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The Wealth Gap: Through the Lens of Governmental Policies and Racial Inequality in Housing

Tara Carone

The median net worth of white households by 2010 had grown to \$110,729, whereas the same figure for black households had grown to \$4,955—4.4% of the net worth of whites.¹ The wealth gap is just one of many statistics that show a nation still deeply divided by racial lines.² To face this divide, we need to address the questions of why the wealth gap exists and how to fix it. Housing is a significant contributor within a multitude of factors that contribute to the racial wealth gap.³ Wealth accumulation, accessibility to valuable public services and amenities, community engagement and civic life, and less exposure to violence and other social advantages all accompany homeownership.⁴ Homeownership has been identified as one of the largest components of wealth for many Americans, particularly those in the middle class.⁵ For many communities of color, however, homeownership is out of reach.⁶ Over the past century, both *de jure* and *de facto* housing policies have consistently provided upward mobility for white families while impoverishing black ones.⁷

THE HISTORY OF FEDERALLY INSTITUTIONALIZED DISCRIMINATION

During the 1920s, legal mechanisms of exclusion, including deed restrictions and racially restrictive covenants explicitly prohibited blacks from purchasing homes in white neighborhoods.⁸ These legal mechanisms contin-

¹ Table 1, *Median Value of Assets For Households, By Type of Asset Owned And Selected Characteristics: 2010*, U.S. CENSUS BUREAU, <https://www.census.gov/data/tables/2013/demo/wealth/wealth-asset-ownership.html> (2012).

² *Id.*

³ Gregory Sharp & Matthew Hall, *Emerging Forms of Racial Inequality in Homeownership Exit, 1968-2009*, SOCIAL PROBLEMS, 61(3), 427, 427 (2014).

⁴ *Id.*

⁵ Melany De La Cruz-Viesca et al., *Fifty Years After the Kerner Commission Report: Place, Housing, and Racial Wealth Inequality in Los Angeles*, THE RUSSELL SAGE FOUNDATION JOURNAL OF SOCIAL SCIENCES, 4(6), 160-184 (2018).

⁶ Sharp & Hall, *supra* note 3 at 428.

⁷ *Id.*

⁸ Justin P. Steil et al., *The Social Structure of Mortgage Discrimination: A Qualitative Analysis*, HOUSING STUD., 33(5), 759-76 (2018).

ued until 1948 when they were declared invalid by the U.S. Supreme Court in *Shelley v. Kraemer*.⁹ Segregation in the housing market did not end there, however.¹⁰ It was maintained by institutionalized discrimination in real estate, insurance, and lending industries, which remained common well past the Civil Rights era and into the twenty-first century.¹¹

Institutionalized discrimination in the housing market began with federal policy.¹² New Deal era programs were created with the intent to slow down the number of home foreclosures and encourage new home purchases and construction.¹³ Politics at the time caused these programs and hence, the federal government, to promulgate racism.¹⁴ Southern legislators would not support federal benefits paid directly to blacks.¹⁵ This would threaten white sharecroppers by lessening the financial dependence of blacks.¹⁶ In order to ensure political support from southern politicians, President Franklin Delano Roosevelt and northern Democrats agreed to legislation that excluded blacks.¹⁷

Two of the programs effected by these political compromises were the Federal Housing Administration (FHA) and the Home Owner's Loan Coalition (HOLC).¹⁸ The FHA offered federally-backed mortgage insurance, which guaranteed banks would receive full repayment, with interest, from the federal government if a homeowner defaulted, eliminating banks' risk.¹⁹ With this protection in place, banks lowered collateral and down payment requirements and extended the repayment of loans, making homeownership affordable for many Americans.²⁰ The HOLC helped homeowners refinance mortgages on the brink of default, in addition to providing low-interest loans to households who had already lost their homes buy new ones.²¹

⁹ *Shelley v. Kraemer*, 344 U.S. 1 (1948)

¹⁰ Steil et al., *supra* note 8 at 760

¹¹ *Id.*

¹² *Id.*

¹³ Sharp & Hall, *supra* note 3 at 428; 1934: *Federal Housing Administration Created*, THE FAIR HOUSING CENTER OF GREATER BOSTON, <http://www.bostonfairhousing.org/timeline/1934-FHA.html> (last visited Nov. 9, 2018).

