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CLOSING THE RACIAL WEALTH GAP

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This Article explores a few remedies to closing the racial wealth gap rooted in a theory of contract damages. The U.S. government has failed to live up to its promises to Black Americans to treat them equally under the law and thus a remedy is justified. Though a full reparations program is necessary and theoretically justified, this Article does not focus on a full-scale reparations program. Rather, the Article explores how a housing grant might work as one solution to closing the racial wealth gap given the current constitutional interpretation and political barriers.

INTRODUCTION

"Average wealth for white families is seven times higher than average wealth for black families."[1] Further, "median white wealth is twelve times higher than median black wealth."[2] Discriminatory federal, state, and local laws and policies, which enforced segregation and created a race-based

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1 Janelle Jones, *The Racial Wealth Gap: How African-Americans Have Been Shortchanged Out of the Materials to Build Wealth*, ECON. POL'Y INST.: WORKING ECON. BLOG (Feb. 13, 2017), https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth.

2 *Id.*

bifurcated economy, created the racial wealth gap.[3] While the Civil Rights reforms ended explicit racial segregation and Jim Crow, the effects of those policies have never been addressed.[4] Instead, policymakers have repeatedly proposed self-help solutions rooted in the false assumption that a wealth gap created by a failure of public policy could be remedied by private markets.[5]

Without major structural reforms, the wealth gap will continue to expand. A 2016 study glibly predicted that based on the current racial wealth gap, it would take 228 years for Blacks to have as much wealth as whites today.[6] The prediction, though grim, is based on a false assumption: that the wealth gap will naturally close over time—albeit a very long time—without intervention. In fact, as my previous research demonstrates, it is likely that the racial wealth gap will remain in place and continue to reproduce itself.[7] In other words, if nothing changes, no amount of time will close the wealth gap because of the self-perpetuating effects of capital accumulation. The prediction of 228 years of stagnation also underestimates the transformative effects of policy changes that could close the racial wealth gap rapidly. Heretofore untried changes can close the wealth gap very quickly.

An essential first step in dealing with the wealth gap is to acknowledge that public policy created the wealth gap and must be used to address it. Full justice demands a recognition of the historic breach of the social contract

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3 *See* Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial, Ethnic Lines Since End of Great Recession*, PEW RES. CTR. (Dec. 12, 2014), https://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession.

4 For one example of the contemporary implications of Jim Crow laws, see Trymaine Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. TIMES (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html, which discusses the effects of the exclusion of "black people from government wealth-building programs" on the wealth gap today.

5 For a more complete history of policy responses post-Civil Rights, see MEHRSA BARADARAN, THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP (2017), which examines how unequal access to banking and capital fueled and solified the modern wealth gap. *See also* KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP (2019) (arguing that HUD's efforts to mobilize the real estate industry to increase Black homeownership was ineffective and only lead to greater segregation and inequality). Numerous 2020 presidential candidates have proposed policies that address "both housing insecurity and historical racial discrimination in the housing market." Brentin Mock & Kriston Capps, *Who Will Presidential Candidates' Redlining Plans Actually Benefit?*, CITYLAB (Oct. 18, 2019), https://www.citylab.com/equity/2019/10/housing-racial-discrimination-redlining-map-candidate-plans/600265; *see also* Andre M. Perry & David Harshbarger, *America's Formerly Redlined Neighborhoods Have Changed, and So Must Solutions to Rectify Them*, BROOKINGS (Oct. 14, 2019), https://www.brookings.edu/research/americas-formerly-redlines-areas-changed-so-must-solutions (reporting on Democratic candidates plan to use redlining to determine who will be eligible for certain proposed benefits).

