussing how framing policing as “broken” in times of protest reaffirms reform, rather than abolition, as the solution and reinforces anti-Blackness).

²⁸⁵ See KLEIN, *supra* note 65, at 1–25 (describing the “shock doctrine” view that only a major rupture can create the clean slate necessary for sweeping transformation); MIKE DAVIS, *THE MONSTER ENTERS: COVID-19, AVIAN FLU, AND THE PLAGUES OF CAPITALISM* 1–33 (2020).

²⁸⁶ See ROBINSON, *supra* note 190, at 241–88.

seriously, revealing how constitutional ideals diverge from lived experience that conventional mechanisms cannot bridge.²⁸⁷

Several insights follow from this dialectical perspective. First, it underscores the importance of multiple voices, especially those whose lived experiences reveal the contradictions between text and practice.²⁸⁸ Second, it illuminates the temporal dimensions of struggle: Arguments that appear radical in ordinary times may become central during rupture, while interpretations that seem settled during restoration may be vulnerable in future crises.²⁸⁹ Most importantly, the comet framework suggests that constitutional transformation requires ongoing effort rather than singular breakthroughs. Each moment of rupture generates genuine possibilities, even when temporary. The task is not to prevent restoration—which Du Bois implies may be inevitable—but to sustain alternative visions and practices that can expand when the next comet arrives.²⁹⁰

Du Bois's cosmic perspective thus offers not despair but a form of revolutionary patience—a recognition that meaningful change occurs through cyclical processes that exceed individual lifespans and require sustained commitment across generations.²⁹¹ The comet will return, bringing with it new possibilities for constitutional renewal and transformation. In the interim, the work of constitutional interpretation continues through the everyday struggles of communities seeking recognition, equality, and justice within and beyond existing frameworks.

The Comet remains relevant not only for its analysis of constitutional dynamics but for its insistence that democracy requires ongoing contestation rather than settled arrangements.²⁹² Du Bois's literary imagination reveals constitutional interpretation as fundamentally political—a process of collective self-definition that must account for the cyclical nature of change and the persistent possibility of both transformation and backlash.²⁹³ In this way, constitutional meaning

²⁸⁷ See BELL, *supra* note 20, at 13–28 (detailing the author's experience debating constitutional law development at the Black Bicentennial Convention, specifically the tension between "patriotic" proposals and experience-based ones).

²⁸⁸ See GUINIER & TORRES, *supra* note 30, at 71–129.

²⁸⁹ See BALKIN, *supra* note 45, at 96–97 (recognizing features of radical reform that are inherited as "a return to origins and to basic principles," calling this a "standard method for urging reform").

²⁹⁰ See SOLNIT, *supra* note 276, at 1–25.

²⁹¹ See, e.g., ANGELA Y. DAVIS, *WOMEN, RACE, AND CLASS* 238–71 (1981) (recounting the struggles, achievements, and setbacks faced by five exceptional advocates for the rights of Black women over the 19th and 20th centuries).

²⁹² See CHANTAL MOUFFE, *THE DEMOCRATIC PARADOX* 1–33 (2000) (discussing different democratic models and the need for engagement).

²⁹³ See TUSHNET, *supra* note 15, at 154–94 (describing judicial review as both a tool to help and to harm progressive causes and arguing that constitutional interpretation should be performed by the people, not judges).

emerges through democratic struggle rather than expert interpretation, through the rhythm of rupture and restoration rather than linear progress. This ongoing contestation reflects the inherently cultural dimensions of constitutional interpretation, where legal understanding develops through the intersection of formal legal discourse and the lived experiences of those most affected by law's operation.²⁹⁴ Understanding constitutional development requires engaging with the sociocultural dimensions of race and racism, recognizing how cultural perceptions shape both the interpretation and application of constitutional principles.

This Essay's Afrofuturist methodology—reading Du Bois's speculative fiction as constitutional theory—demonstrates how alternative interpretive frameworks can illuminate dynamics that conventional legal analysis cannot reach. By treating *The Comet* as what Yaszek calls a “history of the future”²⁹⁵ and what Anderson and Jones recognize as Afrofuturist critical practice,²⁹⁶ this analysis reveals constitutional development as fundamentally temporal: shaped by cyclical processes of rupture and restoration rather than linear progress. The Afrofuturist lens makes visible how Black protest movements have consistently deployed speculative imagination—through fiction, music, performance, and visual art—to challenge dominant constitutional narratives and project alternative possibilities. These interventions are not flights from history but groundings in lived experience, oriented toward liberatory futures that refuse to accept present arrangements as inevitable.

Ultimately, Du Bois's literary approach exemplifies the law and literature movement's central insight: legal meaning emerges through interpretation rather than discovery of fixed truths.²⁹⁷ *The Comet* demonstrates literature's capacity to explore constitutional possibilities that exceed doctrinal constraints, revealing interpretation as an inherently creative and political process.²⁹⁸ As we face contemporary constitutional crises—from attacks on democratic institutions to ongoing struggles for racial and economic justice—Du Bois's framework provides both analytical clarity and grounds for hope.

²⁹⁴ See Toussaint, *supra* note 27, at 157–59.

²⁹⁵ Yaszek, *supra* note 35, at 41–43.

²⁹⁶ See *supra* note 216 and accompanying text.

²⁹⁷ See West, *supra* note 67, at 203–08.

²⁹⁸ See NUSSBAUM, *supra* note 68, at 72–78 (arguing that literary imagination cultivates the emotional and moral capacities essential to legal judgment, making readership a constitutive rather than merely illustrative dimension of legal interpretation); SMITH, *supra* note 195, at 98–108 (examining how legal meaning is actively constructed through interpretive practice rather than discovered as pre-given truth).