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Nathalie Martin
Frederick M. Hart Chair in Consumer and Clinical Law, University of New Mexico School of Law

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BAD APPLES OR A ROTTEN TREE: AMELIORATING THE DOUBLE PANDEMIC OF COVID-19 AND RACIAL ECONOMIC INEQUALITY

Nathalie Martin*

I. Introduction

Black Lives Matter signs pepper our rural, middle class neighborhood. Like many of the neighborhoods in my town, there are few Black Americans living nearby. The signs are a symbol of the desire to do something, finally, about systemic racism. There are other subtle shifts occurring as well. More books on racism top bestsellers lists and more ads feature people of color. The Black Lives Matter movement has been embraced by a large swath of Americans from many walks of life, making this an opportune time to do something more than putting up signs, a time to find solutions to problems caused by centuries of seemingly intractable racial violence, segregation, and discrimination. The lawn signs raise a fundamental question though: if Black lives matter, what will it take to reverse the longstanding trend that has left many dead and so many others, perhaps all others, suffering? What will it take to create some semblance of equality and equity across racial lines in America?

Author Leonard Pitts recently said, about George Floyd's death and the riots that ensued, better police policies are not the issue. Rather, the issue is that we have not addressed deeper underlying issues of racism and discrimination in our society, tracing back to our Nation's beginnings. In other words, we are short-sighted to focus on a few bad apples—meaning a few bad police officers. What we need to do is take a closer look at the rotten tree from which these incidences arise. I attempt to do this here for the benefit of those who are unfamiliar with much of our country's history of economic racism since slavery.

While Pitts was talking about violence and physical well-being, financial well-being follows a similar tragic trajectory. Income and wealth inequality in America have reached an all-time high.[1] Despite anti-discrimina-

* Frederick M. Hart Chair in Consumer and Clinical Law, University of New Mexico School of Law. The author thanks Alfred Mathewson, Ernesto Longa, Stephen Wilks, Stewart Paley, Clair Gardner, John Brandt, and all the editors of the *Montana Law Review*, and particularly Kelsey Dayton, Symposium Editor, and Kylar Clifton, Executive Editor.

1. *See infra* notes 28–100 and accompanying text. *See also* Carter A. Wilson, Metaracism: Explaining the Persistence of Racial Inequality 2 (2015).

tion laws like the Equal Opportunity Credit Act,[2] and Title VII of the Civil Rights Act,[3] persons of color consistently receive loans on less favorable terms than White Americans, even when adjusted for income and credit scores.[4]

While economic racism has not diminished, it has morphed into more subtle forms. As Carter Wilson explains in his book *Metaracism: Explaining the Persistence of Racial Inequality*, modern racism does not always involve hateful bigots.[5] Rather, modern racism accepts a Black middle class, but has become desensitized to the effects of deep poverty and mass incarceration in Black communities.[6]

The coronavirus (COVID-19) has exacerbated wealth, income, and credit gaps. Communities of color have been harder hit by COVID-19 deaths. Moreover, to the extent that systemic racism increases with economic insecurity in the population as a whole,[7] COVID-19 increases structural racism. Racial economic inequality, combined with COVID-19, is a double pandemic. After looking at how COVID-19 has affected and continues to affect communities of color, this essay shares statistics on income and wealth differentials between rich and poor and among ethnic groups, and then examines a few of the roots of wealth inequality from the early days of abolition of slavery to the present. It discusses one narrow solution to wealth inequality targeted particularly at our nation's role in stripping Black Americans of wealth and segregating our society, both of which have led to poverty and death.

2. The Equal Credit Opportunity Act makes it illegal for a creditor to discriminate in any aspect of a credit transaction based on certain characteristics. 15 U.S.C. § 1691(a) (2018). In addition, the Fair Housing Act makes many discrimination practices in home financing illegal. 42 U.S.C. §§ 3604–05 (2018).

3. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against applicants and employees on the basis of race, color, religion, sex, and national origin, including membership in a Native American tribe. *See* 42 U.S.C. § 2000e-2. It also prohibits employers from retaliating against an applicant or employee who asserts his or her rights under the law. *See* § 2000e-3. To learn more about retaliation, see our article on preventing retaliation claims by employees. NOLO, *Preventing Retaliation Claims by Employees,* https://perma.cc/R4CQ-KYTJ.

4. Non-White Americans use more high-cost credit per capital, carry more sub-prime loans, and carry higher interest credit cards. Pamela Foohey & Nathalie Martin, *Reducing The Wealth Gap Through Fintech 'Advances' in Consumer Banking and Lending*, 2021 U. Ill. L. Rev. (forthcoming 2021) (manuscript at 16–30), https://perma.cc/T7MY-X4DW. They also pay higher interest on student loans. While access to credit was once the biggest issues in credit discrimination, the issue today is not access, but the quality of this credit. Following the deregulation of interest rates in Marquette Nat'l Bank of Minneapolis v. First of Omaha Serv. Corp. Marquette, 439 U.S. 299, 309–13 (1978), lenders could afford to offer credit to a larger swath of Americans and offer they did. The stratification of credit along racial and ethnic lines became more pronounced, though it has always been significant. Foohey & Martin at 16–30.

5. Wilson, *supra* note 1, at 1–2.

6. *Id.*

7. *Id.* at 33–44.

Part I of this essay discusses race and COVID-19. It reviews and updates statistics on COVID-19 deaths and race, then discusses some of the reasons for racial disparities in COVID-19 deaths. Part II briefly reviews the stratification of income and wealth along racial lines.[8] Part III provides background and texture on how this problem of unequal income, credit terms, and wealth arose in the first place. It provides just a few of the many examples of America's deep intolerance for Black wealth and chronicles how credit discrimination (particularly in housing) became such a fixture in American society. It describes economic racism and violence by private citizens, as well as governmental racism, credit discrimination, displacement, and segregation. Scholars of the history of racism, slavery, and reparations, as well as scholars of color in all fields, will find nothing new here. Others, however, may be unfamiliar with these historic events and with the many others that have created the society in which we now live.

Part IV considers solutions directly related to the wrongs committed by our government against Americans of color, particularly Black Americans. The momentum of the Black Lives Matter movement and other similar societal sentiments can help reduce American racial violence, racism, and discrimination, but only if we have concrete policies in place to right past wrongs. While physical racial violence is front and center in today's Black Lives Matter discussions, including systemic changes designed to end police brutality, addressing economic racism and disenfranchisement is just as important in remedying the explicit segregation policies of the United States—a legacy tied directly to poverty, police brutality, and death.

II. The Color of COVID-19

COVID-19 has claimed more than 478,912 American lives as of February 25, 2021, and we know the race and ethnicity for 91% of those who have died.[9] The U.S. Federal government responded to the pandemic with politically-motivated paralysis, first denying COVID-19 existed, and then insisting it would go away if it did exist.[10]

8. Much of this ground is covered in my recent paper with Pamela Foohey. *See* Foohey & Martin, *supra* note 4, at 11–16.

9. *Daily Updates of Totals by Week and State, National Center for Disease Statistics, Provisional Death Counts for Coronavirus Disease 2019 (COVID-19)*, Center for Disease Control & Prevention, https://perma.cc/7J8Q-T9EV (last updated Dec. 31, 2020); *see also The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM Research Lab, https://perma.cc/3GGH-KTRN (last visited July 31, 2020). APM is a non-profit corporation affiliated with American Public Media.

10. For a detailed recount of all that Trump said about the issue through mid-May, *see* Stephen Wilks, *Disturbing the Modern Plantation: How COVID-19 Is Reinforcing The Food Supply Chain's Function As A Social Sorting Tool*, at 33–37, forthcoming at 30 Cornell J. L. & Pub. Pol'y (2021). As Wilks explains:

Though far more White Americans have died than any other ethnic group, the virus has disproportionately harmed communities of color. While most of us have heard that COVID-19 is a greater risk in Black and Indigenous communities, statistics and percentages shared by major news outlets underestimate the relative effects of COVID-19 on these communities. For example, the New York Times reported in July that Black and Latino Americans were three times as likely to contract the disease than Whites and nearly twice as likely to die of the disease.[11]

These numbers are understated because they do not adjust mortality rates by age.[12] Age is one of COVID-19's most defining features, due to its direct relationship with the risk of dying. According to July 2020 CDC data, fewer than 2 in 100,000 Americans under age 45 have died from the virus, a number that increases to 14 per 100,000 for those from ages 45–54, 34.5 per 100,000 for those ages 55–64, and 82.7 per 100,000 for those ages 65–74. Among Americans age 75 and older, the death toll exceeds 330 people per 100,000.[13]

A much larger percentage of the overall older population is White, however.[14] This means most data compares the deaths of an older group of White people to those of younger groups in communities of color. As a result, more deaths in communities of color are younger deaths. The APM Research Lab ("APM") adjusted death rates through the two co-correlates of age and race and found, when adjusted for age, that common media figures do not fully express the devastation of COVID-19 on communities of color.[15]

Again, White Americans are older than other Americans. For example, the median age of non-Hispanic White Americans is 44 years, but just 34

> [t]wo forces dominated the U.S. political economy in the year preceding the pandemic, the impeachment controversy and China's ongoing trade tensions with the United States. The president's hostility towards federal civil servants, which intensified in the wake of his impeachment, converged with concerns about negotiating an end to trade hostilities with China, featured prominently in decisions to ignore early warnings about the growing threat of COVID-19.

Id. at 33–44.

11. Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright & Mitch Smith, *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. Times (July 5, 2020), https://perma.cc/P8EQ-L7QB.

12. *The Color of Coronavirus, supra* note 9.

13. *Id*.

14. *Id*.

15. *Id*.

years for Black Americans.[16] To adjust for the role of age differences in COVID-19 mortality rates, APM produced age-adjusted rates.[17]

Age-adjusting shows a much larger gap between Black and White mortality, from 2.3 to 3.7 times as high.[18] Many younger Americans who are Black, Indigenous, or otherwise from communities of color are dying of COVID-19, driving these youth mortality rates far above data otherwise reported. As the Brookings Institution has also reported, "[i]n every age category, Black people are dying from [COVID-19] at roughly the same rate as White people more than a decade older."[19]

The reasons for these elevated rates of mortality vary by community. Some of the factors relate specifically to pre-existing conditions present in communities *before* COVID-19 hits. Some of the factors that might lead to these disparities include greater workplace exposures, including inability to work from home and take sick days, living in certain geographic areas such as Indigenous communities, consolidated housing arrangements, congregate settings like nursing homes, group homes, treatment centers, and correctional facilities, and using public transportation where the virus is more easily spread.

Elevation in death rates also results from poorer outcomes *after* acquiring COVID-19, such as less access to testing, a higher presence of underlying health conditions like diabetes, hypertension, and asthma, and delayed or inferior medical care, perhaps due to lack of health insurance or the limited availability of healthcare providers.[20] Most of these ex-ante and ex-post factors result from systemic racism, discrimination, and segregation, as described further in Part III below.[21]

16. *National Population by Characteristics: 2010–2019*, United States Census Bureau, https://perma.cc/5N8Z-9JTV (last visited July 31, 2020). The comparable figure for all populations of color is considerably lower—for Asians (37), Blacks (34), Pacific Islanders (33), Indigenous (32) and especially Latinos (30). *Id.*; *The Color of Coronavirus*, *supra* note 9.

17. *The Color of Coronavirus*, *supra* note 9. Because mortality data is not available for all states by race *and* age jointly (which is preferred), we have used *indirect* standardization to calculate these rates. *Id*. When the racial data collected was adjusted for age differences, APM saw an increased Covid mortality rate for all American persons of color, and a decrease in cases among White Americans, as shown below.

18. *Id*. Mortality rates for Indigenous people rises to 3.5 times as high as White mortality rates. Latinos and Pacific Islanders also rose substantially, so that all those groups experience age-adjusted mortality rates of about 2–3 times that of Whites. Finally, the Asian mortality rate, which was nearly equivalent with the White rate, rose well above the White death rate to 1.4 times as high when age was considered. *Id*.

19. Tiffany N. Ford, Sarah Reber & Richard V. Reeves, *Race Gaps in COVID-19 Deaths Are Even Bigger than They Appear*, Brookings (June 16, 2020), https://perma.cc/LN4H-5LGL.

20. *Id*.

21. *Id*. Keep in mind these are not the actual mortality rates but the "what if" rates. While age-adjusted mortality rates help us remove age as a confounding factor so we can compare the impact of other differences among race groups, they are not the actual mortality rates experienced by these groups.

