BLACK REPARATIONS FOR TWENTIETH CENTURY FEDERAL HOUSING DISCRIMINATION:

THE CONSTRUCTION OF WHITE WEALTH AND THE EFFECTS OF DENIED BLACK HOMEOWNERSHIP

JANE KIM*

INTRODUCTION

This year marks the 400th anniversary of the first documented arrival of Africans to the United States, which resulted in the enslavement of approximately 4 million Africans and their descendants in the United States

* Columbia Law School, J.D.; Harvard University, A.B. The arguments and ideas contained in this paper are those of the author in her personal capacity.

between 1619 and 1965.[1] On June 19, 2019—or "Juneteenth," the holiday that celebrates the end of slavery in the United States—the U.S. House of Representatives held a hearing to discuss a reparations bill seeking to address the legacy of slavery and racism against African-Americans in the United States.[2] The landmark reparations bill marks the first time since the Reconstruction Era nearly 150 years ago that Congress has reignited a "long overdue" national conversation on reparations.[3] The purpose of the reparations bill was: "[t]o address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States," and to establish a commission to study and consider a national apology and proposal for reparations for the institution of slavery, for subsequent "de jure and de facto" discrimination against African-Americans, and for the impact of such lasting "forces."[4]

Since June, the reparations bill has made little to no progress through either the House or the Senate.[5] Indeed, the idea of reparations to African- and black-Americans for the profound harms of slavery and its legacy of racism in the United States has gained limited traction in the past two centuries.[6] Opposing the reparations bill, Senate majority leader Mitch McConnell stated: "I don't think reparations for something that happened 150 years ago for whom none of us currently living are responsible is a good idea. . .. We've tried to deal with our original sin of slavery by fighting a civil war, by passing landmark civil rights legislation. We elected an African American president."[7] Senator McConnell is not alone in his position. Critics of reparations for slavery and its effects have historically argued that the challenges of pragmatism, causation, and time make reparations improper and infeasible. Critics often ask how reparations should be quantified and distributed, whether we can determine what would have happened but-for slavery, and whether the passage of over 125 years erodes "ancient injustice" claims for compensation, accountability, and

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[1] Carol Gay Stolberg, *At Historic Hearing, House Panel Explores Reparations*, The New York Times (June 19, 2019), https://www.nytimes.com/2019/06/19/us/politics/slavery-reparations-hearing.html (last visited Oct. 20, 2019) (language cited appears in video excerpt associated with article); *see also* H.R. 40, S. 1083, Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R. 40, 116th Cong. § 2(a)(1) (2019) (companion bill S. 1083).

[2] *See* Stolberg, *supra* note 1; *see also* H.R. 40, *supra* note 1.

[3] *See* Press Release, Cory Booker United States Senator for New Jersey; *see* Booker Reparations Bill Reaches 12 Senate Cosponsors (June 14, 2019), https://www.booker.senate.gov/?p=press_release&id=937 (last visited Oct. 21, 2019).

[4] H.R. 40, *supra* note 1.

[5] *See id.*

[6] This paper was first drafted in 2010 and accepted for publication in 2019. From 2010 to 2019, there has been little to no movement on the issue of reparations for African-American slavery and its legacy. *See, e.g.*, Stolberg, *supra* note 1; H.R. 40, *supra* note 1.

[7] Ted Barrett, *McConnell opposes paying reparations: 'None of us currently living are responsible' for slavery*, CNN (June 19, 2019), https://www.cnn.com/2019/06/18/politics/mitch-mcconnell-opposes-reparations-slavery/index.html (last visited Oct. 20, 2019).

standing.[8] Tabling the rich but somewhat static debate on black reparations for U.S. slavery, this paper takes a different approach and focuses on a narrow band of more recent and quantifiable government wrongs for which black-Americans are entitled to reparations.

This paper examines the U.S. government's instigation, participation, authorization, and perpetuation of federal housing discrimination against black-Americans from the 1930s to the 1980s and the damage that such discrimination caused and continues to cause today. Delving into the U.S. government's twentieth century federal housing practices, this paper discusses how the government effectively barred black-Americans from obtaining quality housing and from investing in housing as wealth, while simultaneously subsidizing and endorsing white homeownership, white suburbs, and white wealth. Quantifying the U.S. government's discriminatory practices with current wealth gaps between white- and black-American communities, this paper discusses the effects of twentieth century federal housing discrimination and argues that such government-initiated wrongs justify black reparations.

Part I examines the U.S. government's housing practices—from the New Deal until the 1968 Fair Housing Act and its 1988 Amendments—to reveal that although the New Deal's national housing programs revolutionized homeownership and home equity in the United States, the U.S. government's federal housing programs were racially discriminatory.[9] Specifically, and quite shockingly, the U.S. government actively created and promulgated racist neighborhood rating systems that constructed black neighborhoods and black property as unstable, volatile, hazardous, and not worthy of investment.[10] Using these racist rating systems, the federal government endorsed racial covenants and invested federal money into the creation and accumulation of white wealth, the value of whiteness, white suburbia, and white homeownership. Meanwhile, the government denied blacks federal housing funding, fueling black stigma and barring black-Americans from the invaluable twentieth century opportunities of homeownership and home equity.[11]

Understanding the U.S. government's discriminatory housing practices, Part II discusses and quantifies the effects of the government's housing discrimination on black-American households and communities. Finding that

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[8] Jonathan Kaplan and Andrew Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 PUBLIC AFFAIRS QUARTERLY 255, 256 –5758 (2007); *see* Jeremy Waldron, *Superseding History Injustice*, 103 ETHICS 1 (1992); *see also* GLENN C. LOURY, THE ANATOMY OF RACIAL INEQUALITY 124 (2002) (questioning the solution to a "history of deprivation and racial oppression).

[9] *See infra* Part I.

[10] THOMAS J. SUGRUE, THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT 44 (1996).

[11] It should be noted that this paper focuses on the impact of, and reparations for, the U.S. government's discriminatory housing practices on African- and Black-Americans, although such practices were also harmful to other minority groups, particularly Mexican-Americans.

approximately 120 billion 1950s dollars[12]—or more than 1.239 quintillion 2019 dollars[13]—were invested to subsidize and create white-American wealth through homeownership, Part II discusses both the quantifiable and the less quantifiable effects of twentieth century federal housing discrimination.[14] Mapping the impact of the U.S. government's discriminatory housing practices to the black-white wealth gap, Part II argues that the black-white wealth gap may be attributable, at least in part, to twentieth century federal housing discrimination.

In conclusion, this paper argues in favor of black reparations for the discriminatory U.S. housing practices that persisted from the 1930s to the 1980s—and whose remnants pervasively continue to damage black-American communities today. At a minimum, this paper argues that the U.S. government should compensate black-Americans for the 1.239 quintillion dollars of discriminatory federal housing spending.[15] In addition, recognizing the power of wealth accumulation, the U.S. government should consider the grave and lasting impact of its discriminatory housing practices in order to repair the government-initiated wrongs perpetrated merely one generation ago. While black reparations for federal housing discrimination do not speak to or cure the issues of reparations for slavery in the United States, such reparations are one step forward in correcting past wrongs that continue to devastate black-American communities and will continue to haunt our country, if left unrepaired.

I. TWENTIETH CENTURY FEDERAL HOUSING DISCRIMINATION IN AMERICA: THE GOVERNMENT'S CONSTRUCTION OF WHITE PROPERTY AND WHITE WEALTH

The U.S. housing market has dramatically changed in the past hundred years. Prior to the 1930s, the U.S. government had traditionally remained un-involved in the selection, construction, and purchase of residences, viewing such activities as inherently private and beyond the realm of federal regulation.[16] In stark contrast to the twenty-first century housing market, homeownership in the early

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[12] Public Broadcasting System, *Race: The Power of an Illusion (Video 3: The Houses We Live In)*, California Newsreal and Independent Television Service (2003). Information about the documentary is available at: http://www.pbs.org/race/000_General/000_00-Home.htm (last visited Nov. 23, 2019). A transcript of video three is available at: http://newsreel.org/transcripts/race3.htm (last visited Nov. 23, 2019).

[13] The buying power of 120 billion 1950s dollars was calculated with the U.S. Bureau of Labor Statistics' Inflation Calculator, which produces measurements in increments of 10 million dollars, where 10 million 1950s dollars as of January 1950 has the same buying power of 103,259,148.94 2019 in 2010 dollars as of September 2019. *See* CPI Inflation Calculator, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 23, 2019).

[14] *See infra* Part II.

[15] *See supra* note 13.

[16] KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 191–92 (1985) (finding these things to be an "individual problem").

twentieth century United States was rare.[17] This was in part because long-term and low-interest mortgages were not available before the New Deal and buyers consequently had to save substantial sums of money before buying a home.[18] Thus, homeownership for most people in the United States in the 1920s was only accessible in old age.[19] Homeownership, therefore, did not produce the stability, equity, wealth, or opportunities that it currently provides.[20]

The stock market crash in 1929, followed by the Great Depression, dramatically changed the U.S. housing landscape.[21] In 1929, a 95 percent decline in home construction and a 90 percent decline in home improvements devastated the U.S. housing industry and compelled President Franklin Delano Roosevelt ("FDR") to redefine the federal government's involvement with the homeowner and housing industry.[22] In 1933, FDR devised a new national housing policy, explaining:

> This policy is that the broad interests of the Nation require that special safeguards should be thrown around home ownership as a guaranty of social and economic stability, and that to protect home owners from inequitable enforced liquidation, in a time of general distress, is a proper concern of the Government.[23]

Pursuant to FDR's new national housing policy, the federal government established a series of programs and agencies, including: the Home Owners Loan Corporation ("HOLC," established in 1933) under the governance of the Federal home Loan Bank Board ("FHLBB"), the Fair Housing Administration ("FHA," established in 1934), and the Veterans Administration ("VA," established in 1944).[24] These programs forever changed the housing market and intergenerational wealth in the United States.

This Part of the article examines the U.S. government's discriminatory housing practices from the New Deal until the 1968 Fair Housing Act and its 1988 Amendments. This time period involved various forms of discrimination,

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[17] Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L. J. 186, 190–91 (2005).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *See* JACKSON, *supra* note 16, at 193; Amy Hillier, *Who Received Loans? Home Owners' Loan Corporation Lending and Discrimination in Philadelphia in the 1930s*, 2 J. PLAN. HIST. 1, 4 (2003).