6 DEDRICK ASANTE-MUHAMED ET AL., THE EVER-GROWING GAP 11 (2016).

7 *See* Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887, 946 (2019); *see also* DARIA ROITHMAYR, REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGES 2, 4–7 (2014) (arguing that racial inequality is self-reinforcing).

between America's constitutional democracy and Black Americans. And contract breach requires a remedy. The post-Civil War 13th, 14th, and 15th Amendments to the Constitution promised freedmen equal protection under the law, the end of coerced labor, and the right to vote. If we envision these rights as a binding contractual promise, we can also envision a justification for a remedy to this breach. In his landmark "I Have a Dream Speech," Martin Luther King Jr. framed the Black American claim to justice as rooted in a broken promise, "a promissory note to which every American was to fall heir. . . . [A] promise that all men . . . would be guaranteed the inalienable rights of life, liberty, and the pursuit of happiness."[8] King said that "America has defaulted on this promissory note insofar as her citizens of color are concerned. Instead of honoring this sacred obligation, America has given the Negro people a bad check . . . which has come back marked 'insufficient funds.'"[9] Continuing in the framing of a broken contractual framing, he lays claim to a remedy: "we've come to cash this check, a check that will give us upon demand the riches of freedom and the security of justice."[10]

Constitutional rights are not treated like typical contractual claims, but this framing can help theorize how a remedy for centuries of racial oppression can be designed. If the promise of equality was made by the federal government and then breached, what recourse can be envisioned for Black Americans? Typically, claims of redress are called "reparations." Viewed through the lens of contractual breach, reparations are akin to "damages."[11] Without that recognition, the Constitution itself stands as a roadblock to redress because it demands that all individuals be neither harmed nor benefited based on group characteristics.[12] Black Americans have been harmed in direct contradiction to the Constitution's promise of equal treatment, yet they have still had to contend with its demand of equal treatment in seeking a remedy. We must accurately diagnose the problem before we can move forward with solutions. A full-scale reparations agenda is essential—true justice is difficult to achieve without such a commitment.

In contracts, there are three forms of damages: compensatory damages, reliance damages, and restitution damages or unjust enrichment. A forthcoming Article will discuss all of these claims in full, but in this Article, I will explore the basic outlines of a compensatory damages remediation

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8 Rev. Martin Luther King Jr., Address at the March on Washington (Aug. 28, 1963).

9 *Id.*

10 *Id.* King was referring to the Constitution and the Declaration of Independence's promise of freedom and liberty for all, not specifically the post-Civil War amendments.

11 *See* Emily Sherwin, *Reparations and Unjust Enrichment*, 84 B.U. L. REV. 1443, 1443–50 (2004) (arguing that reparations should be analyzed as compensatory claims rather than as restitution).

12 *See* United States v. Carolene Products Co., 304 U.S. 144, n.4 (1938) (holding that "[t]here may be narrower scope for operation of the presumption of constitutionality" for laws which discriminate against groups like religious or racial minorities).

program. Compensatory damages is the typical form of damages for most contract breaches and is a form of remedy where the breaching party makes the breached-upon party whole and compensates them to put them in the position they would be in had the contract been fulfilled.[13] What would this look like for a reparations claim? Reparations could take many forms—all of which would have to be measured in monetary outcomes as are all contractual claims. One way to measure the remedy is to focus on outcomes rather than means. For example, reparations could mean that the federal government could enlist several programs and agencies at once intended to eliminate the racial wealth gap. The means of elimination would be flexible so long as within a stated amount of time, the wealth gap was eliminated. Several other government programs are designed in this way. For example, the Congressional Budget and Impoundment Control Act of 1974 created the Congressional Budget Office (CBO) tasked with analyzing congressional bills and agency programs with a focus on cost-cutting. The CBO has a mandate to score each bill and use a cost/benefit analysis. This score is put to use when passing the bill. A similar oversight committee can be devised to score each bill and agency program on its effects on the racial wealth gap. Closing the racial wealth gap can be viewed as a specific regulatory goal and each agency can design their own program or response depending on their own specific domain. The racial wealth gap has deleterious effects on Black communities in practically every domain: environmental impact, education, credit availability, housing, and policing. Thus, a response must be multi-faceted.