Reviewing some of the statistics, overall American death rates from COVID-19, as of July 31, 2020, are as follows:

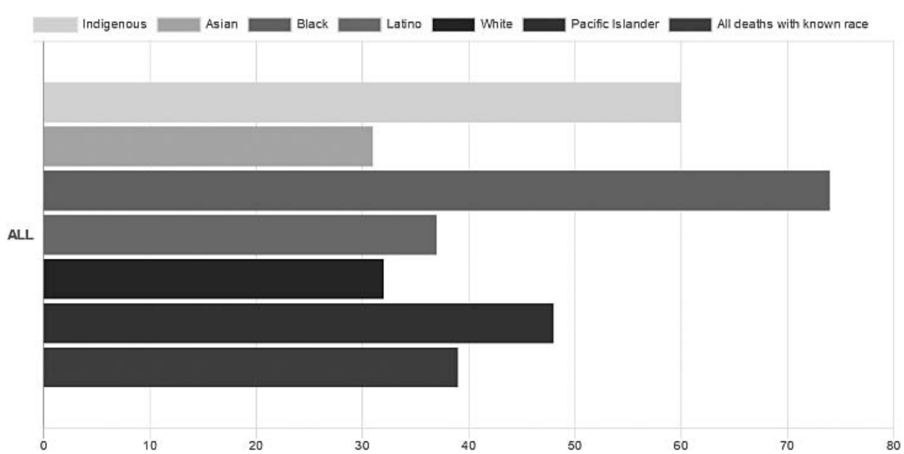
- One in 1,350 Black Americans has died (or 73.7 deaths per 100,000)
- One in 1,650 Indigenous Americans has died (or 60.5 deaths per 100,000)
- One in 2,100 Pacific Islander Americans has died (or 48.0 deaths per 100,000)
- One in 2,700 Latino Americans has died (or 37.2 deaths per 100,000)
- One in 3,100 White Americans has died (or 32.4 deaths per 100,000)
- One in 3,250 Asian Americans has died (or 30.7 deaths per 100,000).[22]

Black Americans continue to experience the highest overall COVID-19 mortality rates, which are approximately 2.3 times as high as the rate for White people. If persons of color had died of COVID-19 at the same actual rate as Whites, about 17,000 Black, 3,000 Latino, 500 Indigenous, and 50 Pacific Islander Americans would still be alive. Thus, adjusting the data for age differences among racial groups widens the gap in the overall mortality rates between all other groups and Whites, who have the lowest rate. Compared to Whites, the latest U.S. age-adjusted COVID-19 mortality rates for various groups are:

- Black Americans is 3.7 times as high
- Indigenous people is 3.5 times as high
- Pacific Islanders is 2.8 times as high
- Latinos is 2.5 times as high
- Asians is 1.4 times as high.[23]

These statistics are represented in the following chart:

Chart 1 – COVID-19 Deaths per 100,000 People, through July 21, 2020[24]



22. *The Color of Coronavirus, supra* note 9.
23. *Id.*
24. *Id.*

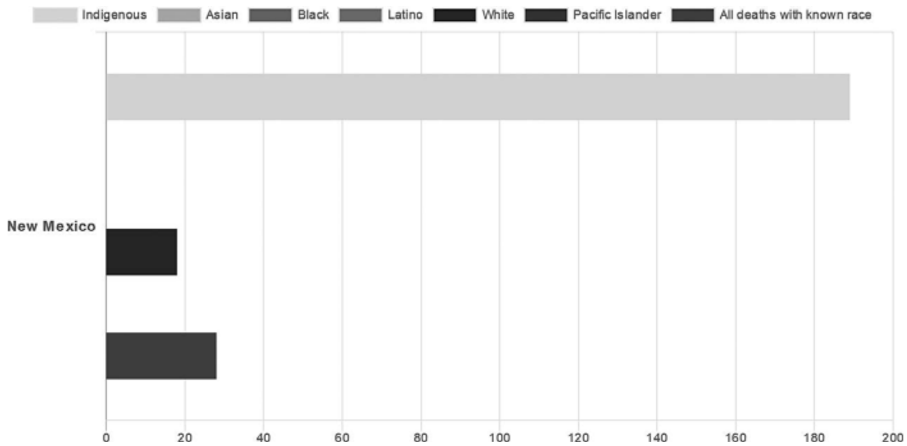
Through July 21, 2020, calculated from those deaths with a known race or ethnicity:

- White Americans have experienced 51.4% of deaths but represent 62.2% of the population.
- Black Americans have experienced 23.3% of deaths but represent 12.4% of the population.
- Latino Americans have experienced 17.3% of deaths but represent 18.3% of the population.
- Asian Americans have experienced 4.4% of deaths but represent 5.7% of the population.
- Indigenous Americans have experienced 2.2% of deaths (in 27 states reporting one or more deaths) but represent 1.0% of the population in those states.
- Pacific Islander Americans have experienced 0.5% of deaths (in 15 states reporting one or more deaths) but represent 0.2% of the population in those states.
- "Other" race Americans have experienced an additional 4.0% of all deaths.[25]

Of particular concern in my home state of New Mexico are the death rates for Native Americans. While Native Americans make up just 10% of the state's population, they represent 50% of all New Mexico COVID-19 deaths.[26] When adjusted for age, COVID-19 death rates are roughly 18 per 100,000 for Whites and roughly 180 per 100,000 for Native Americans.[27] This means Native Americas are ten times more likely to die from COVID-19 than White Americans in New Mexico, as shown in this shocking chart from the APM age-adjusted study:[28]

25. *Id*.
26. Marjorie Childress, *Native Americans Make Up 50% of COVID-19 Cases in New Mexico*, New Mexico In Depth (May 11, 2020), https://perma.cc/83A8-WEP5.
27. *The Color of Coronavirus, supra* note 9.
28. *Id*.

CHART 2 – COVID-19 DEATHS PER 100,000 PEOPLE, THROUGH JULY 21, 2020[29]



These disparate COVID-19 deaths result from economic inequality. "Communities of color are disproportionately uninsured or underinsured and have fewer financial resources and employment benefits with which to weather this major public health emergency."[30] While this discussion has focused on COVID-19 deaths, COVID-19's largest impact on communities of color may not be death at all, but rather living without jobs, food, or economic safety nets.[31] As Stephen Wilks explains in his article on COVID-19 and food supply chains, "by July, 26 million U.S. adults reported not having enough to eat," a number that rose to 40% for Black and Hispanic families.[32] People of color have unquestionably had more difficulty than other Americans paying rent, buying food, and otherwise caring for their families. They are also more likely to be subjected to debt collection and to conditions similar to debtor's prison if unable to pay their bills.[33] These COVID-

29. *Id*. Latino ethnicity is reported separately from non-Hispanic race groups in New Mexico.

30. Danyelle Solomon & Darrick Hamilton, *The Coronavirus Pandemic and the Racial Wealth Gap*, CENTER FOR AM. PROGRESS (Mar. 19, 2020), https://perma.cc/FMQ3-UWL4.

31. Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, CENTER FOR AM. PROGRESS (Apr. 14, 2020), https://perma.cc/LN7A-CS4W. *See also* Conor Dougherty, *31% Can't Pay the Rent: 'It's Only Going to Get Worse*,' N.Y. TIMES (Apr. 8, 2020), https://perma.cc/4QRL-GGNB

32. Wilks, *supra* note 10, at 41.

33. *See* Pamela Foohey, Dalie Jiménez & Christopher K. Odinet, *The Debt Collection Pandemic,* CALIF. L. REV. ONLINE, May 2020, at n. 15, https://perma.cc/UJG6-MXBA (stating that "Black and Latinx Americans are sued by creditors and debt collectors more often than others, and lawsuits against them are more likely to end with default judgments that lead to garnishments"). Black and LatinX consumers are also subject to much greater policing, which can create more "parking tickets, court fees, and other government debts" that force consumers of color into "modern-day debtors' prison." *Id.*; Whitney Benns & Black Strode, *Debtors' Prison in 21st-Century America*, THE ATLANTIC, Feb. 23, 2016, https://perma.cc/6UJ6-VJ4L. *See also* Abbye Atkinson, *Consumer Bankruptcy, Nondis-*

19 disparities demonstrate the critical importance of addressing wealth disparities now. The next Part describes those wealth inequalities in detail.[34]

III. Wealth Differentials and Covid-19 Cross-Triangulation

This Part provides data on the overall American wealth and income gaps between rich and poor as background, and then focuses on racial wealth and income gaps.

A. *The America Wealth Gap between the Rich and the Rest of Us*

Economic equality is the next stage in human and civil rights, and we have been moving backwards.[35] Generally, wages are flat and declining in real dollars and have not risen among persons of color, despite an alleged decline in racism.[36] Poverty across all sectors increased and became more concentrated from 2000 to 2010.[37] The United States now has the largest range of interest rates paid by the rich and poor in history,[38] a sign the economy has become more disparate. Adam Smith warned that his own system of capitalism, if not kept in check, would one day lead to huge

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chargeability, and Penal Debt, 70 Vand. L. Rev. 917 (2017) (discussing how penal debt is disproportionately concentrated in economically and socially disenfranchised communities).

34. Solomon & Hamilton, *supra* note 30; Debbie Stabenow & Chuck Schumer, *Racial Disparities on Full Display: COVID-19 is Disproportionately Affecting Communities of Color*, Democratic Pol'y & Commc'ns Comm. (Apr. 30, 2020), https://perma.cc/3SY9-67ZF; Maxwell & Solomon, *supra* note 31.

35. Drew DeSilver, *For most U.S. workers, Real Wages have Barely Budged in Decades*, Pew Research Center (Aug. 7, 2018), https://perma.cc/M4PJ-WN9V; Jay Shambaugh et al., *Thirteen Facts about Wage Growth*, Brookings (Sept. 2017), https://perma.cc/64EP-7L6N. *See* Signe-Mary McKernan, et al., *Nine Charts About Wealth Inequality in America*, Nonprofit Q. (Mar. 27, 2015), https://perma.cc/TV6D-JJ72 (reporting based on 2013 figures); Rakesh Kochhar & Richard Fry, *Wealth inequality has widened along racial, ethnic lines since end of Great Recession*, Pew Research Center. (Dec. 12, 2014), https://perma.cc/69NM-B6ZD; Laura Sullivan et al., *The Racial Wealth Gap: Why Policy Matters*, Demos (2015), https://perma.cc/B8HE-EVJF; Emmanuel Saez & Gabriel Zucman, *Exploding Wealth Inequality in the United States*, Vox Eu, Oct. 28, 2014, https://perma.cc/R9QQ-PNT5 (stating that "[w]ealth inequality in the US has followed a U-shaped evolution over the last century – there was a substantial democratisation of wealth from the Great Depression to the late 1970s, followed by a sharp rise in wealth inequality." This column discusses new evidence on the concentration of wealth in the US.). Growing wealth disparity is fueled by increases in both income and saving rate inequalities between the haves and the have nots. *Id*.

36. *See* James Kwak, *Take Back Our Party Chapter 2: Bad Policy*, The American Prospect (Dec. 13, 2019) at Figs. 2.2 and 2.3, https://perma.cc/NTN4-MYML (detailing average pre-tax income for all Americans and the bottom 50% of Americans); DeSilver, *supra* note 35; Elise Gould, Janelle Jones & Zane Mokhiber, *Black Workers Have Made no Progress in Closing Earnings Gaps with White Men Since 2000*, Econ. Pol'y Inst. (Sept. 12, 2018), https://perma.cc/Q8WV-LR8L.

37. Wilson, s*upra* note 1, at 36.

38. *See* Nathalie Martin, *Public Opinion and the Limits of State Law: The Case for a Federal Usury Cap*, 34 N. Ill. L. Rev. 259, 267–69 (2014).

concentrations of wealth at the top.[39] We have watched this wealth disparity grow for decades, but now it is growing at exponential rates.[40] One need only look at the continuing rise in the stock market during COVID-19, which, despite the chaos of the pandemic,[41] reached an all-time historic high on August 19, 2020, all while homelessness and unemployment are projected to grow.[42]

Indeed, Smith's prophecy has come true. The United States has the highest level of income inequality within the G7, meaning among the countries with the largest economies in the world. [43] Income inequality is also growing faster in the United States than ever before.[44] Even well before the coronavirus, between 1963 and 2016, families in the bottom 10% of wealth distribution went from having no wealth to owing $2,000 each on average.[45] Those in the middle more than doubled their wealth, but families in the top 1% saw wealth increase sixfold.[46] "In 1963, families near the top had six times the wealth . . . of families in the middle . . . [but b]y 2013 [these top earners] had twelve times the wealth of families in the middle."[47] Stated another way, since the 1980s, the top 10% earns roughly 50% of the total income and has amassed roughly 77% of the wealth in our country.[48]

39. Adam Smith, An Inquiry into the Nature and Causes of the Wealth of Nations 766 (Edwin Cannan ed., 1994) (stating that "[w]herever there is great property, there is great inequality. For one very rich man, there must be at least five hundred poor, and the affluence of the few supposes the indigence of the many").