[22] Hillier, *supra* note 21, at 4–5; Charles Lewis Nier III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation*, 11 U. PA. J. L. & SOC. CHANGE 131, 174–75 (2007-2008).

[23] Hillier, *supra* note 21; Nier, *supra* note 22.

[24] Hillier, *supra* note 21, at 5; Arnold R. Hirsch, *Containment on the Home Front: Race and Federal Housing Policy from the New Deal to the Cold War*, 26 JOURNAL OF URBAN HISTORY 158, 161 (2000).

within and independent from housing and homeownership.[25] Discrimination during this time was overt and covert in housing and lending. It was state-mandated and state-enforced at both the local and federal levels.[26] This paper focuses on overt and active federal discriminatory housing practices, which may not have been part of a comprehensive or intentional plan, but are still highly compelling in justifying black reparations for twentieth century U.S. federal housing discrimination. As such, emphasizing that the federal government and federal law were not neutral agents to discriminatory U.S. housing practices, this Part focuses on the following three deeply married forms of federal housing discrimination: (1) "Redlining," or the government's racist rating of neighborhoods that constructed and dictated property values and public and private investment into such neighborhoods;[27] (2) the federal government's exclusion of black-Americans from access to long-term, low-interest, government-subsidized and government-insured mortgages and development loans;[28] and (3) the federal government's active endorsement of racial covenants that excluded black-Americans from quality housing and new land developments and enabled the creation of white-American suburbs, white homeownership, and white wealth.[29]

A. *The Federal Construction of Neighborhood and Property Ratings: Racist Redlining is Born*

Implementing FDR's new national housing policy, the HOLC surveyed and rated every urban and suburban neighborhood in the United States.[30] First-established by the HOLC, federal agencies and private actors both used race-based rating systems to: (a) appraise homes, neighborhoods, and households; (b) determine the government-constructed property values and the investment-worthiness of prospective homeowners and land developments; and (c) exclude black-Americans from quality housing, government-subsidized and

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[25] *See, e.g.*, The Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 89 (addressing discriminatory laws and practices by, among other things, protecting voting rights, banning employment discrimination, and banning segregation in public places); H.R. 40, S. 1083, Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R. 40, 116th Cong. § 2(2019) (companion bill S. 1083) (discussing the result of "historic and continued discrimination" that has led "African-Americans to continue to suffer debilitating economic, educational, and health hardships including having nearly 1 million Black people incarcerated, an unemployment rate more than twice the current White unemployment rate, and an average of less than 1/16 of the wealth of White families, a disparity which has worsened, not improved, over time.").

[26] Kaplan and Valls, *supra* note 8, at 259–60.

[27] *See, e.g.*, HOMER HOYT, ONE HUNDRED YEARS OF LAND VALUES IN CHICAGO: THE RELATIONSHIP OF THE GROWTH OF CHICAGO TO THE RISE IN ITS LAND VALUES 314–16 (1933); *See* JACKSON, *supra* note 16, at 197–98.

[28] *See, e.g.*, JACKSON, *supra* note 16, at 207–08.

[29] *Id.* at 208.

[30] *Id.* at 197–98.

government-insured loans, and home equity opportunities. The HOLC's rating system, which was essentially replicated by the FHA and the VA, was expressly racist.[31] The federal government, through the HOLC's ratings and the FHA's ratings, effectively stigmatized minority communities by "redlining" them—or, in other words, by falsely constructing or re-constructing these communities as dangerous and unstable.[32] Accordingly, the federal government's property and neighborhood rating systems barred private and government investment in communities of color, as well as black homeownership.

HOLC color-coded neighborhoods within the United States, grading them into four "quality" or "security" categories: "A" (green), "B" (blue), "C" (yellow), and "D" (red).[33] "A" received the highest rating and "D" received the lowest rating, also known as being "redlined."[34] These categories corresponded to a neighborhood's level of "invasion" or "infiltration" by an "undesirable population,"[35] or, in other words, by persons of color.[36]

To obtain a government rating of "A," a neighborhood had to be "homogeneous" and consist of "American business and professional men,"[37] where "American" presumably meant white and often, U.S.-born.[38] "B"-rated areas had "reached their peak", but were "still desirable" and could be "expected to remain stable".[39] "C"-rated areas were described as "definitely declining."[40] Finally, "D" or "red" neighborhoods were described as "undesirable populations" that, having declined, were insecure, volatile, dangerous, hazardous, and unstable.[41] "D"-rated or redlined communities were flagged as unsuitable for federal loans and subsidies.[42] These redlined neighborhoods were

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[31] *See, e.g.*, HOYT, *supra* note 27, at 314–16; JACKSON, *supra* note 16, at 199; SUGRUE, *supra* note 10, at 44; Hillier, *supra* note 21, at 19; *see* PBS, *supra* note 12.

[32] *See, e.g.*, HOYT, *supra* note 27, at 314–16; JACKSON, *supra* note 16, at 199; Hillier, *supra* note 21, at 19.

[33] HOYT, *supra* note 27, at 314–16 (1933); *see* JACKSON, *supra* note 16, at 197–98; Nier, *supra* note 22, at 177.

[34] JACKSON, *supra* note 16, at 197–98; Nier, *supra* note 22, at 177.

[35] SUGRUE, *supra* note 10, at 44; *see* PBS *supra* note 12.

[36] *See* HOYT, *supra* note 27, at 314–16; *see* JACKSON, *supra* note 16, at 199 (detailing race based ratings).

[37] JACKSON, *supra* note 16, at 197–98.

[38] *See* HOYT, *supra* note 27, at 314–16; *see* JACKSON, *supra* note 16, at 199.

[39] HOYT, *supra* note 27, at 314–16; *See* JACKSON, *supra* note 16, at 197–98; Nier, *supra* note 22, at 151–177.

[40] JACKSON, *supra* note 16, at 197–98; Nier, *supra* note 22, at 151–177.

[41] SUGRUE, *supra* note 10, at 44; PBS, *supra* note 12.

[42] SUGRUE, *supra* note 10, at 38 (citing Area Description, Security Map of Detroit, Michigan, Area No. D-28, March 1, 1939, Division of Research and Statistics, Federal Home Loan Bank Board, City Survey, Metropolitan Detroit, HOLC, Box 17).

predominantly black.[43] For instance, in Detroit, every neighborhood with a black-American population, however small, was rated "D" or "hazardous."[44]

Race was an important driver of the HOLC's ratings.[45] "Notions of racial and ethnic worth . . .on an unprecedented scale" informed the HOLC's neighborhood ratings.[46] Racial and ethnic groups were ranked in order of the most desirable to the least desirable, with the least desirable rankings having the most adverse effect on property values.[47] Racial and ethnic groups were ranked in the following way:

(1) English, Germans, Scotch, Irish, Scandinavians
(2) North Italians
(3) Bohemians or Czechs
(4) Poles
(5) Lithuanians
(6) Greeks
(7) Russians, Jews (lower class)
(8) South Italians
(9) Negroes; and
(10)Mexicans.[48]

Stability, security, safety, and property value were thus attributed to "white"-American communities, whereas black neighborhoods[49]—or even neighborhoods with only a handful of black occupants[50]—were defined as hazardous homes and hazardous investment.[51] In this way, race and the worth

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[43] Nier, *supra* note 22, at 179; *see* JACKSON, *supra* note 16, at 197–98 (detailing that areas of certain ethnic groups correlated with price declines).

[44] SUGRUE, *supra* note 10, at 44.

[45] *See* JACKSON, *supra* note 16, at 198 (citing FREDERICK BABCOCK, THE VALUATION OF REAL ESTATE 91 (1932)) (Finding HOLC did not invent the race-based housing system, other relators and appraisers pointed to these aspects as well).

[46] JACKSON, *supra* note 16, at 199; Nier, *supra* note 22, at 152–177 n. 313.

[47] HOYT, *supra* note 27, at 314–16 (reflecting on the prejudice that changed land values); JACKSON, *supra* note 16, at 199 (citing STANLEY MCMICHAEL, MCMICHAEL'S APPRAISING MANUAL: A REAL ESTATE APPRAISING HANDBOOK FOR USE IN FIELD WORK AND ADVANCED STUDY COURSES 160) (1951)) (finding HOLC applied racial worth to the appraising of real-estate).

[48] HOYT, *supra* note 27, at 314–16. *See* JACKSON, *supra* note 16, at 199 (detailing race-based ratings).

[49] *See* JACKSON, *supra* note 16, at 197–99; HOYT, *supra* note 27; Nier, *supra* note 22, at 151–177.

[50] SUGRUE, *supra* note 10, at 44.

[51] *See* JACKSON, *supra* note 16, at 197–98; Nier, *supra* note 22, at 151–179; SUGRUE, *supra* note 10, at 44; PBS, *supra* note 12.

that the federal government attributed to a neighborhood's racial composition principally drove the HOLC's ratings.

The government determined the value of a dwelling based on racial composition, alleged worth, and "infiltration" of a neighborhood, where infiltration reflected racial diversity or the increase in persons of color within a neighborhood.[52] Race was more important than the property's structural characteristics,[53] the community's economic class,[54] or foreseeable mortgage default rates.[55] In St. Louis, for example, a community known as Lincoln Terrace was originally intended for middle class white families.[56] The neighborhood developed into a black neighborhood, but, despite the fact that the homes were relatively new and of good quality, the HOLC gave the area a "D" rating in 1937 and 1940, asserting that the houses had "little or no value today, having suffered a tremendous decline in value due to the *colored elements* now controlling the district."[57] In Detroit, although the black West Side housed wealthy black-Americans and expensive homes, the neighborhood was rated "D" or "red" by the HOLC.[58] Moreover, data indicates that default rates on loans were actually *lower* in lower-grade, minority homes,[59] indicating that the government's classification of minority neighborhoods as financially volatile was subjective, inaccurate, and discriminatory.