This Article outlines a few of the myriad of solutions that can be deployed in a multi-pronged reparations program. This is by no means a complete list of policy goals, but a start in imagining what remedies might be available immediately. The racial wealth gap stemmed from many sources of injustice going back to slavery, but most recently and most obviously, it has stemmed from housing segregation, which is thus the emphasis of this Article. Homeownership is also the main store of wealth for most middle-class Americans. Yet the emphasis on homeownership historically has created problems, even aside from segregated housing. The Federal Housing Administration's focus on housing credit built the American suburb, which led to the overdevelopment of natural land, which has resulted in damaging environmental effects. Gaps in homeownership certainly caused the racial wealth gap, but it is possible to form a remedy that does not repeat the mistakes of the past. However, because many of the other self-perpetuating forces of the racial wealth gap are linked with the long-term effects of segregation, the effects of housing segregation must be examined and

13 *See generally* JOSEPH M. PERILLO, CONTRACTS 511–14 (7th ed. 2014).

targeted by policy in order to adequately remedy the racial wealth gap. Segregated housing has led to segregated schools, and even segregated tax receipts due to local zoning and tax laws. Thus, housing is a lever that can affect several other sectors. Moreover, housing credit has been a federal project since the New Deal, and it was federal agencies like the Federal Housing Administration (FHA) that explicitly created racial zoning.[14] Thus, a solution rooted in housing is most directly linked to the harm in this instance, thereby justifying immediate remedial action at the same agencies (and congressional bodies) that aided and abetted the racist zoning in the first place.[15]

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HOMEOWNERSHIP IS THE ROOT OF THE PROBLEM

The racial wealth gap was caused by the federal government's investment in white homeownership through New Deal legislation that created the credit and housing structure at the foundation of the modern housing market.[16] Congress's century-old investment in homeownership compounded over generations and continues to affect housing value, access to credit, and economic stability.[17] Racial segregation and the racial wealth gap are a direct outgrowth of these federal policies.[18] The New Deal showed us that incredible family wealth can be created when the government acts for the benefit of people—now is the time to put it to work for those that were excluded the first time around. Just as federal housing policies created the racial wealth gap, federal housing policies can eliminate it. Describing this harm in contractual language directly links the remedy to the harm. The post-Civil War constitutional amendments promised to treat all Americans equally yet the federal government created a mortgage credit subsidy and offered it only to white Americans. Racial exclusion was explicit in the workings of the FHA and these subsidies built significant wealth for those

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14 *See* TAYLOR, *supra* note 5, at 3 (criticizing the FHA's practice of redlining).

15 *See id.* at 4–7 (exposing the roles of government agencies in exploiting low-income Black homeowners through predatory contract and mortgage terms).

16 *See generally* Kevin Fox Gotham, *Racialization and the State: The Housing Act of 1934 and the Creation of the Federal Housing Administration*, 43 SOC. PERSP. 292, 309 (2000) ("[T]he FHA institutionalized a racially separate and unequal system of home financing that favored surburban building for whites while precluding insurance for homes in racially mixed and nonwhite neighborhoods in the inner city (citation omitted).").

17 Marisa Chappell, *The False Promise of Homeownership*, WASH. POST (July 20, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/07/20/the-false-promise-of-homeownership (discussing the federal government's investment in homeownership through large subsidies beginning in the early 20th century).

18 Federal policies "locked people of color out of the burgeoning suburbs and denied capital to older urban and minority neighborhoods," even as policymakers praised homeownership as "an instrument for establishing political stability and as an antidote to the 'culture of poverty.'" *Id.*

who could participate.[19]

The effects of a race-based mortgage credit system are still in effect. According to a 2017 Pew Research Center report, "Black and Hispanic households today are still far less likely than white households to own their own homes (41.3% and 47%, respectively, versus 71.9% for whites), and the homeownership gap between blacks and whites has widened since 2004."[20] A potential remedy for the exclusion of redlined Black communities would be to compensate Black communities for their unconstitutional exclusion from the FHA. This remedy need not be rooted in a housing grant. In fact, most contractual remedies are simply monetary damages. A reparations program rooted in this breach would need to measure the effects of racial exclusion and then compensate those individuals, families, and communities that were left out of these subsidies. There are practical and legal obstacles to monetary damages. Each aspect of the remedy, identifying victims, measuring the effects of the breach, and payment of damages, would be complicated. However, these challenges can be overcome and should not be an obstacle toward justice. Contract damages are always difficult to measure and various courts and legal theorists have grappled with the best way to measure damages. The purpose of this Article is not to go through each of these issues, but to outline a few possibilities and challenges.