40. *Income Inequality, and Coronavirus' Economic Fallout*, CBS News, Sept. 6, 2020, https://perma.cc/K2ZL-9HPY (reporting, for example, that Jeff Bezos, the owner of Amazon, saw his net worth increase by $43.8 billion in the first months of the pandemic).

41. Jessica Menton, *How did the Stock Market Hit a Record Amid COVID-19 Fueled Recession? Here's what Experts Say about the Rebound*, USA Today, Aug. 19, 2020, https://perma.cc/M2BU-LQ4B.

42. U.S. Gov't Accountability Office, *How COVID-19 Could Aggravate the Homelessness Crisis*?, WatchBlog (Aug. 25, 2020), https://perma.cc/DK46-YEBH.

43. Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. is Rising Most Rapidly Among Asians*, Pew Research Center 12, (July 12, 2018), https://perma.cc/L4US-DBQH. Across countries, income inequality is measured by the Gini coefficient (or index). It ranges from 0, perfect equality, to 1, perfect inequality, where all wealth is held by one person. As of 2016, the G7 countries, which include the UK, Italy, Canada, Japan, Germany and France the U.S., had a Gini Coefficient income inequality range of .330 to .388, while the U.S. had a Gini Coefficient of .435. *Id.*

44. *See* McKernan, *supra* note 35 (reporting based on 2013 figures). *See also* Wilson, *supra* note 1, at 129–32.

45. McKernan, *supra* note 35.

46. *Id.*

47. *Id.* I hesitate to call them "earners" since most are wealthy due to family money rather than hard work. McKernan, *supra* note 35.

48. Anna Kent, et al., *What Wealth Inequality in America Looks Like: Key Facts & Figures*, Fed. Res. Bank of St. Louis (Aug. 14, 2019), https://perma.cc/T9FP-UYQP; Liu Baodong, *Social Capital, Race, and Income Inequality in the United States*, 9 Sustainability 248, 248 (2017).

For centuries, the America Dream of upward mobility has been a dominant touchstone of our culture.[49] Over the last four decades, however, income inequality has transformed our country from a land of economic promise to one of diminished opportunity for most Americans, not just a few.[50] We have become the opposite of what we originally set out to become, namely, a melting pot nation of opportunity for all.[51] We are now more of a plutocracy than a democracy, a nation governed by an elite class rather than "the people."[52] As a nation of rich and poor, with little in between, we see conditions not unlike the developing world on our streets.[53]

Income inequality in America is now comparable to the level of income inequality in India, the land of the untouchables and the caste system.[54] In 2015, the wealthiest 14 people in America earned enough to hire two million preschool teachers, yet the U.S. ranks among the lowest of all developed countries in preschool attendance.[55] Perhaps this is because more Americans than ever now live in the U.S. under conditions similar to those in developing countries.[56] Fewer and fewer can afford the fundamentals. Following the great recession of 2008, the 1% has realized 95% of new

49. LUKE WINSLOW, ECONOMIC INJUSTICE AND THE RHETORIC OF THE AMERICAN DREAM x–xii (2017). In 2016, the US's Gini coefficient was 0.415, as compared to France's 0.327 and Sweden's 0.292, both as of 2015. *See GINI Index (World Bank Estimate)*, THE WORLD BANK, https://perma.cc/VCL6-H3JY (last visited Dec. 10, 2019).

50. RONALD P. FORMISANO, PLUTOCRACY IN AMERICA: HOW INCREASING INEQUALITY DESTROYS THE MIDDLE CLASS AND EXPLOITS THE POOR 1–8 (2015). *See* Kwak, *supra* note 36 (stating that only one in five Americans think that today's youth will have a better life than their parents' generation); Eleanor Krause & Isabel V. Sawhill, *Seven Reasons to Worry About the American Middle Class*, BROOKINGS (June 5, 2018), https://perma.cc/PC9C-D72N (showing a decline in upward mobility since the 1940s, with a brief period of increase in the 1970s).

51. Joyce Millet, *Understanding American Culture: From Melting Pot to Salad Bowl*, CULTURAL SAVVY, https://perma.cc/V4FQ-4YZ5 (last visited Sept. 20, 2020). According to a web site dedicated to helping others learn about the cultures of other countries: "American history began with waves of immigrants, bringing their own cultures and traditions to a vast new country. No other place in the world has such a diverse population. It is this diversity that makes America what it is and, at the same time, creates the challenges it faces." *Id.*; *see also* John Higham, *American Immigration Policy in Historical Perspective*, 21 LAW & CONTEMP. PROBS. 213, 215 (1956) (stating that Congress itself attempted to stimulate immigration levels from 1864 to 1868 and that many individual states "developed programs to lure new settlers from overseas").

52. *See generally* FORMISANO, *supra* note 50, at 1–8.

53. *See generally* PETER TEMIN, THE VANISHING MIDDLE CLASS: PREJUDICE AND POWER IN A DUAL ECONOMY x, xii, xiv (2017).

54. *See GINI Index (World Bank Estimate) - India*, THE WORLD BANK, https://perma.cc/LQ2Y-LYE5 (last visited Dec. 10, 2019) (listing India's GINI index at 0.357 in 2011); Kochhar & Cilluffo, *supra* note 43.

55. PAUL BUCHHEIT, DISPOSABLE AMERICANS: EXTREME CAPITALISM AND THE CASE FOR A GUARANTEED INCOME 2, 34 (2017).

56. TEMIN, *supra* note 53.

income gains.[57] This mysterious math results from a precipitous drop in income and wealth among the middle class,[58] which has caused the average standard of living in the U.S. to stagnate or decline.[59]

Looking briefly at institutional wealth, the picture is even more astounding. According to Peter Philips, in *Giants: The Global Power Elite*,[60] seventeen giant asset-management firms now control most of the world's money.[61] Collectively these 17 firms control $41.1 trillion dollars,[62] one-third of the entire U.S. net economy, which is $123.8 trillion.[63] The actual cash floating around in the U.S. at any time is just $1.2 trillion,[64] meaning that these financial giants control 34 times the amount of cash that is available in the entire U.S. economy at any given moment.[65] Needless to say, their political power is virtually endless.

B. People of Color and Income, Wealth, Employment, and Home Ownership Gaps

The rich are getting richer and the poor, poorer, but what about people of color? As one might expect, people of color are disproportionately affected by this reduction in the middle class. This great income redistribution to the rich from the middle class and poor has dramatically increased racial inequality; in other words, wealth inequality is not felt equally across the

57. *Income Gains for 1% Break Records,* CBS NEWS (Sept. 10, 2013), https://perma.cc/7KKU-8KZY (stating that "the top 1 percent captured 95 percent of the income gains in the first three years of the recovery.")

58. *Id.*

59. *Id. See also* THOMAS M. SHAPIRO, TOXIC INEQUALITY: HOW AMERICA'S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE, AND THREATENS OUR FUTURE (2017); Ben S. Bernanke & Peter Olson, *Are Americans Better Off than They Were a Decade or Two Ago?*, BROOKINGS (Oct. 19, 2016), https://perma.cc/M482-2XNW.

60. PETER PHILLIPS, GIANTS: THE GLOBAL POWER ELITE 37 (2018).

61. The "Giants" are Vanguard Group, JP Morgan Chase Allianz Se ("PIMCO"), UBS, Bank of America Merrill Lynch, Barclays, Fidelity Investments, State Street Global Advisors AXA Group Capital Group, Goldman Sachs Group, Credit Suisse, Prudential Financial, Morgan Stanley, Amundi/Crédit Agricole. *Id.* at 35.

62. *Id.*

63. *Id.*

64. *Id.* That is quite a bit of capital. Phillips does not stop there. He looks at New Giants and Emerging Giants as well. The list of New Giants is not long. It includes BNP Paribas, Northern Trust, and Wellington. The Near Giants include: Aegon, Natixis, Nuveen, T. Rowe Price, TIAA, Invesco, Deutsche Asset, HSBC, and Affiliated Managers Group. All these companies are interconnected via their own investment. Each company has invested in the other creating a difficult to penetrate web. The amount of money which is inter-invested amongst these firms amounts to $74 trillion dollars. *See also* Josh Clark & Kathryn Whitbourne, *How Much Actual Money is there in the World?*, HOWSTUFFWORKS, https://perma.cc/UT9R-K7JF (last visited July 9, 2019). This is as of 2013.

65. PHILLIPS, *supra* note 60, at 49.

races, even within socio-economic groups.[66] As a result, the income and wealth gap between Black and White Americans has increased since the Great Recession.[67] In this Part, I first discuss the income gap, then the wealth gap. These are two related, but very different concepts. While the income gap is significant, the wealth gap is exponentially larger and more pernicious across generations. COVID-19 had made these gaps worse.

1. Gaps in Income Based on Race

In 2016, the median income for White Americans was $48,000, while the median income for Black Americans was $31,100.[68] This means Black Americans made just 65% of what White Americans made.[69] Looking at entire households, the income gap is even larger, with Black households making just over 60% of what White households make.[70] Remarkably, this income gap has remained the same, or worsened, since 1976.[71] The gap also persists, though decreases somewhat, across education levels.[72] In 2014, the median income of a household headed by a college educated Black American was $82,300, whereas the median income of a household headed by a

66. Rodney E. Hero & Morris E. Levy, *The Racial Structure of Economic Inequality in the United States: Understanding Change and Continuity in an Era of "Great Divergence"*, 97 Soc. Sci. Q. 491, 498–502 (2016).

67. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart,* Pew Research Center (June 27, 2016), 21–22, 24, https://perma.cc/ZVN4-43TL. Professor Robert Manduca tells a slightly more nuanced story. *See* Robert Manduca, *Income Inequality and the Persistence of Racial Economic Disparities*, 5 Soc. Sci. 182 (2018). According to Manduca, more than 50 years after the Civil Rights Act, family income disparities between African Americans and White Americans are not growing but are the same today as they were in 1968. He claims that from 1968 to 2016, these disparities in family income narrowed by almost one-third, but that this relative gain was negated by changes to the national income distribution that resulted in rapid income growth for the richest and Whitest Americans. This occurred while income stagnated for the poor and middle class. If not for this greater or more global income inequality, the median Black–White family income gap would have decreased by about 30 percent. Additionally, without the partial closing of the rank gap, growing inequality alone would have increased the racial income gap by yet another 30 percent. *Id.* at 182–83, 194.

68. Rakesh Kochhar & Anthony Cilluffo, *Income of Whites, Blacks, Hispanics and Asians in the U.S., 1970 and 2016*, Pew Research Center (July 21, 2018), https://perma.cc/4W2F-625R. In a 2018 article, Pew Research Center analyzed incomes (rather than household income) of White, Black, Hispanic, and Asian Americans in both 1970 and 2016. Pew Research Center found an income gap between White and Black Americans and White and Hispanic Americans in both 1970 and 2016. In 1970, the median income for White Americans was $31,500.

69. *Id.*

70. For the year 2014, the median income of households headed by Black Americans was approximately $43,300, while median income of households headed by White Americans was approximately $71,300. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, *supra* note 67, at 21–22, 24. In 2015, these figures were $44,100 and $75,100 respectively. Kristen Bialik & Anthony Cilluffo, *6 Facts about Black Americans for Black History Month*, Pew Research Center (Feb. 22, 2017), https://perma.cc/9TE3-HAG3.

71. *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, *supra* note 67, at 21–22, 24. This is 77%.

72. *Id.* at 22.

college educated White American was $106,600, a percentage income gap of 23%.[73]

Income gaps among Hispanics are similar. In 2014, the median income of households headed by Hispanic Americans was approximately the same as households headed by Black Americans.[74] In 1970, the median income of households headed by Hispanic Americans was 67% of the median income of White household and in 2014, the median income of households headed by Hispanic Americans was 61% of the median income of White households.[75]

2. *Racial Gaps in Acquired Wealth*

Compared to income disparities, racial wealth disparities are far larger and more generationally intractable.[76] According to one source, Black families make 60% of the income of White families, but Black families have just 5% of the wealth of White families.[77] According to another study, Black Americans' net wealth is one-tenth of that of White Americans.[78] This has created a "toxic inequality" that, when combined with other racial inequalities, traps families in place.[79] As Thomas Shapiro explains in *Toxic Inequality: How America's Wealth Gap Destroys Mobility, Deepens the Racial Divide, and Threatens our Future,* these racial wealth gaps are the result of deep structural inequality.[80] Federal policies have "helped spawn the era of toxic inequality, producing a mounting racial wealth gap and historically high levels of wealth and income inequality."[81] The culprits are not

73. *Id.*

74. *Id*.

75. *Id*. Since 1987, the median income of households headed by Asian Americans has either been the same or more then the median income of households headed by White Americans. People of color are also more likely, over all time periods, to be unemployed. Valerie Wilson, *State Unemployment by Race and Ethnicity*, ECON. POL'Y INST. (May 2019), https://perma.cc/AC45-9BLM.