¹⁴ Juan Perea, *Doctrines of Delusion: How the History of the G.I. Bill and Other Inconvenient Truths Undermine Supreme Court's Affirmative Action Jurisprudence*, 75 U. PITT. L. REV. 588, 583-651 (2014).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ 1934: *Federal Housing Administration Created*, *supra* note 13.

¹⁹ Sharp & Hall, *supra* note 3 at 428.

²⁰ *Id.*

²¹ *Id.*

On the surface, these programs sounded great for Americans—just not all Americans. A rating system (“redlining”) was put in place, creating nationwide standards for assessing residential areas and their fitness to receive loans.²² Every neighborhood was categorized into a color-coded desirability scale from green (most desirable) to red (least desirable).²³ The classification was based on assumptions about the neighborhood, *not* on the ability of various households to satisfy lending criteria.²⁴ Quickly, this practice became discriminatory as ethnic neighborhoods were deemed unacceptable sites of investment.²⁵

In an attempt to maintain residential stability and security, the FHA adopted HOLC’s appraisal system.²⁶ By doing so, it endorsed racially restrictive covenants and made residential segregation federal policy.²⁷ While growing homeownership substantially, the FHA’s policies limited this expansion largely to middle-class suburban whites.²⁸ Regardless of a white homeowner’s personal beliefs regarding racial equality, the value of their home was tied to their willingness to keep their neighborhood exclusively white.²⁹

REDLINING AND ITS EFFECTS THROUGH POST-WAR YEARS

During World War II, hundreds of thousands of southern blacks migrated to cities to escape Jim Crow segregation.³⁰ These newly arrived African-Americans moved into segregated redlined neighborhoods.³¹ They were denied access to government subsidies that allowed thousands of their white co-workers to purchase their first home.³² Without the assistance of the FHA, few African-Americans could afford to purchase a home.³³ Those who did, did so largely in redlined neighborhoods, where their investment would appreciate at a much slower rate, if at all, than their white counterparts who bought in green and blue tracts, the middle categories for neighborhood classification.³⁴

²² *Id.*

²³ Steil et al., *supra* note 8 at 759.

²⁴ Fair Housing Center, *supra*.

²⁵ Sharp & Hall, *supra* note 3 at 428.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 429.

³⁰ Richard Rothstein, *The Color of Law* 41(2017).

³¹ Steil et al., *supra* note 8 at 759.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

The FHA's "redlining" system significantly shaped the racial geography of the post-war decades.³⁵ By effectively dictating where billions of investment dollars could and could not flow, the federal government largely created the socioeconomic character of racially segregated neighborhoods.³⁶ Green and blue designations, on the other hand, attracted investment dollars and guaranteed the appreciation of home values.³⁷

The Ninth Circuit Court of Appeals summarized the federal housing environment of the 1960s in a recent court case:

By the mid-1960s, Congress had addressed discrimination in public accommodations and voting through major legislation; yet, it had failed to tackle discrimination in housing, the area that determined millions of citizens' daily life experiences, as well as who their neighbors would be, which schools their children would attend, and the general social environment in which they would grow up or live. Combined with the arrival of Levittown-like suburban developments across the country, 'various practices . . . , sometimes with governmental support, . . . encourage[d] and maintain[ed] the separation of the races,' including racially restrictive covenants, blockbusting, and redlining.³⁸

Government policy, which promised not to change a neighborhood's composition when constructing affordable housing, exacerbated the stark segregation in America's cities.³⁹