Instead of monetary damages to individuals, policymakers could target communities and neighborhoods that are currently most harmed by their historic exclusion. "Most of the neighborhoods that were initially redlined by the federal government in 1934 have been perpetually denied credit and thus remain pockets of poverty."[21] "Racial ghettos, once created, have had remarkable staying power" because the federal government has, for the most part, resisted making large investments in lower-income families.[22] These are the districts where "poverty is still concentrated, schools are segregated, and properties continue to be devalued."[23] By focusing a wealth gap program on geography as opposed to identity, policymakers can avoid Supreme Court jurisprudence on racial neutrality, but they can link economic reforms with integration.

Just as segregation and poverty can lock in and perpetuate disadvantage, so too can revitalization lock in a virtuous cycle of wealth, community

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19 *See* Baradaran, *supra* note 7, at 893.

20 Drew DeSilver & Kristen Bialik, *Blacks and Hispanics Face Extra Challenges in Getting Home Loans*, PEW RES. CTR. (Jan. 10, 2017), http://www.pewresearch.org/fact-tank/2017/01/10/blacks-and-hispanics-face-extra-challenges-in-getting-home-loans.

21 Baradaran, *supra* note 7.

22 *Id.*

23 *Id.*

building, and public infrastructure.[24] The unique success of the New Deal era mortgage programs was that once the mechanisms were in place and the initial federal investments made, the system was able to operate successfully and without further intervention.[25] Mortgage credit fueled the creation of the white suburbs of homeowners.[26] These stable communities supported thriving public schools with property taxes.[27] Educational opportunities paved the way for the next generation to attend college, accrue social capital and a buffer of wealth, which they used to reach professional success, increased wealth, and on and on.[28] The redlined areas entered the reverse cycle—having been left out of the mortgage credit market by redlining, these segregated communities were deprived of homeownership, wealth, and the other positive externalities like school funding.[29] Cities entered decades of decline and blight that resulted in increased crime and a drug epidemic.[30]

These cyclical trends continue to contribute to the racial wealth gap. However, the geographic dimensions of wealth and poverty have shifted as

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24 *See, e.g.*, Tom Condon, *City Revival – Did We Learn from the Urban Renewal Era?*, CT MIRROR (June 24, 2019), https://ctmirror.org/2019/06/24/city-revival-did-we-learn-from-the-urban-renewal-era (explaining the history of the Urban Renewal movement and the positive impact of recent revitalization efforts in Connecticut); Pete Saunders, *Detroit, Five Years After Bankruptcy*, FORBES (July 19, 2018), https://www.forbes.com/sites/petesaunders1/2018/07/19/detroit-five-years-after-bankruptcy (praising Detroit's revitalization five years after the city declared bankruptcy).

25 *See* Adam Gordon, Note, *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, 194 (2005) (explaining that New Deal reforms "fundamentally transformed homeownership from a short-term, consumption-driven experience for a minority of Americans to the main tool that most Americans use for asset building over the long term").

26 *See generally* KENNETH T. JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 195–97 (1985) (describing how the government-run Home Owners Loan Corporation's self-amortized loans helped to encourage homeownership).

27 *See generally* Jack Dougherty, *Shopping for Schools: How Public Education and Private Housing Shaped Suburban Connecticut*, 38 J. URB. HIST. 205, 206, 211–12 (2012) (examining the connection between homeownership and school funding); John R. Logan, *Industrialization and the Stratification of Cities in Suburban Regions*, 82 AM. J. SOC. 333, 346–47 (1976) (presenting data showing that the tax base per students in suburban neighborhoods is twice that of inner city neighborhoods).