76. Darrick Hamilton & Michael Linden, *Hidden Rules Of Race Are Embedded In The New Tax Law*, ROOSEVELT INST. (May 2018), available at https://perma.cc/V4VZ-86US.

77. RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017); *'The Color of Law' Details How U.S. Housing Policies Created Segregation*, NPR, May 17, 2017, 4:32 PM ET, https://perma.cc/M7TC-FHFF [Hereinafter NPR, *The Color of Law*].

78. Kriston McIntosh, Emily Moss, Ryan Nunn & Jay Shambaugh, *Examining the Black-White wealth gap*, BROOKINGS (Feb. 27, 2020), https://perma.cc/5SS7-K5JR; WILSON, *supra* note 1, at 136. *See also* Hamilton & Linden, *supra* note 76 (overviewing these statistics and noting that the Tax Cuts and Jobs Act, passed in 2018, is likely to exacerbate the racial income gap).

79. SHAPIRO, *supra* note 59. Professor Thomas Shapiro followed nearly 200 families of different races and income levels for over twelve years to discover first-hand why some families build wealth and others do not.

80. *Id.* at 179–80.

81. *Id.*

hard to find: wealthy elites, financial institutions, large corporations, and political leaders.[82]

Like the income gap, since the Great Recession the wealth gap between Black and White Americans has grown.[83] In *The Decline of African-American Wealth Since the Great Recession*, Edward Wolff notes that the gap in net worth between Black Americans and White Americans remained the same from 1983 to 2007, but increased thereafter.[84] According to 2019 data, White families have a median wealth of $188,200 and a mean of $983,400, while Black families have a mean and median wealth that is less than 15 percent that of White families, at $142,500 for the median and $24,100 for the mean.[85] The median wealth gap between White and Black households continues when controlling for education level.[86]

The wealth gap between White households and Hispanic households has also stayed consistently large.[87] In 1983, the median net worth of White households was approximately 11 times the median net worth of Hispanic households, and in 2013 the median net worth of White households was approximately 10 times the net worth of Hispanic households.[88]

As one would expect, wealth inequity grows over a person's lifetime.[89] "On average, White households have . . . a net worth of $105,000 by mid-life," compared to less than $5,000 for Black families and $39,000 for Mexican American families.[90] Parental wealth and segregation both play a role in the production and maintenance of wealth inequality.[91] Finally, the racial

82. *Id.*

83. SHAPIRO, *supra* note 59, at 24. In 2013, the median net worth of households headed by White Americans was approximately 13 times greater than the median net worth of households headed by Black Americans. *Id*.

84. Edward N. Wolff, *The Decline of African-American and Hispanic Wealth Since the Great Recession* 1 (Nat'l Bureau of Econ. Res., Working Paper No. 25198, 2018), https://perma.cc/AF3Z-DNXF. The ratio in standard net worth between African Americans and (non-Hispanic) Whites was the same in 2007 as in 1983 (0.19) but then fell to 0.14 in 2016, while that between Hispanics and Whites climbed from 0.16 to 0.26 but then plunged to 0.19. Minorities had much higher debt-net worth ratios in 2007—0.55 for Blacks, 0.51 for Hispanics, and 0.18 for Whites. *Id*.

85. Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances* (Sept. 28, 2020), https://perma.cc/XWK3-MJ9Z.

86. Wolff, *supra* note 84.

87. *Id*.

88. *Id*.

89. Tyson H. Brown, *Diverging Fortunes: Racial/Ethnic Inequality in Wealth Trajectories in Middle and Late Life*, 8 RACE & SOC. PROBLEMS 29, 29 (2016).

90. *Id*. White people experience much more rapid rates of wealth accumulation during their 50s and 60s, and these differences cannot be attributed solely to the usual socioeconomic, behavioral, and health factors. Age is another indicatory of poverty. Older Black and older Hispanic Americans are more likely than older White Americans to live in poverty. Jennifer Ailshire & Catherine Garcia, *Unequal Places: The Impacts of Socioeconomic and Race/Ethnic Differences in Neighborhoods*, 42 GENERATIONS: JOURNAL OF THE AM. SOC'Y ON AGING 20, 21–24 (2018).

91. Brown, *supra* note 89. *See also* Cedric Herring & Loren Henderson, *Wealth Inequality in Black and White: Cultural and Structural Sources of the Racial Wealth Gap*, 8 RACE AND SOC. PROBLEMS 4,

wealth gap is far larger at the top of the income chart.[92] Forty-three to fifty-five percent results from the households at the 90th percentile and only 10% to 28% at the 10th percentile.[93]

3. Racial Gaps in Home Ownership Rates

Homeownership is a proxy for wealth, given that the more wealth one has, the more likely one is to own a home. The racial homeownership gap contributes to the wealth gap because home ownership often represents the lion's share of a family's wealth.[94] Home ownership also influences broader disparities in net worth.[95] White families are more likely to receive inheritance and assistance from family for a down-payment and can thus own a home earlier.[96] Discriminatory practices in lending such as redlining or consistently offering people of color higher interest rate mortgages also contribute to the homeownership gap.[97] The biggest contributor to the home

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6–7 (2016) (describing the roles of gender of household head, bankruptcies, spending patterns, stock ownership, business ownership, home ownership, inheritance, educational attainment, income, occupation, age, and number of children in creating and sustaining the wealth gap).

92. Michelle Maroto, *Growing Farther Apart: Racial and Ethnic Inequality in Household Wealth Across the Distribution*, 3 Soc. Sci. 801, 801, 820–21 (2016) (detailing the components of wealth inequality, including family structure, education, employment, income, and credit usage).

93. *Id*. at 801. Among low-wealth households, access to different forms of credit, as well as homeownership rates, were associated with a larger proportion of the gap in net worth. The poverty gap is the other side of the wealth equation. African American and Hispanic Americans are more than twice as likely as White Americans to live in poverty. *Id*. Drew DeSilver, *Who's Poor in America? 50 Years into the 'War on Poverty,' a Data Portrait*, Pew Research Center (Jan. 13, 2014), https://perma.cc/3K6Q-NP4C. The poverty rate among Native Americans and Alaska Natives is comparable to poverty rates of Black and Hispanic Americans. Jens Manuel Krogstad, *One-in-Four Native Americans and Alaska Natives Are Living in Poverty*, Pew Research Center (June 13, 2014), https://perma.cc/4C55-V3MA. As of 2012, the poverty rate among Native Americans and Alaska Natives was 26%, the poverty rate among Hispanic Americans was 25%, and the poverty rate of Black Americans was 28%. *Id*.

94. Amy Traub et al., *The Racial Wealth Gap: Why Policy Matters*, Demos 9 (2015), https://perma.cc/4XHT-ZQ5S. The report defines the racial wealth gap "as the absolute difference in wealth holdings between the median household among populations grouped by race or ethnicity." *Id*. at 7. *See also* A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership is Not Always a Good Thing*, 84 Ind. L.J. 189, 189 (2009) ("Home ownership is said to be a fundamental part of the American Dream because of the economic security it gives homeowners."); Kuhn, et al., *How the Financial Crisis Drastically Increased Wealth Inequality in the U.S.*, Harvard Bus. Rev. (Sept. 13, 2018) ("[H]ousing booms lead to wealth gains for leveraged middle-class households and tend to decrease wealth inequality.").

95. Maroto, s*upra* note 92, at 819–20.

96. *See* Jeffrey P. Thompson & Gustavo Suarez, *Updating the Racial Wealth Gap* 15–16 (Fed. Res. Board, Working Paper No. 2015-76, Nov. 7, 2017), https://perma.cc/FJB3-CNL8 (describing the role of inheritance and family wealth across racial lines); Maroto, *supra* note 92 (detailing the components wealth inequality, including family structure, education, employment, income, and credit usage).

97. Traub, *supra* note 94. This report defines the racial wealth gap "as the absolute difference in wealth holdings between the median household among populations grouped by race or ethnicity." *But see* Dionissi Aliprantis, Daniel Carroll & Eric R. Young, *The Dynamics of the Racial Wealth Gap* (FRB of Cleveland, Working Paper No. 19-18, Oct. 8, 2019), https://perma.cc/3FEX-G6BU (reconciling the large and persistent racial wealth gap with the smaller racial earnings gap, this article matches racial

ownership gap is likely our government's explicit segregation policies, described in the next Part.

How large is the homeownership gap? In 2019, the homeownership rate was 73.3%, for White Americans compared to 42.1% for Black Americans.[98] This 31.2% difference was the largest since these data have been kept by the Census.[99] "Between 1994 and 2019, the White homeownership rate increased by approximately 3.3%, while the Black homeownership rate declined by 0.2% over the time period."[100]

As with education, the homeownership gap persists when adjusted for income levels.[101] Homeownership affects more than just where a family sleeps. Homeownership provides stability, which is tied to better outcomes for children.[102] As such, homes play a role in upward mobility, beyond the wealth they represent. They represent purpose, belonging, and a sense of community beyond one's self and one's family.[103]

The undervaluation of Black-owned properties is another wealth minimizer. "Across all majority Black neighborhoods, owner-occupied homes are undervalued by $48,000 per home on average."[104] This amounts to $156 billion in cumulative wealth loss.[105] This undervaluation of Black homes leads to even slower wealth accumulation, less ability of those homeowners to start businesses, and less ability of those homeowners to help children with college costs.[106]

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differences in earnings, wealth, bequests, and returns to savings and attributes the racial wealth gap primarily to earnings rather than bequests or returns to savings); *see also* Thompson & Suarez, *supra* note 96, at 14–19 (describing the role of inheritance and family wealth across racial lines and the role of this family money in perpetuating the wealth gap). These researchers claim that wealth differences between Black and White families derive 100% from different asset holdings, while wealth differences between Black and Hispanic families result mostly from different debt holdings. *Id.* at 1.

98. *Homeownership Rates Show that Black Americans Are Currently the Least Likely Group to Own Homes*, https://perma.cc/T9P9-DUJV (last updated Oct. 16, 2020).

99. *Id.*

100. *Id.*

101. Gould, *supra* note 36; Christopher Famighetti & Darrick Hamilton, *The Great Recession, Education, Race, and Homeownership*, ECON. POL'Y INST. (May 15, 2019), https://perma.cc/JL9R-NKCM (While the overall rate difference in homeownership between Blacks and Whites increased by 2.6 percentage points in the period studied, the difference for Blacks and Whites with a college degree increased by 3.6 percentage points—from 16.6 percent to 20.2 percent).

102. Richard Green, *Do Kids of Homeowners Do Better Than Kids of Renters?*, 15 CITYSCAPE: A JOURNAL OF POL'Y DEV. & RES. 223, 224 (2013); *see also* Joseph M. Harkness & Sandra J. Newman, *Effects of Homeownership on Children: The Role of Neighborhood Characteristics and Family Income*, FRBNY ECON. POL'Y REV. 78, 89 (June 2003) (stating that moving is hard on children).

103. Harkness & Newman, *supra* note 102, at 91.

104. Andre Perry et al., *The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property,* METROPOLITAN POL'Y PROGRAM AT BROOKINGS (Nov. 2018), https://perma.cc/3BFD-LGAH.

105. *Id.*

106. *Id.*

In summary, income, wealth, and home ownership gaps persist over all time periods, despite antidiscrimination laws and increased education levels among people of color.[107] Below I explore why.

IV. A Few Examples of Historic Economic Racism

Only by understanding where we have been can we see where we need to go to ameliorate racial economic inequality. We have always seen income and wealth gaps between White people and persons of color in the United States, but the vexing question is why these gaps persist in a society in which discrimination is illegal and interracial families are more common.[108]

In this Part, we briefly explore why these differences persist, at least as related to Black American wealth and income gaps. These gaps are larger than we see with any other ethnic group, except perhaps Native Americans.[109] The history below demonstrates what many people already know, that racial income and wealth gaps result not from underachievement or lack of essential skills but from socioeconomic, political, and purposefully-designed structure barriers.[110]

We are still making history when it comes to economic racism, however. In *Metaracism*, Carter Wilson fully explores the paradox of a rising upper-middle class Black population occurring simultaneously with tremendous poverty in inner cities, prisons filled with Black men, and larger and larger racial wealth gaps.[111] His book reminds us that while it is important

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107. Carter Wilson says these gaps decreased in the '60s and '70s. Wilson, *supra* note 1, at 22–23.

108. Kristen Bialik, *Key Facts About Race and Marriage, 50 Years after* Loving v. Virginia*, Fact-Tank News in the Numbers*, Pew Research Center (June 12, 2017), https://perma.cc/9RXS-X7VT (stating that since 1967 there has been a gradual increase in interracial marriage, that interracial marriage is more common at higher education levels, and that increasing numbers of Americans think interracial marriage is good for U.S. society).