Altogether, the nation was "moving toward two societies, one black, one white—separate."⁴⁰ Frustration with this system was apparent during the Civil Rights Movement.⁴¹ Black power organizations recognized the great disparate effects housing discrimination was having.⁴² For example, Black Panther Party demands made direct reference to land and housing.⁴³ Urban uprisings in the late 1960s in places like Newark and Detroit trace their origins back to the issue of housing discrimination and the production of America's inner-city

³⁵ Sharp & Hall, *supra* note 8 at 428.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Ave. 6E Investments, LLC v. City of Yuma, Ariz., 818 F.3d 493, 504 (9th Cir. 2016).

³⁹ *Id.* at 502.

⁴⁰ Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc., 135 S. Ct. 2507, 2516 (2015).

⁴¹ *10-Point Platform* (PBS 2002).

⁴² *Id.*

⁴³ *Id.*

ghettoes through redlining and government policy.⁴⁴ Eventually, these protests sparked federal policy change.⁴⁵

ATTEMPTS TO BAN HOUSING DISCRIMINATION AND IMPROVE HOUSING FOR MINORITY GROUPS

The Fair Housing Act (FHA) of 1968 outlawed redlining and all market discrimination based on race at the federal level.⁴⁶ Specifically, this legislation banned all forms of discrimination in real estate transactions, including “blockbusting,” the practice of real estate agents informing white residents that black families would soon be moving into the neighborhood, thereby creating a panic sell due to whites’ fears of impending racial turnover.⁴⁷ Despite the act’s attempt to improve housing for minorities, blatant discrimination continued.⁴⁸ Congress, in response, passed three additional laws to combat discrimination in lending.⁴⁹ These included the Equal Credit Opportunity Act (ECOA) of 1974, the Home Mortgage Disclosure Act (HMDA) of 1975, and the Community Reinvestment Act (CRA) of 1975.⁵⁰ The HMDA and CRA were designed to curb redlining by requiring lenders to serve the credit needs of their communities, including minority and low-income communities, through safe and sound banking operations.⁵¹

Despite Congress’ efforts, discriminatory practices in homeownership continued through the 1970s and 1980s.⁵² As such, new legislation continued to be enacted. The Fair Housing Amendments Act of 1988 strengthened enforcement procedures for discrimination lawsuits and provided racially equitable access to housing.⁵³ Substantial revisions to the CRA were also made in the 1990s.⁵⁴ These revisions focused on lender performance which helped to stimulate lending to urban, low-income, and minority neighborhoods.⁵⁵

⁴⁴ De La Cruz-Viesca et al., *supra* note 5 at 166.

⁴⁵ *Id.*

⁴⁶ Sharp & Hall, *supra* note 3 at 428.

⁴⁷ *Id.* at 429.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*; *Community Reinvestment Act: Background and Purpose*, FED. FIN. INST. EXAM. COUNCIL, <https://www.ffiec.gov/cra/history.htm> (last visited Sept. 9, 2018).

⁵² *Id.*

⁵³ Sharp & Hall, *supra* note 3 at 429; *Understanding the Fair Housing Amendments Act: A Publication of United Spinal Association*, 3-4, UNITED SPINAL ASSOCIATION (2004).

⁵⁴ Sharp & Hall, *supra* note 3 at 429.

⁵⁵ *Id.*

In enacting the FHA, Congress sought to not only eliminate discriminatory practices in housing, but also the impact these practices created.⁵⁶ The FHA not only forbids disparate treatment, but also disparate impact.⁵⁷ This prohibits actions by private or governmental bodies that create a discriminatory effect upon a protected class or perpetuate housing segregation without any concomitant legitimate reason.⁵⁸ Disparate impact provides a remedy in two situations that disparate treatment may not reach.⁵⁹ First, it gives plaintiffs a cause of action for facially neutral rules upon passage, but develop into powerful discriminatory mechanisms when applied.⁶⁰ Second, disparate impact not only serves to uncover unconscious or consciously hidden biases, but also targets “artificial, arbitrary, and unnecessary barriers” minorities face in the housing market which can occur through unthinking, even if seemingly benign, policies of developers and governmental entities.⁶¹ In this way, disparate impact “recognize[s] that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.”⁶²