HOLC's race-based—or apparently racist—neighborhood ratings determined the property value, stability, and investment-worthiness of a community based on its racial composition.[60] Both private and public actors advanced the HOLC's racist ratings in determinations of which communities would receive investment in an effort to maintain or increase the property values in white communities.[61] Accordingly, the HOLC's ratings compelled racial covenants that excluded black-Americans from entry into "A" neighborhoods, steered public and private investment into "A" neighborhoods and to white homebuyers, and denied prospective black homebuyers from public and private funding.[62] Thus, redlining and federal housing market discrimination resulted in the short-term

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[52] SUGRUE, *supra* note 10, at 44; *see* PBS, *supra* note 12.

[53] *See* JACKSON, *supra* note 16, at 198.

[54] SUGRUE, *supra* note 10, at 38.

[55] Gordon, *supra* note 17, at 210–211.

[56] JACKSON, *supra* note 16, at 199–200.

[57] *Id.* (emphasis added).

[58] SUGRUE, *supra* note 10, at 38.

[59] Gordon, *supra* note 17, at 210.

[60] *See* JACKSON, *supra* note 16, at 197–198. *See e.g.*, SUGRUE, *supra* note 10, at 38; Nier, *supra* note 22, at 179.

[61] *See* Casey J. Dawkins, *Recent Evidence on the Continuing Causes of Black-White Residential Segregation*, 26 J. URB. AFF. 379, 396 (2004) (discussing some of these factors); George Galster, *Residential Segregation in American Cities: A Contrary Review*, 7 POPULATION RES. & POL'Y REV. 93 (1988) (same).

[62] *See* Dawkins, *supra* note 61 at 396; Galster, *supra* note 61 at 12–16.

effects of higher housing valuations for homes within white communities, discriminatory investment and development into these communities versus communities of color, and the exclusion of black-Americans and persons of color from purchasing housing within these communities. Over time, the immediate effects of redlining and federal housing market discrimination have multiplied exponentially. Wealth begets wealth. For example, higher property values for homes in white communities and greater investment into these homes over a some-seventy-year period have contributed to increasing wealth gaps between white communities and communities of color. Significant differences in resources between communities have further affected, for instance: educational opportunities (where public school resources are often a product of property taxes), the continued exclusion of persons and communities of color from wealth and quality housing, variances in social benefits (including social capital and social stigma, based on your community and its real or perceived reputation), continued racial segregation, stability, and both the perceived desirability and subsequent real value of particular neighborhoods, among other things.[63]

While the government used federal redlining practices in numerous ways, the remaining Sub-Sections of this Part discuss the particularly harmful effects the HOLC's racist redlining ratings: (1) the exclusion from subsidized and insured government loans, investment, and homeownership; and (2) racial covenants and the creation of white suburbs and white wealth.

B. *Racial Exclusion from Government-Subsidized and Government-Insured Loans, Investment, and Homeownership*

1. Policy Overview

Ushering in unparalleled opportunities for prospective homeowners to purchase and invest in property, the New Deal era's new federal housing policy profoundly impacted housing and wealth in the United States.[64] Until the establishment of the HOLC and the FHA, in 1933 and 1934 respectively, "home mortgages were generally limited to less than 50 percent of the home's appraised value, the loans were generally limited to short time periods of less than five years, and the loans generally ended with a large "balloon-payment" of the

[63] *See* Dawkins, *supra* note 61 at 396; Galster, *supra* note 61 at 12–16; *see also* William M. Rohe and Mark Lindblad, *Reexamining the Benefits of Homeownership after the Housing Crisis*, 7 (Aug. 2013).

[64] *See, e.g.*, JACKSON, *supra* note 16, at 204 (explaining how collateral for an FHA-secured loan made payments of more than ten percent unnecessary); CHESTER RAPKIN ET AL., THE PRIVATE INSURANCE OF HOME MORTGAGES: A STUDY OF MORTGAGE GUARANTY INSURANCE CORPORATION 14 (1967); DOROTHY ROSENMAN, A MILLION HOMES A YEAR 38 (1945) (noting how decreasing down payments make homeowners "glorified renters"); Gordon, *supra* note 17, at 193.

remaining principal."[65] Pre-New Deal home mortgages therefore made homeownership difficult, rare, and only obtainable if a potential homeowner saved a substantial sum.[66] With the creation of the HOLC, FHA, and VA, for the first time in America's history, prospective homeowners were eligible to obtain long-term, low-interest, fully amortized mortgage loans with uniform payments extending over a fixed period.[67] FDR's new federal housing program afforded younger—and *white*—families with the opportunity to purchase a home and "the assurance that they would not be forced out of those homes at the end of a short-term mortgage."[68] As a result, through property ownership, FDR's federal housing program gave white-Americans the opportunity to build significant home equity, stability, and accumulated wealth over time.

The HOLC, FHA, and VA supported white homeownership in four primary ways: through property values and investment criteria constructed from racist rating systems, through HOLC and VA's direct subsidized loans, through the FHA and VA's insurance of private loans for both private homeownership and land development, and by encouraging and recommending racial covenants, segregated, white suburbs, and white wealth.[69] The HOLC administered the first government-sponsored program to subsidize mortgage loans, allowing Americans to achieve the previously rare prospect of homeownership.[70] Between July 1933 and June 1935 alone, the HOLC supplied over three billion dollars for over one million mortgages.[71] Beginning in 1944, the VA also offered a loan program, reducing borrowing requirements even further and often permitting returning World War II veterans to purchase homes without any down payment.[72]

In addition to direct, subsidized lending, the FHA and the VA provided financial incentives to encourage private and public lenders "to invest in residential mortgages" and suburban developments "by insuring them against

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[65] Kaplan and Valls, *supra* note 8, 260–268 (2007); Marc A. Weiss, *Marketing and Financing Home Ownership: Mortgage Lending and Public Policy in the United States 1918-1989*, *in* BUSINESS AND ECONOMIC HISTORY 198–218 (1989).

[66] Kaplan and Valls, *supra* note 8, at 260–61.

[67] *See* JACKSON, *supra* note 16, at 196 (finding the HOLC refinanced thousands of mortgages and granted low-interest loans).); *see* Hillier, *supra* note 21, at 5 (detailing the government bonds); *see also* Gordon, *supra* note 17 (describing homeownership before the New Deal era).

[68] *See* JACKSON, *supra* note 16, at 193–94.

[69] *See infra* Part I.B.

[70] *See* JACKSON, *supra* note 16, at 196 (explaining that the HOLC program was the first of its kind); Gordon, *supra* note 17, at 193 (describing homeownership before the New Deal era).

[71] C. LOWELL HARRISS, HISTORY AND POLICIES OF THE HOME OWNERS' LOAN CORPORATION 1 (1951).

[72] Weiss, *supra* note 65, at 113–114.

loss[es] on such instruments."[73] While the FHA did not lend money, the FHA essentially guaranteed private loans to eligible U.S.-Americans and developers, reinforcing the lending market by minimizing lender risk and insuring and indemnifying lenders against defaults on mortgages.[74] The FHA program guaranteed over 90 percent of the value of collateral for loans made by private banks,[75] effectively "enabl[ing] lenders to provide home mortgage credit without any risk of loss—a vital guarantee given how much money those lenders had lost in the foreclosures of early Depression."[76] In insuring private loans, the FHA required home mortgage loans to be fully amortized and an extension of repayment periods to 25 to 30 years,[77] resulting in low monthly payments, reduced down payments,[78] and facilitating long-term, low-interest loans through loan endorsement, risk minimization, and regulation.[79] "[F]undamentally transform[ing] the mortgage market. . .. FHA standards allowed mortgages with low down payments—initially 20 percent, then 10 percent, and by the mid-1960s, 3 percent."[80]

The FHA's impact on homeownership was explosive. From 1937 to 1941, housing starts nearly doubled and the national rate of mortgage foreclosure dropped from 250,000 (non-farm units) to 18,000 from 1932 to 1951.[81] Overall, by 1972, nearly eleven million families had entered the ranks of homeownership with the assistance of the FHA.[82] An additional twenty-two million families were able to make improvements to their homes.[83] Additionally, "for a substantial portion of the twentieth century, then, the FHA had a true monopoly . . ." on access to ". . .the only kind of home loan that most Americans could

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[73] *See* JACKSON, *supra* note 16, at 204. The FHA and the VA were designed "to encourage improvement in housing standards and conditions, to facilitate sound home financing on reasonable terms, and to exert a stabilizing influence on the mortgage market." *Id.* at 203.

[74] JACKSON, *supra* note 16, at 204; Gordon, *supra* note 17, at 193; *see* National Housing Act, Pub. L. No. 73-479, 48 Stat. 1246 (1934); *The Financial Health of the Federal Housing Administration's Single Family Mutual Mortgage Insurance Fund: Hearing Before the Subcomm. on H. and Cmty. Opportunity of the H. Comm. on Fin. Servs.*, 107th Cong. 73 (2001) (statement of Susan Gaffney, Inspector Gen., Dep't of Hous. and Urban Dev.) ("Prior to 1983, the FHA Mortgage Insurance Premium was an annual charge of 0.5 percent of the outstanding mortgage principle balance").

[75] JACKSON, *supra* note 16, at 204.

[76] Gordon, *supra* note 17, at 193.

[77] JACKSON, *supra* note 16, at 204; RAPKIN ET AL., *supra* note 64 at 14.

[78] Gordon, *supra* note 17, at 193–94.

[79] *Id.*

[80] Gordon, *supra* note 17, at 193; *see generally See* JACKSON, *supra* note 16, at 204 (explaining how collateral for an FHA-secured loan made payments of more than ten percent unnecessary); RAPKIN ET AL., *supra* note 64; ROSENMAN, *supra* note 64, at 38.

[81] JACKSON, *supra* note 16, at 204–05.

[82] *Id.* at 205

[83] *Id.*

afford,"[84] thus controlling who could access the golden chalice of homeownership.

2. Racial Exclusion from Federal Financial Support and The Golden Chalice of Homeownership

The FHA used the HOLC's grading system of racist redlining as the foundation for its own system of selecting which homeowners were investment-worthy and which loans it would insure.[85] Race-based (or, effectively, racist) redlining therefore dictated where the HOLC would offer direct, subsidized federal loans, and redlining also reappeared through the FHA and VA's programs, further dictating access to federal loan insurance and homeownership. Accordingly, through the FHA, the federal government insured long-term, low-interest mortgage loans and homeownership opportunities to white-Americans in homogeneously white neighborhoods. This policy barred black-Americans from homeownership and from loans to purchase and improve their properties.