109. "Based on information from 2013–2017 ACS for American Indian and Alaska Native population, the median income of American Indian and Alaska Native households was $40,315—slightly lower than the median income of African American households, which was $41,361, according to the 2018 U.S Census Bureau." Dedrick Asante Muhammad, Rogelio Tec & Kathy Ramirez, *Racial Wealth Snapshot: American Indians/ Native Americans*, National Community Reinvestment Coalition (Nov. 18, 2019), https://perma.cc/TY2K-VGCV. "The Hispanic household income for that same period was $51,450. Altogether, these numbers pale in comparison to the White household median income of $66,943." *Id.*

110. Darrick Hamilton & William A. Darity, *The Political Economy of Education, Financial Literacy, and the Racial Wealth Gap*, 99(1) Federal Reserve Bank of St. Louis Rev. 59–76 (2017), available at https://perma.cc/TQA6-S4L3 (examining the mismatch between the political discourse around individual agency, education, and financial literacy, and the actual racial wealth gap). "The authors argue that the racial wealth gap is rooted in socioeconomic and political structure barriers rather than a disdain for or under-achievement in education or financial literacy on the part of Black Americans . . . [and provides] a stratification economic lens as an alternative to the conventional wisdom to better understand why the racial wealth gap persists." *Id.*

111. Wilson, *supra* note 1, at 1.

to know some of the history of racism, it is dangerous to see this as part of our past. Most racism is motivated by economics, a desire to subjugate for financial gain.[112] This is why deep recessions and depressions are so harmful to racial equality.[113]

According to Wilson, constructs of race and racism "present dominant and subordinate racial groups as binary opposites [in order to] legitimize patterns of oppression and to desensitize society to the suffering of the oppressed."[114] Creating that psychological otherness "increases tolerance for extreme inequality,"[115] which is sometimes "normalized by religious, intellectual, scientific, political, and media elites."[116] Thus, although the events recounted below are *historic* events (events that some readers will know all too well), we are not post-racist by any means.[117] We are still making racist history today, and the rest is unwritten.

Because this essay is part of a consumer law symposium, it focuses on the money, or lack thereof, in communities of color. Of course, for Black Americans, slavery continues to play a major role in the wealth gap. As explained by Mehrsa Baradaran in *The Color of Money*,[118] "The stark wealth distortion caused by slavery and the longevity of its effects cannot be underestimated."[119] Slavery modernized credit markets because slaves were "mortgaged, exchanged, and used as leverage to purchase more slaves,"[120] and slave bodies were considered assets that White men used to build fortunes. Slaves were literally the way the South built wealth.[121]

Moreover, post-slavery policies made it difficult for all Black Americans to build wealth. Once freed, free Black Americans were excluded or constrained from participating in the mainstream economy, through laws that prohibited Black Americans from owning land, suing White debtors, or joining loan institutions.[122] Black Americans were subjected to violence and even death for merely acquiring wealth. Below we describe four of the many examples of this repression, some of which persist to this day. These examples demonstrate that slavery does not begin to tell the entire story. Much of what has happened since slavery intentionally perpetuates a society in which Black Americans must still overcome insurmountable obsta-

112. *Id*. at 14.
113. *Id*. at 105 (noting that the recession of 2008 increased anger and frustration toward ethnic minorities as more people turned to the tea party movement).
114. *Id*. at 7.
115. *Id*.
116. *Id*.
117. *See generally id.* at 1–4.
118. MEHRSA BARADARAN, THE COLOR OF MONEY, 10 (2017).
119. *Id*. at 10.
120. *Id*. at 11.
121. WILSON, *supra* note 1, at 14–15.
122. BARADARAN, *supra* note 118, at 11.

cles to achieve a fraction of the economic prosperity many White Americans take for granted. Again, this section will be most useful for readers who are unfamiliar with this history, as I was until not long ago.

A. *Forty Acres and a Mule*

One might wonder if the wealth gap is inevitable given the history of slavery. While the wealth gap is not inevitable, it is highly predicable if left unmitigated. The abolitionists portended the wealth gap over a century ago. Following slavery, the family of each freed slave was promised "forty acres and a mule."[123] The promise was recognition of the obvious, namely, that eliminating slavery would not, by itself, make it possible for former slaves to support themselves.[124] They would need assets and perhaps even land. The promise of forty acres and a mule was memorialized in Union General William T. Sherman's Special Field Order No. 15.[125]

Special Field Order No. 15 resulted from a meeting between Sherman, his Secretary of War, Edwin M. Stanton, and twenty or so Black community leaders. Sherman and Stanton asked, "What do you want for your own people" following the war?[126] Black community leader Garrison Frazier requested land, so newly-freed slaves could take care of themselves, so "we," as he explained, could "maintain ourselves and have something to spare."[127] While some former slaves actually got the land, by some accounts over 40,000 of them,[128] "Andrew Johnson, Lincoln's successor and a sympathizer with the South, overturned the Order in the fall of 1865."[129] As scholar Barton Myers sadly concludes, this " 'returned the land along the

123. Henry Lois Gates, Jr., *The Truth Behind 40 Acres and a Mule*, THE ROOT, https://perma.cc/NVA2-Q928.

124. Gates, *supra* note 123.

125. Order by the Commander of the Military Division of the Mississippi, W. Tecumseh Sherman, Special Field Order No. 15: "Forty Acres and a Mule," reprinted in WHEN SORRY ISN'T ENOUGH: THE CONTROVERSY OVER APOLOGIES AND REPARATIONS FOR HUMAN INJUSTICE 365, 365–66 (Roy L. Brooks ed., 1999), https://perma.cc/ETT5-98VS.

126. Gates, *supra* note 123.

127. Section one of the order said that "the islands from Charleston, south, the abandoned rice fields along the rivers for thirty miles back from the sea, and the country bordering the St. Johns river, Florida, are reserved and set apart for the settlement of the negroes [sic] now made free by the acts of war and the proclamation of the President of the United States." Section two provided that in these new communities, Black people would govern themselves, and no White person could live in them. Section three said that each family shall have a plot of not more than forty acres of tillable ground, and that the military would protect this ownership. *Id*.

128. Baptist minister Ulysses L. Houston was one of the groups that met with Sherman. He led 1,000 Blacks to Skidaway Island, Ga., where they established a self-governing community with Houston as the "Black governor." By June, "40,000 freedmen had been settled on 400,000 acres of 'Sherman Land.' " "Sherman later ordered that the army could lend the new settlers mules; hence the phrase, '40 acres and a mule.' " *Id*.

129. *Id.*

South Carolina, Georgia and Florida coasts to the planters who had originally owned it'—to the very people who had declared war on the United States of America."[130]

Lest we assume these events are part of a dismal, distant past, they persist today. Many of those who did get land under the Special Field Order No. 15 ultimately lost it due to distrust of often corrupt Southern courts, lack of access to good legal services, and outright fraud.[131] "Between 1910 and 1997, [Black] Americans lost about ninety per cent of their farmland[,] . . . a[n ongoing] contributor to America's racial wealth gap."[132] Since 1910, Black American families "have been stripped of hundreds of billions of dollars," in part because many did not trust the courts, so did not leave wills.[133] Instead, they let the land become heirs' property, "a form of ownership in which descendants inherit an interest, like holding stock in a company," that does not get recorded in land records, a practice referred to by one expert as "the worst problem you never heard of."[134]

According to the U.S. Department of Agriculture, this practice is "the leading contemporary cause of Black American involuntary land loss."[135] Heirs' property makes up more than a third of Southern Black-owned land—3.5 million acres, worth more than twenty-eight billion dollars.[136] Because of clouded titles, laws and loopholes, speculators and developers have been able to acquire these properties, particularly along the coasts of South and North Carolina, and have lined the properties with expensive resorts.[137] Even today, "[b]lack families watch as their land is auctioned on courthouse steps or forced into a sale against their will."[138]

One wonders how the history of race relations would be different if Special Field Order No. 15 had been honored and supported by our legal system. More to the point of this essay, how would wealth distribution be different today if former slaves actually had access to the ownership of land and the ability to build wealth? We are still witnessing the same inability to

130. *Id*.

131. Lizzie Presser, *Kicked Off the Land: Why So Many Black Families Are Losing their Property,* New Yorker Mag. (July 15, 2019), https://perma.cc/7CFM-DCJU.

132. As described in Part II, the median wealth among Black families is about a tenth that of White families. *Id*.

133. In the United States today, 76% of African Americans do not have a will, more than twice the percentage of White Americans. *Id*.

134. *Id*. (quoting David Dietrich, a former co-chair of the American Bar Association's Property Preservation Task Force).

135. *Id*.

136. *Id*.

137. *Id*.

138. *Id*.

build, accrue, and pass on wealth, that same unfulfilled desire to "maintain ourselves and have something to spare."[139]

The "forty acres and a mule" promise reflects an understanding that emancipation was not as simple as freeing slaves. Rather, we recognized people needed a place to start economically. We chose not to fulfill our promise, but the promise shows that we knew what we had to do. The United States was, in some ways, more emancipated in its beliefs than it is now. The government actually asked the freed slaves: "State in what manner you would rather live, whether scattered among the Whites, or in colonies by yourselves."[140] While one person interviewed said "I would prefer to live by ourselves, for there is a prejudice against us in the South that will take years to get over,"[141] this question was not asked of Black American communities and individuals when our government segregated America in the 40s and 50s, as discussed in Part D. below.

B. The Freedman's Savings Bank

In 1865, free Black businessmen in the North sought to establish a bank to allow Black Americans to get credit or buy property, the Freedman's Savings Bank.[142] This bank and other Black banks, however, were often created with insufficient capital and thus failed.[143] The Freedman's Savings Bank failure led to the loss of more than half of accumulated Black wealth of the time[144] and led the Black community to distrust banks as well as the government—distrust that continues to this day.[145]

The Freedman's Savings Bank was supposed to be "a benevolent gift from President Lincoln, connected to the federal government, and run by the country's most prominent citizens,"[146] but since it was not an actual

139. Gates, *supra* note 123.

140. Sarah McCammon, *The Story Behind '40 Acres and A Mule'*, NPR (Jan. 12, 2012), https://perma.cc/LEW2-RGEA.

141. *Id.*

142. BARADARAN, *supra* note 118, at 14.

143. *Id.* Other attempts to grow Black wealth were thwarted through laws or outright violence. *Id.* at 16–17. As an example of a law that precluded Black wealth-building, Andrew Johnson ordered land grants that had been given to African Americans to be returned to their previous White owners. *Id.* at 14. The Ku Klux Klan became a para-military force in the South whose purpose was to undermine anything that would interfere with established antebellum order. *Id.* Since freedom for African Americans was contained only in constitutional laws and on the books, rather than in the southern economy, these rights were often hollow and vulnerable. *Id.*

144. *Id.* at 30.

145. *Id.* at 30–31.

146. *Id.* at 26.

lending institution, it failed to grow wealth in the Black American community.[147]

Mehrsa Baradaran calls the bank "counterfeit capitalism" because it would not lend to its depositors.[148] White managers ultimately looted the bank and used the money deposited in the Freedman's Savings Bank for risky investments,[149] causing the bank to shut down and leave over 60,000 depositors without access to nearly $3 million in deposits.[150] The Freedman's Savings Bank provides an historical example of how the mainstream White economy stole wealth from the Black American community, as well as prevented Black American wealth from growing by denying access to credit,[151] as well as how southern sharecropping trapped Black Americans in a cycle of debt and poverty.[152]

C. Private Citizen Intolerance for Black Wealth

Successful Black businessmen were also faced with daily violence.[153] In 1921, the Greenwood district described below (the Black Wall Street) was destroyed by a White mob.[154] In the aftermath of the riot, 300 mostly Black American people died and many more were injured, 304 homes were looted, 18,000 homes were burned, and $2 to $3 million in property was damaged.[155] A similar destruction occurred in Wilmington, North Caro-

147. *Id*. Baradaran states "the Freedman's Bank was purposefully set up as a savings bank, a teaching institution, rooted in a paternalistic and condescending mission of instructing Blacks in the ways of thrift and capitalism. But the bank left out the most important part of capitalism—the part where capital is able to grow and multiply through credit."

148. *Id*. at 26–27.

149. *Id*. at 27–29.

150. *Id*. at 30. During Reconstruction, Black capital was exploited in the northern capitalist economy through the Freedman's bank, while Black labor was exploited in the southern plantation economy. *Id*. at 33. Sharecropping kept Black Americans in "debt bondage. *Id*. Sharecroppers used credit to obtain land and supplies. That credit was paid off with their crop yield. Sharecropping functioned to keep many African Americans in debt. *Id*. at 34. "Sharecroppers paid "exorbitant interest for their supplies and all 'wages' or 'payments' were in the form of 'store credit.'" *Id*. For sharecroppers, "the credit cycle ensured both perpetual debt and perpetual poverty." *Id*.