Attempts to improve fairness in the housing market continued through the 1990s.⁶³ Congress designed housing policy initiatives to increase homeownership rates of underserved households and communities.⁶⁴ These initiatives included the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which established performance goals to promote minority and low-income homeownership.⁶⁵ The Department of Housing and Urban Development (HUD) was tasked with ensuring the target goals were successfully met.⁶⁶ This led to an increase in homeownership among black households.⁶⁷ Despite these developments, however, lending discrimination continued

⁵⁶ Texas Dep’t of Hous. & Cmty. Affairs, *supra* note 40 at 2522.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Steil *supra* note 8 at 761.

⁶⁴ *Id.*

⁶⁵ Sharp & Hall, *supra* note 3 at 429.

⁶⁶ *Id.*

⁶⁷ Steil, *supra* note 8 at 762.

throughout the 1980s and 1990s.⁶⁸ These initiatives just led to a new wave of racial discrimination in the housing market.⁶⁹

PREDATORY LENDING: A NEW FORM OF RACIAL DISCRIMINATION

High levels of segregation and housing discrimination throughout time created a natural market for reverse redlining: a financial practice targeting non-white neighborhoods for risky, high-cost financial services, such as sub-prime loans.⁷⁰ Lenders were able to systematically target underserved minority communities with these loans due to the invention of securitized mortgages in the 1980s.⁷¹ This transformed a bank-based intermediary credit system into a securities-based market system.⁷² Previously, the number of mortgages given out was limited to the amount of deposits a bank had on hand to lend.⁷³ Under the securitized mortgage system, mortgages were no longer limited by deposits, but by the number of potential borrowers and investors' willingness to purchase mortgage-backed securities.⁷⁴

Securitized mortgages are pooled together and divided into different shares on the basis of risk.⁷⁵ High interest mortgages pay more to investors, but also come with more risk.⁷⁶ To manage this risk, financial engineers combined different risk shares into diversified bonds to be sold on secondary markets.⁷⁷ Financiers could mix different shares of different risks together to create security with almost any risk rating and interest rate they wished.⁷⁸ The risk of default by borrowers in high-risk shares was offset by the surety of payments within low-risk shares.⁷⁹ Risky borrowers became an attractive new pool for independent mortgage brokers—leading to predatory lending.⁸⁰

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Jacob Rugh & Douglas Massey, *Racial Segregation and the American Foreclosure Crisis*, AMERICAN SOCIOLOGICAL REVIEW, 75(5), 629, 630 (2010).

⁷¹ *Id.* at 630.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* at 631.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 632.

A disproportionate number of black homebuyers were targets with these subprime lending strategies.⁸¹ These predatory and abusive loans are characterized as resulting in disproportionate net harm to borrowers, harmful rent seeking, legally actionable fraud, or deceptive practices.⁸² Subprime lending accounted for 43% of the increase in black home ownership during the 1990s and 33% of the growth in ownership within minority neighborhoods.⁸³ However, anywhere from 10% to 35% of the people given subprime loans were actually eligible for prime loans.⁸⁴ During the 2000s, this percentage continued to grow.⁸⁵ In 2006, as many as 62% of subprime borrowers, disproportionately black and Latino, qualified for prime loans.⁸⁶ These predatory mortgages resulted in extraordinarily high rates of foreclosure during the housing crash of 2008.⁸⁷ Therefore, black and Latino homeowners bore the brunt of the 2008 collapse and disproportionately suffered the damages it wrought.⁸⁸ This new inequality was only possible due to the long history of home lending inequality throughout U.S. history.⁸⁹