Essentially replicating HOLC's grading of neighborhoods, the FHA developed an *Underwriting Manual* that rated neighborhoods based on constructed risk criteria, determined by "relative economic stability" and "protection from adverse influences" or persons of color.[86] FHA's *Underwriting Manual* informed loan guarantees by attempting to quantify the value of a property and the security of a prospective loan applicant.[87] Similar to the HOLC's grading system, FHA's ratings prioritized the location of the property and the racial composition of the property's surrounding neighborhood.[88] Like the HOLC's grading of neighborhoods, FHA's ratings gave predominantly white, non-immigrant neighborhoods the highest ratings, and predominantly black neighborhoods the lowest ratings.[89] The VA also established criteria from which homes and neighborhoods would qualify for loans that similarly excluded black neighborhoods from federal financial support and black veterans from access to homeownership.[90]

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[84] Kaplan and Valls, *supra* note 8, at 261.

[85] JACKSON, *supra* note 16, at 207–08.

[86] *See* JACKSON, *supra* note 16, at 207; Gordon, *supra* note 17, at 207; *see, e.g.*, SUGRUE, *supra* note 10, at 43–44 (citing Summary of Economic, Real Estate and Mortgage Survey and Security Area Descriptions for Greater Detroit, Michigan 2-4 in FHLBS, Box 18) (describing the use of the Residential Security Maps and Surveys classifying neighborhoods in Detroit on "the level of racial, ethnic, and economic homogeneity").

[87] JACKSON, *supra* note 16, at 207.

[88] U.S. FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT (1938); JACKSON, *supra* note 16, at 207–08; DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 53–54 (1993).

[89] *See, e.g.*, JACKSON, *supra* note 16, at 202 (demonstrating low grade ratings for all black neighborhoods in Newark, New Jersey).

[90] MASSEY & DENTON, *supra* note 88, at 53–55.

FHA's *Underwriting Manual* constructed "stable" neighborhoods as properties occupied by the same social and racial classes.[91] Rating based on "racial infiltration" and "inharmonious racial groups or nationality groups" damaged the value of a neighborhood and specific property.[92] For example, in Detroit, in response to a land developer's proposal to build an all-white subdivision next to a "D"-listed black neighborhood in the Eight Mile Wyoming area of the city, the FHA agreed to provide loans and mortgage guarantees for the proposed development provided that the developer build a foot-thick, six-foot-high wall for half a mile in order to separate the black and white neighborhoods and minimize racial infiltration.[93] Furthermore, the FHA strongly endorsed racial covenants as a means of protecting against perceived adverse influences of non-white residents, instability, and what the FHA viewed as harmful transitions away from racial homogeneity.[94]

In addition, the FHA favored the financing of new, single-family, detached homes over multi-family, urban projects by adopting policies that favored investment into new, suburban developments outside of the city.[95] The FHA established minimum standards for lot size, distance from other structures, and the home's setback distance from the road, which effectively excluded many city residents from loan eligibility.[96] This policy disproportionately excluded black-Americans, the majority of whom were concentrated in urban neighborhoods at the time.[97] The FHA also favored new purchases over repairs of existing properties.[98] As a result, black or non-white neighborhoods were generally viewed as uninsurable by the FHA.[99] Likewise, "builders and developers . . .could expect little or no federal financial backing if they chose to build in such risky neighborhoods."[100] Thus, both public and private investment, property development, commercial entry, and funding were largely dictated by the HOLC, FHA, and the VA's racist rating systems that effectively afforded

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[91] U.S. FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT (1938); *see also* JACKSON, *supra* note 16, at 208 (noting the FHA's fear a neighborhood would "lose its investment value if rigid white-lack separation was not maintained").

[92] U.S. FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT (1938); *See* JACKSON, *supra* note 16, at 208; MASSEY & DENTON, *supra* note 88, at 73.

[93] SUGRUE, *supra* note 10, at 64.

[94] JACKSON, *supra* note 16, at 208; *see infra* Part I.C.

[95] MELVIN OLIVER & THOMAS SHAPIRO, BLACK WEALTH WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 17 (1995).

[96] JACKSON, *supra* note 16, at 208.

[97] AUGUST MEIER & ELLIOTT RUDWICK, FROM PLANTATION TO GHETTO 189 (1966).

[98] *See* JACKSON, *supra* note 16, at 206.

[99] *Id.*

[100] SUGRUE, *supra* note 10, at 44.

white homeowners with funding and resources that were denied to their black counterparts.

Racist property and neighborhood rating systems, combined with pervasive racial covenants enforced by communities, property developers, and builders, meant that black-Americans who were interested in purchasing suburban properties were first barred by private actors and also barred by the federal government from obtaining affordable mortgages through the FHA, VA, and HOLC. For black-Americans who were interested in purchasing or improving their urban properties, the FHA's *Underwriting Manual* and focus on suburban developments both limited federal investment into urban areas—that disproportionately and primarily housed blacks[101]—and also blocked federal investment into black or minority areas that were rendered economically unstable and defined as unworthy or unsuitable for federal loans, subsidies, and public and private investment.[102]

As a consequence of being denied the benefits of FDR's national housing policy, black-Americans and black communities were excluded from federal investment through direct, subsidized loans, federally-insured loans for home mortgages, and federally insured loans for housing developments and housing improvements.[103] From 1930 to 1960, less than one percent of all mortgages in the nation were issued to black-Americans.[104] In the 1950s, only 2.3 percent of FHA-insured mortgages were for non-whites;[105] in the 1960s, only 2.5 percent of FHA-insured loans went to non-whites.[106] As a result, for example, between 1946 and 1960, in Northern California, over 350,000 homes were constructed with FHA financing and less than 100 black-Americans received FHA financial endorsement—a pattern that resonated across the state of California and across the entire nation.[107] For over "thirty years, whites were able to get housing loans" with advantageously low interest rates of "3 to 5 percent, while blacks were routinely denied" such opportunities.[108] Ultimately, from 1934 to 1962, the U.S. government invested 120 billion in 1950s dollars[109] to subsidize new

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[101] MEIER & RUDWICK, *supra* note 97, at 189.

[102] *See* JACKSON, *supra* note 16, at 207–08 (discussing the FHA's criteria to determine worthy investments); SUGRUE, *supra* note 10, at 38 (citing HOME OWNER'S LOAN COROP., Area Description, Security Map of Detroit, Michigan, Area No. D-28, (Mar. 1, 1939)) (discussing the "D" or "red" markings given every black section of Detroit).

[103] SUGRUE, *supra* note 10, at 46.

[104] *See id.* (discussing lending institutions' aversion to working with black individuals).

[105] BUREAU OF THE CENSUS, CENSUS OF HOUSING: 1950, 164 (1952).

[106] BUREAU OF THE CENSUS, CENSUS OF HOUSING: 1960, 10 (1963).

[107] Troy Duster, *The 'Morphing' Properties of Whiteness*, *in* THE MAKING AND UNMAKING OF WHITENESS 113, 119 (Birgit Brander Rasmussen et al. eds., 2001).

[108] *Id.*

[109] As discussed above, $120 billion in the 1950s, with inflation, amounts to approximately $1.239 quintillion in 2019. *See* CPI Inflation Calculator, *supra* note 13.

housing for white families while simultaneously barring blacks from such federal financial support and from the lucrative benefits of homeownership.[110]

It appears that the federal government was aware of its discriminatory practices and the harmful effects of its racist property and neighborhood rating systems.[111] In 1947, the Housing and Home Finance Agency (HHFA) was established to coordinate across the federal government's principal housing policies, functions, and agencies, including the HOLC and the FHA.[112] The existence of a permanent, single body responsible for the execution of national housing policy suggests the government's awareness of its federal housing practices and the harmful effects of such a housing strategy.[113]

Moreover, in 1944, the National Association for the Advancement of Colored People (NAACP) presented a memorandum to FDR "concerning the present discriminatory policies of the [FHA]."[114] "The key points in the NAACP indictment included the FHA emphasis, in its *Underwriting Manual*, on the risks allegedly posed by the comingling of 'inharmonious racial groups,' and the agency's unbridled support for racially restrictive covenants."[115] The FHA responded to the NAACP's memorandum, dismissing its findings and denying that the FHA encouraged racial segregation,[116] despite the language used in the FHA's *Underwriting Manual*.[117] The FHA "asserted that its underwriting operation reflected market conditions and maintained the highest professional standards," but also stated that "[w]hen it is apparent that infiltration will be unacceptable to the local real estate market and desirability of properties will be reduced . . .then this Administration has no alternative but to so recognize the conditions in its valuation of specific properties."[118] Accordingly, the coordinated execution of FDR's national housing policies, the NAACP's memorandum, and the FHA's response indicates that the federal government was aware of the harmful effects of its discriminatory housing practices and that such awareness emerged as early as 1944.

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[110] PBS, *supra* note 12.

[111] Hirsch, *supra* note 24, at 161–162.

[112] *Id.* at 158–61.

[113] *Id.* at 161–62.

[114] *Id.* at 162.

[115] *Id.*

[116] *Id.* at 163 (citing Curt C. Mack to Mr. E. S. Draper, November 23, 1944, Box 6, Folder: Restrictive Covenants, 1938-1948, Commissioner's Correspondence and Subject File, 1938-1958, to Walter White).

[117] U.S. FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT (1938) (including numerous references to the prevention of the infiltration of inharmonious racial groups).

[118] Hirsch, *supra* note 24, at 163 (citing Curt C. Mack to Mr. E. S. Draper, November 23, 1944, Box 6, Folder: Restrictive Covenants, 1938-1948, Commissioner's Correspondence and Subject File, 1938-1958, to Walter White).