151. *See id.* at 30. As Baradaran explains:

> There were two groups who did not rely on [classical] consumer credit in postwar America: the very wealthy and the poor Black population- the wealthy because they did not need it, and Blacks who desperately did need it but were excluded from the credit card market. Credit cards and finance companies avoided the ghetto due to racism and its risk-prone economy. Blacks had to keep relying on expensive and extractive installment credit that assured instability and continued poverty.

Id.

152. *Id*. at 34.

153. *Id*. at 62.

154. *Id*. at 60.

155. *Id*. at 60.

lina.[156] As Baradaran states, "The violence permanently derailed Black business efforts and hard-won racial progress."[157] While other ethnic groups also face historical challenges, slavery's legacy continues to play a role in today's income and wealth inequality.

Despite incredible obstacles, some Black Americans managed to rise to the upper middle class by the beginning of the twentieth century. For example, by the 1920s, Tulsa, Oklahoma became home to one of the wealthiest Black communities in America.[158] Thought to be less racist than many other America cities, a Black upper middle class thrived. Tulsa's Greenwood neighborhood, nicknamed Negro Wall Street of America, had the wealth and opulence of a similar upper middle class White neighborhood.[159]

Yet on the morning of June 1, 1921, this "less racist" claim was turned on its head when a White mob numbering in the thousands marched across the railroad tracks dividing Black Tulsa from White Tulsa and burned down the 34 square-block Greenwood neighborhood.[160] Those in power in Oklahoma did everything in their power to cover up the tragedy and erase it from history[161]

156. *Id*. at 62.

157. *Id*. at 62.

158. Tim Madigan, The Burning: Massacre, Destruction, and the Tulsa Race Riot of 1921 (2003).

159. *See id*. at 3 (noting that Blacks in Greenwood had everything they needed in their own community and were the top of the economic mountain for their race in America); Maggie Astor, *What to Know About the Tulsa Greenwood Massacre*, N.Y. Times (July 17, 2019), https://perma.cc/D2Z4-2VBP.

160. Madigan, *supra* note 158, at 104–24.

161. *Id*.; Astor, *supra* note 159. As this article explains:

> After the massacre, officials set about erasing it from the city's historical record. Victims were buried in unmarked graves. Police records vanished. The inflammatory Tulsa Tribune articles were cut out before the newspapers were transferred to microfilm.
>
> "What happens fairly rapidly is this culture of silence descends, and the story of the riot becomes actively suppressed," said Scott Ellsworth, a lecturer at the University of Michigan who is from Tulsa and contributed to the 2001 report, and whose 1982 book "Death in a Promised Land" was the first full history of the massacre.
>
> City officials cleansed the history books so thoroughly that when Nancy Feldman, a lawyer from Illinois, started teaching her students at the University of Tulsa about the massacre in the late 1940s, they didn't believe her.
>
> Mr. Matthews, the state senator, said that even as a Black person raised in Tulsa, and even as the grandson of a woman who survived the massacre, he did not learn about it until he was in his 20s.

Id.

We know over 100 people died, but the numbers could be much, much higher.[162] We do not know how many people died because the event was followed by a long, painful period of silence for those who experienced it, which explains why most people have never even heard of this historical tragedy.[163] It took a remarkable 80 years to set up the Tulsa Race Riot Commission to find out what actually happened,[164] and promised reparations never occurred.[165]

On October 21, 2020, just months before this essay was published, a second excavation began to find and identify victims of the 1921 Tulsa Race Massacre, and to "shed light on violence that left hundreds dead and decimated an area that was once a cultural and economic mecca for African Americans."[166] The Tulsa Race Massacre was not taught for decades in Oklahoma schools, despite the fact that it decimated the largest economic success story for Black Americans in United States history.[167] As the next sub-section shows, private citizens were not the only ones to set up a lasting legacy of economic inequality in the United States.

D. Government-Sponsored Discrimination and Socially-Engineered Segregation

Federal polices of the 1930s, 40s, and 50s mandated segregation and forbid Black Americans from buying homes.[168] Segregation was official U.S. government policy, not the result of societal prejudice, bank redlining, White flight, or self-segregation.[169] Black Americans were systematically stripped of wealth and forbidden from building more.[170]

Official U.S. government policies were designed and implemented to segregate several metro areas in the country, through two New Deal pro-

162. Memorandum from Oklahoma Commission to Study the Tulsa Race Riot, to Hon. Frank Keating, Governor of Okla., et al., *Tulsa Race Riot: A Report by the Okla. Comm'n to Study the Tulsa Race Riot of 1921*, at 12–13 (Feb. 28, 2001), available at https://perma.cc/ZX8H-XW5Y (stating that "[a]lthough the exact total can never be determined, credible evidence makes it probable that many people, likely numbering between one hundred and three hundred, were killed during the riot.).

163. Madigan, *supra* note 158, at 246–59. Madigan describes how a learned sociologist had never heard of the riots as of 1976, nor had classrooms of Oklahoma college and high school students. *Id*. at 250–52.

164. Memorandum from Oklahoma Commission to Study the Tulsa Race Riot, *supra* note 162, at ii (stating that [t]he 1921 Tulsa Race Riot Commission, which was formed to find out what happened in these riots, originated in 1997 with House Joint Resolution No. 1035).

165. Alfred L. Brophy, Reconstructing the Dreamland: The Tulsa Riot of 1921 102 (2002).

166. Ken Miller, *Tulsa Digs Again for Victims of 1921 Race Massacre: A Second Search for Black Victims of the 1921 Tulsa Race Massacre is to Begin in a Cemetery*, U.S. News & World Rep. (Oct. 18, 2020), https://perma.cc/D4BK-27GA.

167. *Id*.

168. Rothstein, s*upra* note 77, at 20–27, 174, 199–200.

169. *Id*. at 20–21, 59–75, 95–99, 215–17.

170. *Id*. at 63–67, 215–17.

grams.[171] The first was the Public Works Administration, which created the first civilian public housing.[172] This affordable housing was primarily for White, lower-middle class families, with a few also built for Black Americans.[173] These Public Works Administration projects segregated neighborhoods that had never been segregated before.[174] The second project was the formation of the Federal Housing Authority ("FHA"), which guaranteed low-interest home loans for Whites only and subsidized builders to build homes in the suburbs for White homeowners only.[175] These policies were explicit and not a secret.

Through FHA regulations, the FHA structured the entire private housing market around segregation.[176] In his book, *The Color of Law*, Richard Rothstein explains these government policies and highlights how, rather than real estate brokers and other private citizens, the government itself is responsible for the segregation of America.[177] In 1934, faced with a housing shortage, the FHA was formed and created a housing program designed to increase housing stock for White, middle class and lower-middle class families out in the suburbs.[178] One of these developments, Levittown, Pennsylvania, was known by some as one of the greatest social programs of all time.[179]

One man who delivered goods to the new development wanted and had the resources to buy one of the homes but was forbidden because he was Black.[180] Of course, there were many other Black Americans who were precluded from the development, and most accounts of this prohibition against Black owners blame the builder, William Levitt, for these racist policies. For example, Wikipedia claims "Levitt refused to sell Levittown homes to people of color, and the FHA, upon authorizing loans for the construction of Levittown, included racial covenants in each deed, making Levittown a segregated community."[181]

This account of the facts misattributes the cause of Levittown's segregation. As Rothstein explains, if Levitt had been willing to sell to Black

171. *Id*. at 46–47.
172. *Id*. at 20–23.
173. *Id*.
174. *Id*. at 107.
175. *Id*. at 70–73.
176. *Id*. at 65–67.
177. *Id*. at 60, 64–65.
178. *Id*. at 63–65.
179. Patricia E. Salkin & Irene Crisci, *Billy Joel: The Chronicler of the Suburbanization In New York*, 32 Touro L. Rev. 111, 126 (2016); Nathalie Martin, *The Role of History and Culture in Developing Bankruptcy and Insolvency Systems: The Perils of Legal Transplantation*, 28 B.C. Int'l & Comp. L. Rev. 1, 16–17 (2005).
180. Rothstein, *supra* note 77, at 69–70.
181. *Levittown*, Wikipedia, (last edited Sept. 25, 2020, 2:50 AM), https://perma.cc/3945-TWD9.

buyers, the FHA would not have subsidized his projects, and he would have had no ability to build any homes.[182] As Levitt himself stated to Congress, "We are 100% dependent on government."[183] At the time, the vast majority of housing construction was government-subsidized and reserved only for Whites.[184] Banks also were encouraged to loan money only on suburban rather than urban homes.[185]

At the same time the government was building these new homes for Whites, Black families were being pushed into urban housing projects.[186] The FHA refused to insure mortgages in and near Black neighborhoods—a process known as redlining, named after maps indicating where mortgages could not be federally insured.[187] Black families could not even rent these new suburban homes.[188] In one case, a White teacher bought a home in one of these subdivisions and rented it out to a Black colleague. This buyer was told that, as a result, he would never receive the benefit of an FHA loan again.[189] The FHA's explicit justification for these polices was that if Black Americans lived in these homes, bought homes in these suburbs, or even bought homes near these suburbs, the nearby homes would decline in value and create underwriting risk for FHA.[190]

As new housing was created in the form of suburban tract housing for Whites, the White inner city projects became largely vacant, while the Black projects had long waiting lists.[191] Eventually the dire need in Black communities caused the public housing authorities in the federal government to open up the White-designated projects to Black Americans, who quickly became their only residents.[192] At the same time, industry was leaving the cities, Black Americans were becoming poorer in those areas, and

182. Rothstein, *supra* note 77, at 69–70.

183. *Id*. at 72.

184. *Id*. at 70–74.

185. *Id*. at 65.

186. *Id*. at 75.

187. The term "redlining" comes from color-coded maps used by the federal Home Owners Loan Corp., the Federal Housing Administration, and the Veterans Administration, indicating where it was financially safe to insure mortgages. Neighborhoods where or near where African Americans lived were colored red. *Id*. at 64–65.

188. *Id*. at 70–71, 115–17.

189. *Id*. at 66–67.

190. There was no basis for this claim and in fact housing options for Black families were so limited that they were often willing to pay more for homes, increasing the value of nearby homes. *Id*. at 94, 96–97, 99. Black Americans continue to pay more for the same housing than Whites. *Id*. at 173. The FHA's official regulations, found in its bank underwriting manual, stated that "incompatible racial groups" should not be permitted to live in the same communities. This was interpreted to mean that loans to African Americans could not be insured, which in turn meant Black families could not get loans. *Id*. at 65–66. These regulations even suggested that highways would be a good way to separate White and Black neighborhoods. *Id*. at 65.

191. *Id*. at 27–30.

192. *Id*.

these projects were becoming vertical slums. Thus, the federal government intentionally created "White flight," as well as the current state of public housing in America.[193]

Black Americans were getting further and further from their dreams and their own birthright under our Constitution. The more impoverished they became, the less welcome they were in middle class neighborhoods,[194] and the more likely they were to live in places with poor schools, few professional role models, few libraries and books, more airborne pollutants that reduce attendance in school, fewer physicians in the neighborhood, less fresh food, more overcrowding, and more unemployment.[195]

Toxic waste sites often were situated in these Black neighborhoods.[196] Black neighborhoods received few city services, adding to the blight and poverty.[197] Schools were segregated, and Black schools were often placed in the most undesirable neighborhoods, causing families to either move to these even more undesirable areas or find some other way to get their kids to these Black schools.[198]

One scholar, Teron McGrew, notes that unconstitutional residential segregation was practiced by federal, state, and local governments as an instrument of racial domination in the United States throughout much of the 20th century.[199] McGrew, like Rothstein, describes systematic racial discrimination in housing through federal agencies, laws, regulations, and private practices, through the lens of the segregation of Oakland, California.[200] Urban renewal, called by some "Negro removal," was often accomplished by building interstate highways right through Black neighborhoods, destroying housing that was never replaced.[201] In the case of Oakland, 9,000 Black Americans were removed long before any replacement housing was built, all in the name of urban renewal, code for Black removal.[202] Much of the time, the housing being removed was not blighted or even damaged.[203]

193. *Id.* at 93–99. Rothstein's Chapter 6, entitled "White Flight," explained in detail how the FHA used its discriminatory regulations to keep Blacks out of White housing projects. At the same time, speculators and real estate agents colluded to use blockbuster tactics to buy up properties in borderline Black-White neighborhoods and persuade White residents that their neighborhoods were turning into Black slums. These tactics included having Black women push baby carts and Black men blast loud music as they drove by, all in order to encourage Whites to move. *Id.* at 95.

194. *Id.* at 127.

195. *Id.* at 187.

196. *Id.* at 54–57.

197. *Id.* at 133.