28 Dougherty, *supra* note 27, at 208 ("During the course of the twentieth century, suburban families became more conscious of this equation: buying a home in the 'right' neighborhood, to send their children to a 'good' public school, would increase their odds of being accepted to a 'top-ranked' college and . . . land the 'perfect' job.").

29 *See* U.S. NAT'L COMM'N ON URBAN PROBLEMS, BUILDING THE AMERICAN CITY 101 (1969) ("There was evidence of a tacit agreement among all groups - lending institutions, fire insurance companies, and FHA - to block off certain areas of cities within 'red lines,' and not to loan or insure within them. . . . [These] slums and the areas surrounding them went downhill farther and faster than before.").

30 *See* DAVID FARBER, CRACK: ROCK COCAINE, STREET CAPITALISM, AND THE DECADE OF GREED 2–7 (2019) (noting that in the mid 1980s, a period of supposed economic propsperity and racial progress, Blacks in inner cities were disproportionally affected by despair and destruction from the crack epidemic).

wealthy professionals have been drawn back into a few super cities abandoning the suburbs.[31] The poor Black and brown populations have been pushed out of these cities toward suburban regions bringing the problems of poverty and lack of wealth along.[32] However, the rise of cities has not been equally distributed. Rather, a few cities like New York, San Francisco, Washington, D.C., and Los Angeles are splitting at the seams with skyrocketing housing prices where only the super-rich can afford to live[33] while other cities have been abandoned due to the decline in rust belt manufacturing.[34] None of these changes have altered the racial wealth gap or patterns of segregation. Black and brown residents are still living in dilapidated communities with underfunded schools and wealthy white professionals live in wealthy enclaves with high-performing schools and access to other resources. Ferguson, Missouri is just one example of a region that has been resegregated as St. Louis has gentrified.[35] The protests erupting in Ferguson after the shooting of Michael Brown revealed a pattern of exclusion and exploitation stemming from concentrated poverty and the vulnerability of the citizens of Ferguson to abuse.[36] Compounding these trends are the environmental hazards that have plagued areas of decline. The Flint water crisis is just one paradigmatic example of this phenomenon,[37] but there are many others.[38] Remedies to tackle the racial wealth gap must take

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[31] *See generally* Rowland Atkinson & Gary Bridge, *Globalisation and the New Urban Colonialism*, *in* THE GENTRIFICATION DEBATES: A READER 51–59 (Japonica Brown-Saracino ed., 2010) (arguing that the migration back to cities is a global phenomenon with the movers across the world exhibiting similar characteristics).

[32] *See* Daniel C. Vock, *Suburbs Struggle to Aid the Sprawling Poor*, GOVERNING (Feb. 2015), https://www.governing.com/topics/health-human-services/gov-suburban-poverty-gentrification-series.html.

[33] *See, e.g.*, Shirin Ghaffary, *Even Tech Workers Can't Afford to Buy Homes in San Francisco*, VOX (Mar. 19, 2019), https://www.vox.com/2019/3/19/18256378/tech-worker-afford-buy-homes-san-francisco-facebook-google-uber-lyft-housing-crisis-programmers.

[34] *See* DANIEL HARTLEY, FED. RESERVE BANK OF CLEVELAND, URBAN DECLINE IN RUST-BELT CITIES (2013), https://www.clevelandfed.org/newsroom-and-events/publications/economic-commentary/2013-economic-commentaries/ec-201306-urban-decline-in-rust-belt-cities.aspx (describing the population decline in Rust-Belt cities since the 1970s).

[35] *See generally* RICHARD ROTHSTEIN, ECON. POL'Y INST., THE MAKING OF FERGUSON: PUBLIC POLICIES AT THE ROOT OF ITS TROUBLES, 3–4, 23 (2014), https://www.epi.org/files/2014/making-of-ferguson-final.pdf (explaining how Black families had to move to St. Louis suburbs as the city embarked on a large urban renewal plan and demolished their neighborhoods).

[36] *See id.* at 1–2 (reporting on how decades of government policies helped to shape segregated and impoverished suburbs like Ferguson).