C. *Racial Exclusion from Quality Housing Through Racial Covenants and the Creation of White Suburbs and White Wealth*

In addition to government-subsidized and government-insured loans, the federal government's racist neighborhood and property rating systems also further authorized discrimination and racial exclusion through racial covenants. Racial covenants are essentially restrictions on the ownership and use of real property. The covenants were primarily imposed by private persons, communities, or private companies (*i.e.* land developers and builders) and enforced against black-Americans in efforts to maintain the white homogeneity of certain neighborhoods.[119] The racial exclusion of non-whites from selected, quality housing and property, particularly suburban developments, was actively endorsed and authorized by the U.S. government through recommendations in favor of racial covenants.[120] Active federal endorsement of racial covenants arose in two primary ways: first, through government directives and incentives to preserve white neighborhood homogeneity; and second, through the federal government's funding, creation, and development of white suburbs.

First, the federal government incentivized and sanctioned racial covenants, discriminatory real estate sales and bank lending practices, and local public housing discrimination. The federal government recommended and advocated for racial covenants as a means of protecting against adverse influences, external infiltration, instability, and the harmful contamination and volatility produced by minority entrants into a neighborhood.[121] Indeed, the FHA's "*Underwriting Manual* recommended subdivision regulations and suitable restrictive covenants as an excellent method to maintain neighborhood stability via racial segregation."[122] FHA administrators felt "it incumbent upon [them] . . .to give consideration to the strong likelihood of *disorders* which would result through [the] violation of such [racial] covenants," namely, racial integration and equal access to housing and homeownership.[123] "HOLC appraisers awarded higher ratings to white neighborhoods whose properties were covered by restrictive

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[119] William R. Ming, Jr., *Racial Restrictions and the Fourteenth Amendment: The Restrictive Covenant Cases*, 16 U. CHI. L. R. 203, 210 (1949).

[120] *See* JACKSON, *supra* note 16, at 208.

[121] JACKSON, *supra* note 16, at 207–08; *see* SUGRUE, *supra* note 10, at 44 (citing Summary of Economic, Real Estate and Mortgage Survey and Security Area Descriptions for Greater Detroit, Michigan 2-4 in FHLBS, Box 18) ("HOLC awarded higher ratings to white neighborhoods whose properties were covered by restrictive covenants").

[122] Nier, *supra* note 22, at 183 (quoting JACKSON, *supra* note 16, at 208); *see* Hirsch, *supra* note 24, at 159 ("The urbanization of African Americans, and the movement of nearly 5 million blacks out of the South between 1940 and 1970, represented a demographic upheaval that left patterns of segregation virtually untouched").

[123] Hirsch, *supra* note 24, at 163 (citing B.C. Bovard to Walter Greene, November 29, 1944, and Raymond M. Foley to John A. Sheridan, November 24 1944, both in Box 6, Folder: Restrictive Covenants, 1938-1948, Commissioner's Correspondence and Subject File, 1938-1958, RG 31) (emphasis added).

covenants."[124] Not surprisingly, following the government's directives, "the official code of ethics of the National Association of Real Estate Boards . . .barred its members from selling houses across the racial divide."[125] The government constructed property and neighborhood values and imposed a value or grade that aligned with the investment-worthiness of a property. By doing so, federal redlining practices and the government's endorsement of racial covenants incentivized the exclusion of black-Americans from homeownership, suburban developments, and quality housing through racial discrimination and housing segregation.

Additionally, "in giving carte blanche to local authorities,"[126] such as white-controlled local housing boards,[127] the federal government refused to intervene against explicit local policies of racial separation, accepting racial segregation and housing discrimination as it was produced on the local level.[128] It was not until the Supreme Court case *Shelley v. Kraemer* that a federal actor intervened to assert that courts could not enforce racial real estate covenants.[129] However, *Shelley* merely prohibited judicial enforcement of racial covenants rather than generally prohibiting the enforcement.[130] The creation and the local and private enforcement of racial covenants persisted. In fact, after *Shelley*, "the FHA acknowledged that 'it has not as yet considered it practical to prohibit discrimination in all housing assisted with an FHA-insured mortgage, except where such prohibitions have been enacted into laws by the State legislatures.'"[131] Not even one developer was disqualified from FHA-insured funding for violating non-discrimination laws.[132]

Secondly, and not surprisingly, the federal government invested in the development of white suburbs by subsidizing private development within these communities and the purchase of white homes by white-Americans. This was at the expense and exclusion of black-Americans. The majority of FHA loans in the twentieth century—91 percent—developed and built white, suburban neighborhoods.[133] "Whole new residential towns" were built during the

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[124] SUGRUE, *supra* note 10, at 44.

[125] Duster, *supra* note 107, at 119.

[126] Hirsch, *supra* note 24.

[127] *See* IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA 121–124, 128 (2005) (discussing local housing discrimination against blacks, including black veterans, and the restrictions in place keeping them from receiving benefits).

[128] Hirsch, *supra* note 24, at 158 (citing U.S. COMM'N ON CIVIL RIGHTS, REPORT 459, 474–76 (1959)).

[129] Shelley v. Kraemer, 334 U.S. 1, 20 (1948).

[130] *Id.*

[131] Shelley v. Kraemer, 334 U.S. at 20; Hirsch, *supra* note 126, at 182 (citing Material Prepared for Harold Tyler, 1-4).

[132] Hirsch, *supra* note 24, at 182 (citing Material Prepared for Harold Tyler, 1-4).

[133] *See* JACKSON, *supra* note 16, at 209–210.

twentieth century "with an acknowledged policy of excluding [black-Americans]."[134] Even black-American war veterans returned home and were denied access to suburban homeownership and housing.[135] Federal funding to subsidize individuals and contractors in the purchase and development of suburban neighborhoods by and for whites was abundant.[136] In contrast, "while underwriting the construction and purchase of homes by [and for] whites," "the FHA regularly refused loans to black homebuilders" and prospective homeowners "of a similar economic status a few blocks away."[137] The FHA effectively created and perpetuated a "policy of segregation" by "offer[ing] racial protection" and by conferring homogeneously white suburbs, white neighborhoods, and white wealth to whites.[138]

To make matters worse, as black-Americans could not obtain housing in white neighborhoods and suburbs, many settled in low-quality housing within urban areas.[139] These low-quality housing areas were largely "cleared" during the federal government's Urban Renewal programs of the 1950s. Subsequently, this moved black-Americans into even lower-quality urban housing.[140] In Detroit, for example, discriminatory housing practices resulted in black-Americans "trapped in the city's worst housing, in strictly segregated sections of the city . . .[and] confined to the city's oldest housing stock, in most need of ongoing maintenance, repair, and rehabilitation."[141] By the end of the 1950s, the Urban Renewal Administration displaced and compelled families to move into low-rent housing.[142] Nearly nine out of ten of those families were non-white.[143]

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[134] Hirsch, *supra* note 24, at 158–59 (citing U.S. COMM'N ON CIVIL RIGHTS, REPORT 462–65 (1959)).

[135] 114 Cong. Rec. 2277-78, 3420 (statement of Sen. Mondale) (recalling story of black naval officer who could not purchase housing of his choice); 114 Cong. Rec. 2709 (statement of Sen. Kennedy); KATZNELSON, *supra* note 127, at 139–140; Kaplan and Valls, *supra* note 8, at 262; *see* BART LANDRY, THE NEW BLACK MIDDLE CLASS 178–79 (1987) (describing that after World War II, whites moved to the suburbs increasing the population and homogeny of suburban neighborhoods).

[136] DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 6, 36–37 (1999); SUGRUE, *supra* note 10, at 44; *see* JACKSON, *supra* note 16 at 209 (finding that the FHA approved mortgages for suburban whites after a white developer putting a wall separating the black from white areas).

[137] SUGRUE, *supra* note 10, at 44.

[138] Hirsch, *supra* note 24, at 162 (citing Material Prepared for Harold Tyler, 1-4); *see* GUNNAR MYRDAL ET AL., AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 349, 625 (1944) (The FHA provided a policy of segregation and offered racial 'protection' to areas and groups of white people who were earlier without it.").

[139] U.S. COMM'N ON CIVIL RIGHTS, REPORT 484–88 (1959).

[140] *See id.*

[141] SUGRUE, *supra* note 10, at 34.

[142] U.S. COMM'N ON CIVIL RIGHTS, REPORT 484-85 (1959).

[143] *Id.*

> As Americans took their leave of 1938, before the full horror of Germany's Nazi regime became widely known, the *Los Angeles Sentinel*, a black newspaper, sounded a disturbing note. In an editorial titled "Ghettoes, American Style," the paper warned that those "who have been protesting Hitler's despicable plan to herd German Jews into ghettoes will be surprised to learn that... [sic] their own government has been busily planning ghettoes for American Negros through the Federal Housing Authority...The American plan lacks the forthright and brutal frankness of Hitler's plan," the editors concluded, "but in the long run it is calculated to be as effective."[144]

The creation of white suburbs and white wealth and the exclusion of black-Americans from quality housing thus facilitated the creation of low-quality, urban, and black neighborhoods that soon became known as the "ghetto."[145] As such, the FHA regulated and shaped the housing market, and also created a dichotomy of whiteness as associated the suburban, wealth, safety, security, and stability, versus blackness, which was associated with the urban, poor, volatile, hazardous, and dangerous.[146] Billions of U.S. government dollars fueled these constructed, race-based conceptions, which became a self-fulfilling prophecy.[147] Black-Americans often had no choice but to resort to urban, low-quality housing as a result of the federal government's discriminatory housing practices.[148]

Between 1935 and 1950 alone, "eleven million homes were built in the United States with federal assistance" through a policy that authorized and perpetuated discrimination against black-Americans.[149] From 1934 to 1962, 120 billion dollars subsidized new housing for white families while the U.S. government simultaneously barred blacks from the lucrative benefits of homeownership.[150]

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[144] Hirsch, *supra* note 24, at 158 (2000) (citing *Ghettoes, American Style*, L.A. SENTINEL, Dec. 29, 1938, at 1).

[145] *Ghettoes, American Style*, *supra* note 144, at 1 (describing the areas the FHA placed blacks in as "ghettos").

[146] *See* HOYT, *supra* note 27, at 314–16 (finding that being a black-American during the 1930s had a detrimental effect on land values); *See* JACKSON, *supra* note 16, at 197–199 (describing that the Home Owner Loan Corporation took into account race and ethnicity during appraisals); SUGRUE, *supra* note 10, at 44 (finding that areas with small populations of black-Americans were deemed "hazardous"); Nier, *supra* note 22, at 151–177, 179 (finding that the monopoly over credit limited black-Americans' ability to own land and gain wealth); PBS, *supra* note 12 (describing minority neighborhoods experienced redlining and were given lower ratings).