198. *Id.* at 133–37.

199. Teron McGrew, *The History of Residential Segregation in the United States, Title VIII, and the Homeownership Remedy*, 77 AM. J. ECON. & SOC. 1013, 1013–14 (2018).

200. *Id.*; ROTHSTEIN, *supra* note 77, at 127–31.

201. ROTHSTEIN, *supra* note 77, at 126–27.

202. McGrew, *supra* note 199, at 1033–34.

203. *Id.* at 1033.

One goal of these highways was to "eliminat[e] . . . unsightly and unsanitary districts" with no regard for where current residents would go.[204] McGrew describes an interstate highway that destroyed entire neighborhoods in West Oakland.[205] The resulting Acorn Housing Project was built in the aftermath of the urban renewal program. Despite many unorthodox attempts to tamp down gang violence and other poverty-related issues, the area continues to be poverty-stricken, unsafe, and crime-ridden as a result.[206]

These segregated housing polices have had deep, lasting effects on the racial economic inequality we see in society today. As Rothstein explains, getting a tract house in the Daly City development south of San Francisco or in Levittown Pennsylvania or any similar place cost about twice the average median annual income at the time.[207] This was affordable with an FHA or VA mortgage.[208] At the time, many Black Americans were equally able to afford those homes but were prohibited from doing so.[209] Today those same homes sell for $300,000, $400,000 or more, or six to eight times the national annual median income.[210] By the time Congress passed the Fair Housing Act in 1968, allowing Black Americans to buy these homes, the homes were no longer affordable.[211] This wealth building opportunity, unless ameliorated, is gone forever.

As set out in Part II above, today, Black American *incomes* on average are about 60% of average White incomes.[212] Black American *wealth* is

204. Rothstein, *supra* note 77, at 127.

205. McGrew, *supra* note 199, at 1031–38.

206. *Cypress Village, Oakland, California*, Wikipedia, (last edited Oct. 26, 2019 2:59 PM), https://perma.cc/2GP8-8ZU4. In order to reduce the violence between two neighboring housing projects, in 2003 rappers from Acorn and Cypress gangs released an underground mixtape titled *Acorn & Cypress* inspired by other unity rap albums.

207. Rothstein, *supra* note 77, at 182, 202.

208. *Id.* at 67–70.

209. Terry Gross, *A 'Forgotten History' Of How The U.S. Government Segregated America* (May 3, 2017) (interviewing Richard Rothstein), https://perma.cc/QA3C-H8SZ, (stating that "African-American families that were prohibited from buying homes in the suburbs in the 1940s and '50s and even into the '60s, by the Federal Housing Administration, gained none of the equity appreciation that Whites gained. So . . . the Daly City development south of San Francisco or Levittown or any of the others in between across the country, those homes in the late 1940s and 1950s sold for about twice national median income."); NPR, *The Color of Law*, *supra* note 77 ("Those homes sold for about $8,000 a piece or $100,000 more or less in today's currency. African-Americans, working class families could have bought those homes.").

210. These homes are simply no longer affordable. *See* Rothstein, *supra* note 77, at 179. *See also* NPR, *The Color of Law*, *supra* note 77, https://perma.cc/KBH6-GML2. ("Today though, those homes sell for $300,000, $400,000. They're no longer affordable to working class families. In the ensuing two generations, the White families who moved into those homes gained that $200,000, $300,000 in equity appreciation.")

211. *See* Rothstein, *supra* note 77, at 182 (discussing how in 1948, a Levittown home cost $8,000 or $75,000 in today's dollars, but today, they cost $350,00 and up).

212. *Id.* at 184.

somewhere between 5% and 10% of White wealth.[213] Because most middle-class families in this country gain their wealth from their home equity, this enormous wealth gap is in large part attributable to federal housing policy implemented through the 20th century.[214] Additionally, many White families have sent their children to college with their home equities. Many have been able financially support their parents in old age and not depend on their own children for their own financial support. Many have been able to bequeath wealth to their children. Many of these opportunities have been lost for Black Americans, who can trace much of this wealth loss to America's housing policies.[215]

This government-designed segregation has led to "stagnant inequality, because families are much less able to be upwardly mobile when they're living in segregated neighborhoods where opportunity is absent."[216] If we want greater equality in this society, and a reduction in hostility between police and young Black men, integration can help.[217] If the government caused this problem and the Constitution has been violated, it is the government's responsibility to attempt to fix these inequities.

V. Solutions: Low-Interest Home Loans and Subsidized Down-Payment Programs

If the Constitution has been violated through government action, the U.S. is obligated to remedy this costly wrong.[218] It is in every citizen's best interest to remedy the wrong, as it has led to racial violence, societal instability, and physical and emotional harm to all of us. The multi-cultural

213. *Id.*

214. *Id.* at 185–86.

215. Bradley L. Hardy, Trevon D. Logan & John Parman, *The Historical Role of Race and Policy for Regional Inequality*, Hamilton Project (Sept. 28, 2018), https://perma.cc/8TS7-W4MK. These authors explain how contemporary racial inequality results from geography, namely government policies governing the spatial distribution of the Black population. They explain current Black–White gaps in income, wealth, and education through the complex relationship between regional inequality, race, and policies at the local, state, and national levels. They describe the ways spatial distribution of the Black population has evolved over time and the ways that spatial distribution has interacted with policy to, at times, reduce and exacerbate levels of inequality.

216. NPR, *The Color of Law*, *supra* note 77.

217. Rothstein, *supra* note 77, at 195–97 (describing the damages to all of society caused by segregation).

218. Rothstein had an "ah ha" moment when he read a 2007 Supreme Court decision that prohibited Louisville and Seattle from token integration. *See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No.* 1, 551 U.S. 701 (2007). The Court claimed that school segregation was acceptable because of neighborhood segregation, and that neighborhood segregation resulted not from government action of private choices. Rothstein, *supra* note 77, at 215. This completely unfounded fact forms the basis of Rothstein's constitutional argument that if government caused segregation, government must now fix it. *Id.*

Black Lives Matter movement provides an opportunity to finally address these inequities with tangible solutions.

Rothstein's solutions relate primarily to integration, which he sees as the most important goal in righting these wrongs. He claims that these decades-old housing policies have had a lasting detrimental effect on American society.[219] "The segregation of our metropolitan areas today leads . . . to stagnant inequality, because families are much less able to be upwardly mobile when they're living in segregated neighborhoods where opportunity is absent," he says. "If we want greater equality in this society, if we want a lowering of the hostility between police and young African-American men, we need to take steps to desegregate."[220] Rothstein acknowledges that integration will not be free, noting it will be costly to integrated schools, neighborhoods, and the rest of society.[221] Nevertheless, moving toward a more integrated world will likely cost far less in the long run than the cost of maintaining segregation. These costs include a continuing lack of upward mobility, continuing economic inequality, crime, riots, and violent deaths due to police violence. The wrongs that must be remedied include loss of income and employment, losses in education, loss of wealth and many other losses, but a tangible start would be to focus on housing and home ownership.

Rothstein proposes several housing-related remedies, including having the government buy the next 15% of Levittown homes that come up for sale, at a market price of around $350,000, and then selling them to Black families for $75,000—the price their grandparents could have bought them for back in the 1940s and 50s, but in today's dollars. He suggests we do this for every housing project that complied with the FHA's discriminatory policies.[222] He also suggests ways to incentivize White Americans to move into predominantly Black neighborhoods[223] and suggests federal subsidies for Black Americans willing to live in previously excluded suburbs.[224] He also suggests outlawing bans on multifamily units in suburbs and denying mortgage interest deductions for those who live in communities in which there is no low or moderate-income housing.[225]

While Rothstein proposes a complex web of solutions, some of which are more politically viable than what I propose here, the simplest way to help correct the loss of the right to buy homes is to guaranty and subsidize low-interest home loans for Black American families. We already have a

219. Gross, *supra* note 209.
220. *Id.*
221. *See* Rothstein, *supra* note 77, at 227.
222. *Id.* at 201–02.
223. *Id.* at 203.
224. *Id.* at 203–04.
225. *Id.* at 204–05.

program of this kind for Native Americans, a group of Americans deeply familiar with our government's explicit role in inequity, displacement, and racism.

The next subsection describes the Native American Section 184 loan program, articulates some of its limitations, and explores how a similar program could be created to improve Black American home ownership rates, build equity in homes owned by Black Americans, and ameliorate some of the wealth loss resulting from our government's segregation and displacement policies.

A. Section 184 Loans for Native Americans: The Design and the Difficulties

Native American communities have long suffered from a deep and wide housing shortage,[226] resulting from racial violence, dislocation, unemployment, and enduring poverty.[227] For example, the overall poverty rate in the United States was 18% for the period from 2006 to 2010. For Native people, the rate was 22% in metropolitan areas, 28% in the surrounding counties, and 32% in tribal areas.[228] This latter figure is almost double (1.8 times) the national average.

When it comes to housing, many Native Americans live in homes with deficient kitchen, heating, and electrical systems, a lack of running water, structural deficiencies, and overcrowding.[229] These overcrowded conditions and systemic and structural problems help explain why Native communities have been so badly hurt by the COVID-19 virus.[230]

Native communities have lacked mortgage loans for decades, as much Native land is held by communities in trust rather than by individuals in fee simple. As Brian Pierson explains:

226. Nancy Pindus G., Thomas Kingsley, Jennifer Biess, Diane Levy, Jasmine Simington & Christopher Hayes, *Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Need Executive Summary*, U.S. DEP'T OF HOUSING (Jan. 2017), available at https://perma.cc/D2D9-JP7E [hereinafter *Housing Needs*].

227. Ezra Rosser, *Forgotten America: Fighting Poverty in Rural Communities,* 13 GEO. J. ON POVERTY L. & POL'Y 33, 67–68 (2006); George H. Cortelyou, *An Attempted Revolution In Native American Housing: The Native American Housing Assistance And Self-Determination Act*, 25 SETON HALL LEGIS. J. 429, 430–34 (2001).

228. *Housing Needs*, *supra* note 226, at 35. This article states that from 2006-to-2010 period, the poverty rate for the AIAN-alone population in tribal areas was 32 percent, substantially more than the 18 percent national rate for non-Indians (exhibit 1.39). *Id.* The AIAN-alone rate was 28 percent in surrounding counties and 22 percent in other metropolitan counties compared with 14 and 13 percent for non-Indians in those areas, respectively. *Id.*

229. *Id*. at 16.

230. Childress, *supra* note 26.

> One of the unique challenges to the development of housing in Indian country is the inalienability of tribal trust and restricted lands. After the federal government had purchased tribal lands by treaty or act of Congress during the eighteenth and nineteenth centuries, most remaining tribal lands were held in common by tribes. With the passage of the General Allotment Act of 1887, assimilation of Indians and the termination of Indian tribes and reservations became the cornerstone of federal Indian policy.
>
> Under the Allotment Act, reservations were divided into 40-, 80-, or 160-acre parcels and distributed (allotted) to individual Indians. Once this process was completed, the "surplus" lands were sold to non-Indians. The allotted lands were initially subject to restrictions against alienation, but the restrictions were eventually lifted in many cases, with disastrous results. By 1934, ninety million acres of tribal lands had been lost through sales to non-Indians. That year, Congress passed the Indian Reorganization Act, which, among other provisions, ended the additional alienation of Indian lands.
>
> The federal government has repudiated the policies of assimilation underlying the Allotment Act, but its effects continue. Today, many reservations are a checkerboard of (1) lands titled to the United States in trust for the tribe or, substantially equivalent, lands technically held in "fee" by a tribe but subject to a deed restriction against alienation without federal approval; (2) lands titled to the United States in trust for individual Indians or, substantially equivalent, lands technically held in fee by individual Indians subject to a deed restriction against alienation without federal approval; (3) lands owned by tribes or tribal members in fee simple; and (4) lands held by non-Indians in fee simple.[231]

In response to this long-standing problem with how title is held for much Native land, as well as the resulting housing shortage, in 1992, the United States government enacted the Section 184 Loan Program,[232] designed to provide mortgage financing to Native American and Alaskan Native tribal members who belong to federally registered tribes.[233]

Section 184 home loans are guaranteed 100% by HUD's Office of Native American Programs.[234] The program was designed to encourage na-

231. Brian L. Pierson, *Developing Affordable Housing in Indian Country,* 19 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 367, 374–75 (2010). Scholars have vigorously debated whether the trust land construct has helped or hurt tribes but all agree that it makes it more difficult to get a mortgage; *see also* Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 CALIF. L. REV. 1531, 1531 (2019) (arguing that trust status is bureaucratic, oppressive and linked to poverty, but that fee simple transfers to individuals are also problematic, and arguing for a complete overhaul of land law in Indian Country); Kristen A. Carpenter & Angela Riley, *Privatizing the Reservation?*, 71 STAN. L. REV. 791, 832 (2019) (advocating for fee simple land holdings and explaining how the traditional "standard residential mortgage lending system excluded most reservation-based Indian borrowers"); George H. Cortelyou, *An Attempted Revolution in Native American Housing: The Native American Housing Assistance and Self-Determination Act*, 25 SETON HALL LEGIS. J. 429, 430–34 (2001).