[37] *See What's at* Stake, NAT'L. RES. DEF. COUNCIL: FLINT WATER CRISIS, https://www.nrdc.org/flint (last visited Feb. 6, 2020).

[38] *See* Emily Badger, *Pollution Is Segregated, Too*, WASH. POST (Apr. 15, 2014), https://www.washingtonpost.com/news/wonk/wp/2014/04/15/pollution-is-substantially-worse-in-minority-neighborhoods-across-the-u-s (identifying studies proving that lower income communities and communities of color are the predominant communities living near environmental hazards).

these changing dynamics into account.

The assumption on which all of these schemes is based is that the home would increase in value. This has not been the case with Black homes. This is what led Emory professor Dorothy Brown to suggest that Blacks avoid purchasing homes and instead focus on building wealth through stock ownership.[39] She argued that Black homes have not increased in value and so homeownership has been a drain on Black wealth.[40] She suggested that even though stocks may be riskier than property, for Blacks, they were a safer long-term investment.[41] This sound advice was the best indictment of the home value gap in America today.

However, there is reason to believe that homeownership can still create wealth. Despite occasional asset bubbles, home values have continued their steady rise in America.[42] Further, home prices follow a positive feedback loop such that the more people own homes in a community, the more home values rise across the board, creating more wealth.[43] "Higher wealth then leads to a bigger tax base, which leads to better schools, which in turn lead to higher incomes" down the road.[44] Children who grow up in communities of homeowners have better outcomes across the board.[45] Thus, the cycle is reversed.

Though the housing bubble created doubt about the promise that the American dream is rooted in homeownership—a promise repeated from

39 Dorothy Brown, *How Home Ownership Keeps Blacks Poorer than Whites*, FORBES (Dec. 10, 2012), https://www.forbes.com/sites/forbesleadershipforum/2012/12/10/how-home-ownership-keeps-blacks-poorer-than-whites.

40 *Id.* ("Put simply, the market penalizes integration: The higher the percentage of blacks in the neighborhood, the less the home is worth, even when researchers control for age, social class, household structure, and geography.").

41 *Id.*

42 Ilyce Glink, *9 Real Estate Trends to Expect in 2017*, CBS MONEY WATCH (Dec. 19, 2016), https://cbsnews.com/media/9-real-estate-trends-to-expect-in-2017.

43 Enrico Moretti & Per Thulin, *Local Multipliers and Human Capital in the United States and Sweden*, 22 INDUS. & CORP. CHANGE 339–62 (2013); *see also* Lawrence Yun, *Why Homeownership Matters*, FORBES (Aug. 12, 2016, 1:09PM), https://www.forbes.com/sites/lawrenceyun/2016/08/12/why-homeownership-matters (outlining collateral benefits of homeownership including improved test scores, community engagement, and health outcomes, while also noting lower crime rates and drug usage among homeowners).

44 MEHRSA BARADARAN, THE GREAT DEMOCRACY INITIATIVE, A HOMESTEAD ACT FOR THE 21ST CENTURY 18 (2019).

45 *See* Press Release, U.S. Dep't of Hous. & Urban Dev., Cuomo Says America's Homeownership Rate Hits Record High of 67 Percent, with 70.5 Million Families Owning Their Homes (Oct. 28, 1999), https://archives.hud.gov/news/1999/pr99-220.html ("Homeowners accumulate wealth as the investment in their homes grows, enjoy better living conditions, are often more involved in their communities, and have children who tend on average to do better in school and are less likely to become involved with crime.").

President Hoover[46] to President George W. Bush[47]—the promise, though now cautiously qualified, remains alive. Over sixty percent of Americans own their homes, and for most Americans, especially the middle class, their home is their largest asset and their greatest source of security.[48] It is still the case that homeownership can lead to wealth, but it is now apparent that not all mortgage loans are created equal. The fallout from the subprime crisis resulted in Black families losing over fifty percent of their accumulated wealth as a result of home foreclosures.[49] Black communities were targeted for the most pernicious and predatory subprime loans due to their years of credit deprivation.[50] They were particularly vulnerable to economic shock. True to the old adage that "when Wall Street gets a cold, Harlem gets the flu," the crisis rippled first through marginalized communities.[51] These communities have yet to recover their lost wealth even as Wall Street hits record profits after ten years of recovery.[52] The inequality of the recovery from the financial crisis makes closing the racial wealth gap all the more urgent.