[147] *See* PBS, *supra* note 12 (finding that only two percent of the billions of dollars went to minorities).

[148] U.S. COMM'N ON CIVIL RIGHTS, REPORT 484-88 (1959); *see Ghettoes, American Style*, *supra* note 145, at 1 (finding that FHA practices at the time kept black-Americans in specific neighborhoods and denied them loans, giving them little opportunity to become homeowners).

[149] Duster, *supra* note 107, at 119.

[150] PBS, *supra* note 12.

> A government offering such bounty to builders and lenders could have required compliance with a nondiscrimination policy [regarding housing] . . .Instead, FHA adopted a racial policy that could well have been culled from the Nuremberg laws. From its inception FHA set itself up as the protector of the all-white neighborhood. It sent its agents into the field to keep Negroes and other minorities from buying homes in white neighborhoods.[151]

The next Part of this paper discusses the U.S. government's discriminatory housing practices profound impact, problems, and effects, as well as the justification for black reparations for such harms.

II. WHAT 120 BILLION 1950S DOLLARS MEAN IN 2019: THE BLACK-WHITE WEALTH GAP AND THE IMPACT OF U.S. FEDERAL HOUSING DISCRIMINATION

According to Kenneth T. Jackson, "no agency of the United States government has had a more pervasive and powerful impact on the American people over the past half-century than the Federal Housing Administration."[152] The profound impact of federal housing—and federal housing discrimination—from the New Deal forward is undeniable.[153] Nearly eighty years have passed since the birth of national housing programs in the United States—programs that have subsidized, paid for, and enabled white-American individuals, families, and communities to accrue wealth for almost a century through the stability and equity of property. Meanwhile, black-Americans, barred from benefiting from more than 120 billion 1950s dollars worth of federal investment and equal access to property ownership and property as housing, have been unable to accrue the wealth and consequential advantages of their white counterparts.

"In 1968, Congress passed the Fair Housing Act–which many consider to be the *last gasp* of the civil rights era."[154] Congress then passed the 1972 Equal Credit Opportunity Act, the 1975 Community Reinvestment Act, and the 1977 Home Mortgage Disclosure Act.[155] In the face of continued mortgage

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[151] CHARLES ABRAMS, FORBIDDEN NEIGHBORS: A STUDY OF PREJUDICE IN HOUSING 229, 237 (1955).

[152] *See* JACKSON, *supra* note 16, at 2–3.

[153] *Id.* at 203–04*; see* RAPKIN ET AL., *supra* note 64, at 14; Gordon, *supra* note 17, at 193 (finding that the "FHA fundamentally transformed the mortgage market.").

[154] SHERYLL CASHIN, [THE FAILURES OF] INTEGRATION: HOW RACE AND CLASS ARE UNDERMINING THE AMERICAN DREAM 3 (2004); John A. Powell, *Reflections on the Past, Looking to the Future: The Fair Housing Act at 40*, 41 Ind. L. Rev. 605 (2008); *see* Kaplan and Valls, *supra* note 8, at 263 (discussing how Congress refused to deal with housing, passing the Civil Rights Act of 1964 and the Voting Rights Act of 1965 before the Fair Housing Act, also known as Title VIII of the Civil Rights Act of 1968) (emphasis added).

[155] George C. Galster, *The Evolving Challenges of Fair Housing Since 1968: Open Housing, Integration, and the Reduction of Ghettoization*, 4 CITYSCAPE: J. POL'Y DEV. & RES. 123, 126 (1999).

discrimination,[156] Congress finally passed the 1988 Amendments to the Fair Housing Act that substantially increased the federal government's commitment to enforcing non-discrimination in housing and lending.[157]

Regardless, federal legislation did not seek a remedy for black-Americans who were discriminated against and suffered from the 1930s to the 1980s. Even so, the 1968 Fair Housing Act, the fair lending acts of the 1970s, and the 1988 Amendments to the Fair Housing Act did not aim to correct the disadvantages that black-Americans had already suffered from the 1930s through the 1980s.[158] By the time the 1988 Amendments took effect, the damage of nearly sixty years of housing discrimination had been done:

> Racial residential segregation, and its accompanying conditions of black poverty, unemployment, and poor educational opportunities were so entrenched that anti-discrimination laws and policies with regard to housing and lending could do little to undo the accumulated damage to racial equality that had been done over the course of the twentieth century.[159]

Despite the damage the U.S. government has caused through discriminatory housing practices, the government has failed to correct for the adverse effects of federal housing discrimination.[160]

This Part discusses the U.S. government's discriminatory housing practices and their impact and effects on black-American communities, beginning with the more quantifiable and direct monetary impact of discriminatory federal assistance and concluding with the less easily quantifiable consequences of federal housing discrimination.[161] Finding that the federal government invested more than 120 billion 1950s dollars—or more than 1.239 quintillion 2019 dollars—into the subsidization and creation of white-American wealth through homeownership, this Part argues that the black-white wealth gap may be attributable, at least in part, to twentieth century federal housing discrimination. The U.S. government should afford reparations to black-Americans for discriminatory federal housing policies perpetrated by the U.S. government from

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[156] Galster, *supra* note 155, at 127–28.

[157] MASSEY & DENTON, *supra* note 88, at 210–211.

[158] Kaplan and Valls, *supra* note 8, at 264.

[159] *Id.*; MASSEY & DENTON, *supra* note 88, at 211.

[160] *See, e.g.*, S. 1083 (describing a 2019 proposal to set up a commission to study reparations for black-Americans); H.R. 40 (describing the House of Representatives version of the 2019 proposal to study reparations); H.R. 40, S. 1083.

[161] As noted in the introduction to this paper, this paper focuses on the impact of, and reparations for, the U.S. government's discriminatory housing practices on African- and black-Americans, although such practices were also harmful to other minority groups, particularly Mexican-Americans.

the 1930s through the 1980s—the damage and adverse effects of which continue to persist and have not yet been corrected or addressed.[162]

A. *The Quantifiable Impact of U.S. Federal Housing Discrimination on White and Black Wealth*

Before the 1930s, home ownership typically acquired later in life and was a good held not for purposes of investment, but rather, for purposes of housing.[163] After the New Deal reforms, "homeownership became the primary mechanism that middle-class Americans use to build assets."[164] Today, home equity is a significant source of wealth for many Americans[165] and home ownership is the largest component of middle-class wealth.[166] Home ownership is unquestionably the "single most important means of accumulating assets," and thus increasing wealth.[167] Indeed, owner-occupied homes constitute 60 percent of the total assets held by middle-class Americans.[168]

More than 120 billion dollars in the 1950s, with inflation, is likely worth more than 1.239 quintillion dollars in 2019.[169] This statistic means that the federal government's financial expenditure on white-American housing after the New Deal would be the equivalent of 1.239 quintillion dollars in federal spending today.[170] This amount is a *net* or *flat* amount and merely takes inflation into consideration. This amount does not consider the exponential growth of wealth accrued or accumulated from the benefits of homeownership over time (the *gross* amount). The government essentially purchased benefits for white individuals and communities with government money. These benefits include interest rates, financial investments, quality housing, education, increased employment opportunities and respective increases in income, affordable loans and credit, the capital to invest and multiply one's wealth, financial and physical

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[162] *See* H.R. 40, S. 1083, Commission to Study and Develop Reparation Proposals for African-Americans Act, H.R. 40, 116th Cong. § 2(a)(1) (2019) (companion bill S. 1083) (calling for a commission to study and address reparations for the institution of slavery, for subsequent de jure and de facto discrimination against African-Americans, and for the impact of such lasting forces).

[163] Gordon, *supra* note 17, at 188.

[164] *Id.* (citing BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at 646 (corrected reprint 1989)).

[165] Kaplan and Valls, *supra* note 8, at 255.

[166] OLIVER & SHAPIRO, *supra* note 95, at 6.

[167] *Id.* at 8.

[168] Gordon, *supra* note 17, at 188.

[169] U.S. BUREAU OF LABOR STATISTICS, *supra* note 42.

[170] It should be noted that this figure involves federal funding from 1934 to 1962 and the actual total amount of discriminatory federal housing funding was larger, as the Amendments to the 1968 Fair Housing Act did not pass until 1988. PBS, *supra* note 12.

stability, security, and safety, inherited or generational wealth,[171] continued race and class discrimination, and stigma. As such, the federal government's investment of more than 1.239 quintillion dollars into white property, white homeownership, and white wealth is likely worth sizably more today, beyond mere inflation considerations.[172]

Meanwhile, alongside the U.S. government's generous assistance in developing white property and wealth during the twentieth century, the "wealth gap" between black- and white-Americans continued to expand.[173] "During the eighties the rich got much richer, and the poor and middle classes fell further behind," in part because "one asset whose value grew dramatically during the eighties was real estate, an asset that is central to the wealth portfolio of the average American."[174] Consequently, "a substantial portion of the wealth gap at every income level is correlated with home-ownership and the value of homes owned. Much of the relative lack of wealth by Black Americans is due to the lower rates of home ownership in Black communities and the lower value of homes owned."[175]

From 1984 to 2007, the "racial wealth gap [between whites and blacks] increased . . .from $20,000 to $95,000 . . .(excluding home equity)."[176] Also in 2007, the household median net worth of black families was $17,100 and $170,400 for white families.[177] "Even when [black- and white-Americans] display similar characteristics" or similar incomes[178] "—for example, are on par educationally and occupationally—a potent difference of $43,143 in home equity and financial assets still remains."[179] "Likewise, giving the average black household the same attributes as the average white household leaves a $25,794 racial gap in financial assets alone."[180]

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171 OLIVER & SHAPIRO, *supra* note 95, at 6 (discussing the amounts that the baby boom generation stands to inherit).

172 SUGRUE, *supra* note 10, at 44.

173 *Id.*

174 *Id.*

175 Kaplan and Valls, *supra* note 8, at 258.

176 THOMAS M. SHAPIRO ET AL., INSTITUTE ON ASSETS AND SOCIAL POLICY, THE RACIAL WEALTH GAP INCREASES FOURFOLD 1 (May 2010), https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/racial-wealth-gap-fourfold.pdf (last visited Nov. 23, 2019).