HOMEOWNERSHIP AND THE WEALTH GAP

Federal and societal discriminatory housing practices have made it extremely difficult for blacks to become homeowners in the U.S., and much easier for whites to do so. Innumerable correlations between housing and wealth exist.⁹⁰ Higher property values mean a higher tax base, which finances good schools, services, and infrastructure.⁹¹ Conversely, lower property values and homeownership rates mean a much lower tax base, with correspondingly lower funding for schools, services, and infrastructure.⁹² Inheritances also develop from home equity and wealth.⁹³ Many white baby boomers and their children have benefitted directly from the government's discriminatory policies

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 632.

⁹⁰ Henry Rose, *How Government Promotes Racial Injustice*, 3 Pub. Int. L. Rep. 1, 1-2 (1998).

⁹¹ *Id.*

⁹² Perea, *supra* note 14 at 602.

⁹³ *Id.*

through inheritances.⁹⁴ The mean lifetime inheritance at age 55 for white baby boomers is \$125,000; whereas, for black baby boomers, the corresponding figure is only \$16,000.⁹⁵ These large disparities in inheritances extend the economic, educational, and social privileges of whites.⁹⁶

The government promotes these disparities even more through deductions on income tax returns interest paid on mortgages or home equity loans.⁹⁷ This results in a tax liability reduction – a subsidy which totals more than \$40 billion each year.⁹⁸ Families with a household income of more than \$50,000 make up approximately ninety percent of this subsidy.⁹⁹ At the same time, the one-third of American households who rent private apartments receive no tax break at all.¹⁰⁰ In addition, the home ownership subsidy of more than \$40 billion dwarfs the \$20 billion the federal government spends each year to provide subsidized housing to the poor.¹⁰¹

Homeownership rates among blacks and whites remain imbalanced.¹⁰² By 1984, seven out of ten whites owned homes, but only four out of ten blacks owned homes—a ratio that remains virtually identical today.¹⁰³ Additionally, the values of white-owned homes has increased since 1984.¹⁰⁴ In 1984, the average value of white-owned homes was \$52,000, whereas the corresponding black-owned homes was less than \$30,000.¹⁰⁵ By 2006, these numbers were \$185,000 compared to \$129,700, respectively.¹⁰⁶ These discrepancies make apparent the amount of wealth that is accumulated by owning a home and lead to the conclusion the government and federal laws are much to blame for promulgating the wealth gap.¹⁰⁷

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 603.

⁹⁷ Rose, *supra* note 90 at 2.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Perea, *supra*, at 601

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

CONCLUSION

Ten years have passed since the housing crisis, and the wealth gap in the United States continues to increase.¹⁰⁸ Providing affordable housing is just one solution.¹⁰⁹ While not entirely responsible for the racial wealth gap in this country, housing policy for the past century has created wealth for some and poverty for others.¹¹⁰ Blacks, through a combination of outright racial discrimination, neglect, and misfortune, have consistently seen their communities impoverished and their opportunities for upward mobility quashed.¹¹¹ For whites, the opposite is true, as owning a home has afforded millions of white families continuous placement in America's middle class.¹¹² Fixing the ills that have been created will not be easy—for racism has been a part of the American fabric since its inception.¹¹³ As Professor Juan Perea of Loyola University Chicago School of Law points to multiple discriminatory Constitutional provisions, he states: "Society has always been controlled by whites—they wrote a document that benefited them. The whole society was set up on that premise."¹¹⁴ The first start to change is understanding the extent of racism in the U.S. and accepting responsibility.

¹⁰⁸ Rose, *supra* note 90 at 1.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ U.S. Const, Art. 1, § 2, Cl. 2.

¹¹⁴ Interview with Juan Perea, Curt and Linda Rodin Professor of Law and Social Justice, Loyola University of Chicago School of Law (Nov. 8, 2018).