232. Pierson*, supra* note 231, at 383; *Section 184 Indian Home Loan Guarantee Program*, HUD, https://perma.cc/V2B4-NLET.

233. *Id*.

234. *Id.*

tional and local banks to provide mortgage loans to Native Americans, and the HUD's Office of Loan Guarantee works with a national network of lenders to increase access to home financing and to improve the value of homes owned by Native Americans.[235]

At least on their face, Section 184 loans have several advantages over other home loans. They provide for low down payments of just 2.25% on loans over $50,000 and just 1.25% on loans under $50,000.[236] The interest rates on these loans are typically lower than they otherwise would be because eligible Native homeowners pay average market rates, not those that would result from credit scores.[237] This is possible because the program uses different underwriting standards to qualify borrowers for home loans. These underwriting methods rely not on automated decision-making tools but on more local and more informal creditworthiness indices.[238]

A network of special approved lenders provides the loans and these lenders are trained in these alternative underwriting methods.[239] In lieu of annual mortgage insurance, borrowers pay a one-time fee of 1.5% of the loan, which can be rolled into the loan.[240] The loans are always fixed-rate loans and thus immune from the predatory, adjustable-rate mortgages that hurt so many in the 2008 financial crisis.[241] The loans can be used to purchase an existing home, refurbish an existing home, refinance an existing home, or construct a new home.[242] They can be used on non-Indian land and reservation land, which at least in theory eliminates some of the risks of lending on tribal land that is collectively owned in most cases, rather than owned in fee simple by the borrower.[243]

Despite these highly favorable loan terms, the loans have been far less successful in increasing Native homeownership than one would hope.[244] As one author notes, even honest lenders are still reluctant to issue Section 184 loans due to unfamiliarity with tribal court procedures and the rights that are available in the event of default or foreclosure.[245] The red tape involved

235. Pierson, *supra* note 231, at 383–84.

236. *Section 184 Indian Home Loan Guarantee Program*, *supra* note 232.

237. Telephonic interview with Marvin Ginn, former executive director of Native Community Finance, a Native American Community Development Corporation (Oct. 29, 2020).

238. *Id*.

239. *Id*.

240. Pierson, *supra* note 231, at 383. Loans with a loan to value of 78% or greater are also subject to an annual .25% mortgage insurance premium. *Id*.

241. Telephone interview with Marvin Ginn, *supra* note 237.

242. Pierson, *supra* note 231, at 383.

243. *Id*.

244. Rosser, *supra* note 227, at 74–75; Shoemaker, *supra* note 231, at 1559.

245. Rosser, *supra* note 227, at 74–75, *citing* Thomas Moore & Margaret Tyndall, *HUD 184 Loan Program Helps Native Americans Achieve Homeownership*, CMTY. DIVIDEND (Fed. Reserve Bank of Minn., Minn., MN), Spring 1998 ("the factors that have inhibited mortgage lending on Indian reservations . . . [include] lenders [who] are often unfamiliar with tribal court procedures and unclear as to

can be prohibitive and is seen by lenders as not worth the effort in some cases.[246]

The Section 184 loan program's 100% guarantee program eliminated some of the complexities of lending on tribal land, but lenders still find the process too time-consuming to reduce their interest in this form of lending.[247] Lenders naturally prefer to lend to Tribes with large infrastructures with the ability to quickly develop tribal land lease programs that allow for quick loan approval, but not all Tribes are in this position.[248] Moreover, many members of Native communities are so poor and lacking in resources that even on these terms, homeownership remains out of reach.[249]

B. *Providing Government Guaranteed, Low-interest, Low-Down Payment Loans to African American Families*

Addressing segregation and economic exclusion in housing and home ownership is a good place to start in attempting to close the wealth gap and repay Black Americans for the systemic harms they have suffered through government-sponsored segregation and wealth destruction. According to Amy Traub, "[d]isparities in homeownership rates and returns would substantially reduce the racial wealth gap."[250] Traub contends that if public policy successfully eliminated racial disparities in homeownership rates, such that Black and Hispanic families were as likely as White households to own their homes:

> Median Black wealth would grow $32,113 and the wealth gap between Black and White households would shrink 31 percent. Median Latino wealth would grow $29,213 and the wealth gap with White households would shrink 28 percent.
>
> If public policy successfully equalized the return on homeownership, so that Blacks and Latinos saw the same financial gains as Whites as a result of being homeowners, median Black wealth would grow $17,113 and the wealth gap between Black and White households would shrink 16 percent. Median Latino wealth would grow $41,652 and the wealth gap with White households would shrink 41 percent.[251]

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procedures to be used in cases of default or foreclosure. On some reservations, tribes have not developed the legal infrastructure necessary to handle mortgage loans. To address these concerns, HUD devised its Section 184 mortgage loan program to finance the purchase, construction or rehabilitation of one- to four-family homes").

246. Yair Listokin, *Confronting the Barriers to Native American Homeownership on Tribal Lands: The Case of the Navajo Partnership for Housing*, 33 URB. LAW. 433, 442–44 (2001).

247. Rosser, *supra* note 227, at 74–75.

248. *See id.*; Pierson, *supra* note 231, at 384.

249. Rosser, *supra* note 227, at 74–75.

250. Traub, *supra* note 94, at 1–2.

251. *Id.*

We can learn from the limitations of the Section 184 program while borrowing some of its most favorable features. Like the Section 184 loans, loans to Black Americans could be 100% government guaranteed, could provide for flexible underwriting, and could provide for low interest rates and low down-payments without the need for private mortgage insurance.

These features alone are not enough, however. First, it is critical to ensure that the loans are not too complex to administer. Second, lenders must be provided with meaningful incentives to actually make these loans. These incentives could include requirements that all lenders make a certain number or percentage of these guaranteed, low-interest, low-down payment loans. Third, due to centuries of discrimination and systemic racism, down payment grants could be made available to those who meet a certain need level, given that any down payment could be an obstacle, where poverty and racism still prevail. These programs would be costly, but not as costly as doing nothing to right our country's role in segregating America and forbidding Black families from building wealth through home ownership.[252]

VI. Conclusion

Addressing systemic racism as it relates to education, employment, income and wealth inequality, and of course housing, is long overdue. Nothing will change overnight, but any steps taken to reduce racism will be helpful, as long as these steps actually reduce economic inequality. Making homeownership more available to Black families is a logical place to begin creating policy, given the government's role in segregating society. It is not, however, the entire solution. We cannot deny the reality of exponential wealth growth. The more one has, the easier it is to build more wealth. This means that subsidizing housing for Americans of color will never close the wealth gap.

It is equally necessary to subsidize higher education, through government-guaranteed, low-interest student loans for students of color, particularly Black students. The double pandemic of racial violence and COVID-19 makes this clear. Such a program would help repay families for their inability to use home equity to help children pay for college. It would also

252. I do not attempt here to describe the implementation mechanism for such a program, to outline the eligibility guidelines, or to estimate the cost of such a program. I do know that those costs would be far less than reparations estimates for slavery, which could cost $12 trillion or more. Tala Hadavi, *Support for a Program to Pay Reparations to Descendants of Slaves is Gaining Momentum, but Could Come with a $12 Trillion Price Tag*, CNBC (Aug. 12, 2020), https://perma.cc/X58D-AHNJ. Nor are these "either or" propositions. I do know that housing is as fundamental to life as any other material thing and that the opportunity to buy homes has been denied to many Black families through government action.

help close the debt gap regarding student loans, for which students of color regularly pay higher interest than White students.[253] These loans, though helpful, will not close the wealth gap either.

Equality will never result from increased access to credit alone. As Professor Abbye Atkinson has noted, "[t]he problem of entrenched and enduring poverty that leaves people consistently unable to afford basic necessities" cannot be addressed through better access to credit or even better credit terms.[254] All credit requires "future prosperity and economic growth," and heavy reliance on credit cannot solve problems related to low income and poverty.[255] Thus, other programs are needed to help Black entrepreneurs who have suffered by not being able to use home equity to build small businesses. Big companies and wealthy individuals can borrow money to build more wealth. Small entrepreneurs have a much harder time borrowing money. Because small loans are less profitable to originate than large loans, and because a growing middle class of Black Americans will likely be looking for smaller business loans, these businesses will be at a competitive disadvantage.[256] Thus, current small business loan programs for persons of color must be restructured and increased.

Additionally, as important as government policy is, and as much as it can impact public opinion, we cannot ignore the role of public opinion in perpetuating racial violence, racism, and discrimination. We should carefully study what causes shifts in public opinion.[257] The number of people

253. *See* Foohey & Martin, *supra* note 4, at 22–24.

254. Abbye Atkinson, *Rethinking Credit as Social Provision*, 71 STAN. L. REV. 1093, 1094 (2019).

255. *Id*.

256. William Jackson III et al., *Size Matters: The Impact of Loan Size on Measures of Disparate Treatment toward Minority Entrepreneurs in the Small Firm Credit Market*, 8 ENTREPRENEURSHIP RES. J. 1, 1 (2018). This paper reports the results of investigating differences in measures of disparate treatment, or discrimination, in the small firm credit market that are related to loan size. It considers the impact of differing levels of competition across products (i.e., small versus large loans). The results for their small loan subsample showed strong evidence of disparate treatment, or discrimination, against African American entrepreneurs. However, the results for the large loan subsample are statistically different. In particular, for the large loan subsample there was no significant evidence of discrimination, or disparate treatment, against African American entrepreneurs applying for business loans. This strongly suggests that the current evidence of discrimination in the small firm credit market needs to be reconsidered for public policy application purposes. It could well be, however, that few African Americans are even trying to get those big loans.

257. For example, Rothstein notes that while most Americans prefer integrated neighborhoods, but for Black people a preferred integrated neighborhood is one in which 20–50% are Black. ROTHSTEIN, s*upra* note 77, at 223. For White people, a preferred integrated neighborhood is one in which Black Americans are 10% of the population. This is obviously problematic as many communities around the country have a Black population far greater than that, with Atlanta at 32%, Chicago at 17%, Detroit at 23%, and even the New York-New Jersey-Connecticut area at 15%. The often-repeated idea that Black Americans do not want to integrate is, in Rothstein's words, "White conceit." *Id.* It is certainly no fun being stopped for being Black in a predominately-White neighborhood, watched like a hawk in predominately-White stores, or assumed by predominantly White schools to have children who are not that

who have become incensed about the current, multi-layered racial crisis has increased, as has the diversity of demographics for these people.

Finally, wealthy companies and businessmen have benefitted financially by pitting the Black and White working poor against one another.[258] This creation of otherness deflects from wealth inequality and creates an enemy other than the rich.[259] These "divide and conquer" methods have decreased wages for workers of all races, hurt everyone but the rich, and have created distrust where none otherwise exists.[260] Seen for what it is, this strategy stops working.

At this moment, the construct of otherness seems to be loosening.[261] When people see an innocent man choked to death by police, otherness begins to fall away. Many people are perhaps ready for the first time to really examine the rotten tree referred to by Leonard Pitts. This readiness is necessary. We cannot address inequality in income, education, and employment without tracing back our roots and beginning to dig up the rotten tree from which these policies arose. Better government policies aimed directly at righting these wrongs are critical but not enough. As obvious as they might be to some, we need to acknowledge and repeat these stories until everyone has heard them.

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smart. *Id.* at 224. On the other hand, many nonintegrated Black neighborhoods have inferior schools and other social disadvantages. *Id.*

258. Wilson, *supra* note 1, at 11.

259. *Id.*

260. *Id.*

261. I do not want to sound too optimistic here or deluded. There are still many obstacles, particularly when it comes to integration. Rothstein notes that while most Americans prefer integrated neighborhoods, but for Black people a preferred integrated neighborhood is one in which 20–50% are Black. Rothstein, supra note 77, at 223. For White people, a preferred integrated neighborhood is one in which Black Americans are 10% of the population. This is obviously problematic as many communities around the country have a Black population far greater than that, with Atlanta at 32%, Chicago at 17%, Detroit at 23%, and even the New York-New Jersey-Connecticut area at 15%. The often-repeated idea that Black Americans don't want to integrate is, in Rothstein's words, "White conceit." *Id.* It is certainly no fun being stopped for being Black in a predominately-White neighborhood, watched like a hawk in predominately-White stores, or assumed by predominantly White schools to have children who are not that smart. *Id.* at 224. On the other hand, many nonintegrated Black neighborhoods have inferior schools and other social disadvantages. *Id.*