177 AJAMU DILLAHUNT ET AL., UNITED FOR A FAIR ECONOMY, STATE OF THE DREAM 2010: DRAINED, JOBLESS AND FORECLOSED IN COMMUNITIES OF COLOR 9 (2010) (citing INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, LAYING THE FOUNDATION FOR NATIONAL PROSPERITY: THE IMPERATIVE OF CLOSING THE RACIAL WEALTH GAP 3 (2009) (using FED. RESERVE BD., 2007 SURVEY OF CONSUMER FINANCES PUBLIC DATA SET (2007)).

178 OLIVER & SHAPIRO, *supra* note 95, at 8 ("Wealth is what people own, while income is what people receive for work, retirement, or social welfare").

179 *Id.* at 8.

180 *Id.*

Should we be surprised at the ever-growing wealth gap that exists between black- and white-Americans, given the 1.239 quintillion 2019 dollars invested into white property and white wealth in the twentieth century?[181] On average, the wealth gap between black- and white-American households (the black-white wealth gap) is approximately 14.074 quadrillion dollars.[182] If approximately one-fourteenth of this gap can be attributed to the net amount of federal investment into white property during the twentieth century, because home equity is a significant source of wealth[183] that has accrued substantial—if not astronomically—since the 1930s, it is possible that much of the black-white wealth gap can be attributed to federal housing discrimination and the accrued wealth of homeownership.[184] Put differently, if it is likely that the property value of a home purchased in the 1930s, 1950s, or even the 1980s may be worth five, ten, or even fifteen times what it was worth at the time of purchase, it seems to follow that the black-white wealth gap map to the quantifiable impact of post-New Deal federal housing discrimination.[185] If so, part of the black-white wealth gap can be attributed to the U.S. government's discriminatory housing practices.

Certainly, there are countless possible contributing factors to the black-white wealth gap and it is difficult to precisely map the less direct effects of home equity to a household's accumulated or absent wealth. However, there are three important reasons for this thought experiment. First, thinking through and attempting to quantify the effects of the U.S. government's discriminatory housing practices after the New Deal show the potentially sizeable scope of impact that such practices have had on communities of color, on wealth differentials, and on race-based poverty. Moreover, quantification of discriminatory housing practices focuses solely on the narrow band of effects stemming from these discriminatory federal housing practices, suggesting the potentially enormous scope of harm caused by other forms of government and private discrimination, and perhaps even from slavery.

Second, even if we cannot attribute the entire black-white wealth gap to the U.S. government's discriminatory housing practices, we can at least attribute a quantifiable portion of direct U.S. investment into white housing. More than 120 billion 1950s dollars, now more than 1.239 quintillion 2019 dollars, is the

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[181] It should be noted that these figures are not precisely accurate, but instead are used for the purpose of thinking through and attempting to quantify the effects of the U.S. government's discriminatory housing practices.

[182] *See infra* Figures 1 and 2. This figures was calculated using the Federal Reserve Bank's 2009 estimate for Total Median Net Worth of Black and White U.S. Households (*see supra* note 123 and accompanying text), and multiplying each median net household worth by the number of black and white households in the United States, respectively (*see* U.S. Census Bureau, State and County QuickFacts, 2009, https://www.census.gov/quickfacts/fact/table/US/PST045218 (last visited Nov. 23, 2019)).

[183] OLIVER & SHAPIRO, *supra* note 95, at 6; Kaplan and Valls, *supra* note 8, at 255.

[184] OLIVER & SHAPIRO, *supra* note 95, at 6.

[185] *See infra*, Figure 2.

minimum amount of reparations that can—and should—instigate the process of black reparations for U.S. federal housing discrimination.

Third, mapping the black-white wealth gap or slivers of this gap to disproportionate and discriminatory government funding challenges pervasive apathy and stereotypes towards race-based poverty and wealth differentials. Put another way, it is important to recognize that communities of color in America are underprivileged for a reason. They did not start on equal footing. These communities were falsely constructed along racial lines as unequal through practices such as redlining. And that inequality has both snowballed into real and significant differences in property values, in wealth and access to wealth, in community resources, in public school funding, and in the safety, stability, and opportunities for children and families living within those communities. A community's lack of resources may be the result of historic government discrimination and through no fault of its residents.[186] Highlighting the government's hand in contributing to race-based poverty and quantifying the damaging effects of the U.S. government's discriminatory housing practices after the New Deal thus compels remedy and redress for these harms.

B. *The Less Easily Quantifiable Effects of U.S. Federal Housing Discrimination*

In addition to the quantifiable 120 billion 1950s dollars that the U.S. federal government invested to subsidize white-American wealth, post-New Deal federal housing discrimination produced less easily quantifiable impacts in denying black-Americans from federal funding and homeownership.[187] Although these effects may not be as easily quantifiable, they are substantial, real, and important to consider in discussing the prospect and scope of black reparations for twentieth century federal housing discrimination. The effects of this denial of federal funding were far-reaching, affecting areas of life including education, employment, increased income, accumulated wealth, quality housing, financial and physical safety and security, increased opportunities, and continued discrimination and stigma. Each of these effects are deeply interconnected and overlapping. This Section will discuss each effect through the following four categories: (1) the lack of accumulated, generational wealth from denied black-American homeownership; (2) stability and security; (3) educational and employment opportunities; and (4) continued discrimination and stigma.

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[186] *See* Robert M. Franklin, *The Legitimization of Inequality*, *in* INEQUALITY MATTERS 237 (James Lardner and David Smith, eds., 2005).

[187] CONLEY, *supra* note 136, at 55–132 (discussing education, employment, homeownership, and wealth accumulation); Kaplan and Valls, *supra* note 8, at 257 (same); Natasha M. Trifun, *Residential Segregation After the Fair Housing Act*, 36 Fall Hum. Rts. 14 (2009) (same); *see also* Nier, *supra* note 22 (discussing education, employment, family, and life opportunities).

First, the lack of accumulated, generational wealth among black-Americans may not be easily quantifiable, but it can be linked, in part, to twentieth century federal housing discrimination.[188] Dramatic rises in the value of homes over the course of the twentieth century essentially enabled twentieth century home purchasers, who benefited from the federal government's discriminatory housing practices, to accumulate wealth through property.[189] Even in the rare instances where property was purchased by black-American home buyers, homes in predominantly black neighborhoods have not increased in value nearly as much as those in predominantly white neighborhoods.[190] Additionally, denied from access to homeownership, black-Americans have often had to pay more for their housing, deepening their impoverishment relative to their white counterparts.[191] Likewise, as black-Americans could not obtain loans to improve their properties, their housing and property values naturally deteriorated.[192] As a result, the black-white wealth gap continues to be fueled in each generation as black-Americans have been largely excluded from the "best" or most profitable housing markets.[193]

In stark contrast to white households, the average black household has little or no net financial assets to pass down to their children.[194] For example,

> "Many first-time White American home buyers rely on their parents for help with the down-payment; their parents are largely able to help because of the rise in the price of the homes they themselves own. This is a source of inter-generational financial help that is unavailable to many young Black Americans whose parents were shut out of purchasing homes in those neighborhoods that historically experienced the highest rates of growth in real estate prices."[195]

The impact of accumulated, generational wealth from property—or the lack thereof—is, therefore, both substantial and deepening with time. According to philosopher Robert Nozick, property wealth "sticks out as a special kind of unearned benefit that produces unequal opportunities.[196]

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[188] *See supra*, Part I.

[189] OLIVER & SHAPIRO, *supra* note 95, at 6 (discussing the prospective inheritance of the baby boom generation). "Blacks will not partake in divvying up the baby boom bounty. America's racist legacy is shutting them out." *Id.* at 7.

[190] Kaplan and Valls, *supra* note 8, at 265.

[191] SUGRUE, *supra* note 10, at 34.

[192] *Id.* at 34–36.

[193] Kaplan and Valls, *supra* note 8, at 259.

[194] OLIVER & SHAPIRO, *supra* note 95, at 7.

[195] Kaplan and Valls, *supra* note 8, at 259.

[196] OLIVER & SHAPIRO, *supra* note 95, at 6.

Second, discriminatory federal housing practices denied, and continue to deny, black-Americans from the stability and security that homeownership and home equity provide.[197]

The "economic foundation" of the black middle-class lacks one of the pillars that provides stability and security to middle-class whites: the asset of home equity.[198] Homeownership not only provides long-term physical stability and security through quality housing, shelter, and safety from crime, but it also provides financial stability, from which, homeowners may obtain loans and credit.

One of the greatest obstacles confronted by black-Americans is the inability to obtain credit[199]—credit that enables people to own homes, take out business loans, engage in entrepreneurship, take out student loans, and pursue a plethora of other opportunities. Put another way, the inability of black-Americans to secure credit to purchase homes on equal footing with white-Americans, and the difficulty faced in securing credit to purchase homes or property in areas recognized by the lending community as predominantly black or mixed-race neighborhoods is at least partially responsible for the lack of financial stability faced by black-American households and communities.[200] "Foreclosed from traditional sources of credit available to whites" through homeownership, black-Americans often have "to turn to other informal, and often predatory sources of credit."[201] The continued inability to obtain credit subsequently results in the ongoing inequality in homeownership rates and the generational lack of physical and financial security, both of which can be traced back to federal housing discrimination.[202] While the perceived "instability" of black-American neighborhoods was constructed during the New Deal through the federal government's redlining practices, the denial of black wealth through homeownership has had a lasting impact on physical and financial insecurity among black-Americans.

Third, educational and employment opportunities directly and indirectly stem from homeownership, intergenerational wealth accumulation, stability, and discrimination. While educational and employment opportunities may also stem from several other factors—such as locality, interest, and skill set—it is undeniable that residence, homeownership, and residential stability, and property values determine the amount of public education funding within a respective public school district.[203] In New York City alone, "annual tuition at

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[197] *See* Rohe and Lindblad, *supra* note 63, at 7 (discussing greater residential stability, which in turns leads to better school performance among children and higher levels of civic engagement and social capital among adults, as a positive impact of homeownership).

[198] *Id.* at 8.

[199] Nier, *supra* note 22, at 132.

[200] Kaplan and Valls, *supra* note 8, at 258–59.

[201] Nier, *supra* note 22, at 132.

[202] Kaplan and Valls, *supra* note 8, at 265.

[203] Powell, *supra* note 154, at 615.

Manhattan's most elite private schools is $26,000, for kindergarten as well as high school. Meanwhile, in one school in the Bronx, nine out of ten students quality for free lunches, one out of ten lives in a homeless shelter, and the student body is 97 percent black.[204] Some school libraries don't have computers, or more than a handful of current books.[205] Other schools have Olympic gymnasiums and each student owns a laptop computer. Homeownership, moreover, typically leads to greater residential stability (*i.e.*, living in one place for a longer period of time).[206] Such residential stability leads to better school performance for children and higher levels of civic and community engagement.[207] Homeownership often also results in better quality housing, which can provide safer and more stimulating environments for children.[208]

It is no surprise that the quality of a school—or at least its basic resources—often correlates with a basic minimum amount of funding. And what students learn in kindergarten, primary, middle, and secondary school enables them to pursue higher education, graduate school, and certain employment opportunities. Along these lines, not surprisingly, "the most consistent and strongest common theme to emerge in interviews conducted with white and black families was that family assets expand potential choices for children, while a lack of assets limits opportunities."[209] As such, housing has the potential to dramatically expand or limit educational and employment opportunities.

Fourth, the segregative and economic effects of U.S. housing practices have contributed to prevailing discrimination and stigma. Housing discrimination persists, making the housing search process more expensive for black-Americans and other minority groups, and limiting the housing choice of persons of color to poorer neighborhoods with inferior housing.[210] Past and ongoing housing discrimination imposes extra costs on black-Americans searching for and acquiring housing, including time, money, and lower quality housing.[211] Even beyond housing, the discrimination and stigma of past and present housing practices, racial and economic segregation, and the exclusion of black-Americans from mainstream American living have produced real and damaging effects across the country. For struggling black-Americans, "[j]ust as black children were stigmatized as inferior through educational segregation, adults in the ghetto faced the impotence of being unable to provide their family with desired living conditions proportionate to a financially comparable white

[204] Bill Moyers, *The Fight of Our Lives*, *in* INEQUALITY MATTERS 1 (James Lardner and David A. Smith, eds.) (2005).

[205] *Id.* at 1–2.

[206] *See* Rohe and Lindblad, *supra* note 63, at 8.

[207] *See id.*

[208] *See id.*

[209] OLIVER & SHAPIRO, *supra* note 95, at 7.

[210] Trifun, *supra* note 187.

[211] Kaplan and Valls, *supra* note 8, at 265.

family."[212] As poor, urban, communities of color confront the external and imposed stereotypes of instability, volatility, and inferiority, these communities also confront personal threats to self-worth and dignity and the real effects of having to try and work harder to overcome accumulated and intergenerational disadvantage, denied opportunities, and poverty.[213]

CONCLUSION

In federal criminal cases, upon a defendant's conviction, crime victims are often awarded restitution to compensate for the harm caused by the defendant's criminal offense. For some federal offenses, restitution is mandatory,[214] and can include costs for "medical and related professional services" relating to "physical, psychiatric, and psychological care," and reimbursement to the victim "for income lost by such victim as a result of such offense."[215] In addition, the U.S. Department of Justice manages a Crime Victims Fund (the "CVF") of over $12 billion, which is a repository of fines, fees, and special assessments collected across federal criminal cases.[216] Last year, for example, the CVF awarded $3.4 billion in grants to aid crime victims nationwide.[217]

Certainly, many federal criminal prosecutions are subject to a "statute of limitations," or a time period after which criminal charges are time-barred. Some crimes cannot be charged after five years; other crimes, including capital offenses, have no statute of limitations.[218] Here, what is the statute of limitations for slavery and the effects of racial discrimination? Does it matter if the crimes have been committed by the government?

In response to Senator McConnell's opposition to the reparations bill,[219] which was effectively an argument that the crimes of slavery occurred too long ago and thus should be time-barred, journalist Ta-Nehisi Coates offered the following response:

[McConnell's] rebuttal proffers a strange theory of governance, that American accounts are somehow bound by the lifetime of its generations. But

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[212] Jean Eberhart Dubofsky, *Fair Housing: A Legislative History and a Perspective*, 8 WASHBURN L. J. 149, 153 (1969); Brian Patrick Larkin, *The Forty-Year 'First Step': The Fair Housing Act as an Incomplete Tool for Suburban Integration*, 107 COLUM. L. REV. 1617, 1621 (2007).

[213] Dubofsky, *supra* note 212, at 153; Larkin, *supra* note 212, at 1621.

[214] *See* 18 U.S.C. § 3663A. (2012).

[215] 18 U.S.C. § 3663A(b)(2)(A)-(C) (2012).

[216] *About OVC, Crime Victims Fund*, Office for Victims of Crime, https://www.ovc.gov/about/victimsfund.html (last visited Nov 23, 2019).

[217] *Justice Department Announces $3.4 Billion in Grants to Aid Crime Victims Nationwide*, U.S. Department of Justice, Office of Public Affairs (Aug. 9, 2018), https://www.justice.gov/opa/pr/justice-department-announces-34-billion-grants-aid-crime-victims-nationwide.

[218] *See, e.g.*, 18 U.S.C. §§ 3281–82, 3293–95.

[219] *See supra* Introduction.

well into this century, the United States was still paying out pensions to the heirs of Civil War soldiers. We honor treaties that date back some 200 years, despite no one being alive who signed those treaties. Many of us would love to be taxed for the things we are solely and individually responsible for. But we are American citizens, and thus bound to a collective enterprise that extends beyond our individual and personal reach. . .. We recognize our lineage as a generational trust, as inheritance, and the real dilemma posed by reparations is just that: a dilemma of inheritance. It is impossible to imagine America without the inheritance of slavery.[220]

Coates further explained that after 250 years of slavery in the United States, "this country could have extended its hallowed principles—life, liberty, and the pursuit of happiness— to all, regardless of color. . .. [But instead,] black people were subjected to a relentless campaign of terror, a campaign that extended well into the lifetime of Majority Leader McConnell."[221] Coates emphasized that McConnell "was alive for the redlining of Chicago and the looting of black homeowners of some $4 billion," among other twentieth and twenty-first century acts of racism and harm to black-Americans.[222] "Victims of that plunder are very much alive today."[223]

In the words of President Barack Obama, paraphrasing William Faulkner: "The past isn't dead and buried. In fact, it isn't even past."[224] Perpetrated merely one generation ago, the damaging effects of twentieth century federal housing discrimination continue to devastate black-American communities and families today. Through the black-white wealth gap, the accumulated benefits of homeownership, continued racial stigma, and discriminatory lending, the legacy of the U.S. government's discriminatory housing practices that were initiated during New Deal continue to thrive in the United States.[225] "[R]acial injustices of the past continue to shape American society by disadvantaging African-Americans in a variety of ways."[226]

While critics of black reparations, which primarily focus on reparations for black slavery, argue that such harms are too far in the past and therefore too difficult to connect, quantify, and distribute, reparations for federal housing

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[220] Olivia Paschal & Madeline Carlisle, *Read Ta-Nehisi Coates's Testimony on Reparations*, The Atlantic (June 19, 2019).

[221] *Id.*

[222] *Id.*

[223] *Id.*

[224] Barack Obama, 2008 Democratic Party Presidential Nomination Speech ("A More Perfect Union") (March 18, 2008) (paraphrasing WILLIAM FAULKNER, REQUIEM FOR A NUN 73 (1951)).

[225] Willy E. Rice, *Race, Gender, 'Redlining,' and the Discriminatory Access to Loans, Credit, and Insurance: An Historical and Empirical Analysis of Consumers Who Sued Lenders and Insurers in Federal and State Courts, 1950-1995*, 33 SAN DIEGO L. REV. 583, 616 (1996) (argue arguing that "mortgage redlining and other types of invidious lending persist.").

[226] Kaplan and Valls, *supra* note 8, at 255.

discrimination provide a remarkably rare opportunity for black reparations.[227] At minimum, the net amount of discriminatory federal assistance can be easily quantified in 2010 dollars and black-Americans should be compensated for at least 1.239 quintillion dollars of federal money that was discriminatorily used to construct, subsidize, purchase, and invest in white property and white wealth at the expense of black-Americans.[228] In addition, recognizing the power of wealth accumulation and the grave and lasting impact of discriminatory federal housing practices, the U.S. government should consider the broad and damaging effects of its discriminatory practices to expand the scope of black reparations beyond net federal spending.

How and to whom black reparations for twentieth century federal housing discrimination should be distributed are valid questions that are beyond the scope of this paper. Reparations could come in the form of both money and new policies that target the detrimental effects of the original harm. Reparations could be distributed to communities, schools, or to individuals. These, however, are questions for another day.

By revealing the express federal initiation, authorization, and perpetuation of denied housing and homeownership to black-Americans, this paper argues that black reparations for twentieth century federal housing discrimination are justified, necessary, and feasible. In order to open the "great vaults of opportunity" to all U.S.-Americans, it is time for the U.S. government to allow black-Americans to cash their check—"a check that will give them the riches of freedom[,] the security of justice," and the substantial benefits of homeownership.[229]

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[227] *Id.* at 255, 256.

[228] *See supra* Part II.

[229] Dr. Martin Luther King, Jr., "I Have a Dream," Address on March on Washington 2 (Aug. 28, 1963) (transcript available at the National Archives).

APPENDIX

Figure 1.

White Wealth Calculation by Household			
Average Net Worth of White Households	Total Number of U.S. Households	Percent of U.S. Population that is White	Total Net Worth of White Households in the U.S.
$170,400	105,480,101	79.6%	$14,307,152,131,478
Black Wealth Calculation by Household			
Average Net Worth of Black Households	Total Number of U.S. Households	Percent of U.S. Population that is Black	Total Net Worth of Black Households in the U.S.
$17,100	105,480,101	12.9%	$232,678,554,796
[illegible] Invested in White Housing in the 1950s			$1,089,[illegible]

Figure 2.