Elsewhere, I have proposed a housing program that could be one remedy among many to these intractable problems. I've called this proposal "The Twenty First Century Homestead Act." The proposal has been adopted by the Bernie Sanders and the Pete Buttigieg presidential campaigns as a part of their multi-pronged racial equality proposals. This program takes advantage of one the most pernicious symptoms of segregation and geographic disparities: the current oversupply of homes in certain regions. This is both a problem that leads to blight and an opportunity for public policy. There are over eleven million unoccupied properties in the United

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46 *See generally* Lawrence J. Vale, *The Ideological Origins of Affordable Homeownership Efforts*, *in* CHASING THE AMERICAN DREAM: NEW PERSPECTIVES ON AFFORDABLE HOMEOWNERSHIP 19, 39 (William M. Rohe & Harry L. Watson eds., 2007) (describing one of the Hoover-era's legacies as tying homeownership to the American Dream).

47 *President George W. Bush Record of Achievement, Expanding Home Ownership*, THE WHITE HOUSE, PRESIDENT GEORGE W. BUSH, https://georgewbush-whitehouse.archives.gov/infocus/achievement/chap7.html (last visited Feb. 6, 2020) ("This Administration will constantly strive to promote an ownership society in America. . . . [A]fter all, if you own your own home, you have a vital stake in the future of our country.").

48 The current homeownership rate is 64.8%. U.S. CENSUS BUREAU, CB19-57, QUARTERLY RESIDENTIAL VACANCIES AND HOMEOWNERSHIP, THIRD QUARTER 2019.

49 *See* CARR ET AL., NAT'L ASS'N OF REAL ESTATE BROKERS, STATE OF HOUSING IN BLACK AMERICA 4 (2013).

50 *See* Cecil J. Hunt, II, *In the Racial Crosshairs, Reconsidering Racially Targeted Predatory Lending Under a New Theory of Economic Hate Crime*, 35 U. TOL. L. REV. 211, 214 (2003).

51 Emma Roller, *How the U.S. Government Locked Black Americans Out of Attaining the American Dream*, SPLINTER (Oct. 11, 2017), https://splinternews.com/how-the-u-s-government-locked-black-americans-out-of-a-1819221197.

52 *See* Yun Li, *Here's What Happened to the Stock Market on Monday*, CNBC (Dec. 23, 2019), https://www.cnbc.com/2019/12/23/what-happened-to-stock-market-monday-sp-500-hits-another-record-high.html.

States.[53] Many of these properties are located in clusters in declining cities and regions. Once a community tips into home vacancy, the district can quickly decline as residents fear further decay and blight. Blighted homes lead to higher crime, environmental hazards, and business flight.[54] The value of a home is determined by its desirability, which is not an objective standard but is susceptible to herd mentality. Once a neighborhood is thought to be headed toward decay, the property values plummet. Detroit, Michigan; Flint, Michigan; Mobile, Alabama; Toledo, Ohio; Atlantic City, New Jersey; and other cities across the Rust Belt, South, and Northeast have seen rapid decline while others have swelled.[55] The residents that remain in these cities have seen their property values decline and public and private resources and infrastructure dwindle.[56] Homes in these towns sit empty while other cities are overcrowded and millions of Americans are homeless, endure housing instability, or wait for years to access public housing.[57]

A few programs on the local level have attempted to sell blighted properties. For example, the homes for a dollar program in Baltimore offered vacant homes to residents willing to move in and improve the home.[58] The homes were "sold" for a dollar and the residents took out loans for improvements. While some residents were able to buy and improve homes, the program failed due to inadequate financing.[59] The fatal flaw was that there was no mechanism for financing the improvement projects, and banks were unwilling to lend on properties with no value.[60] These properties were appraised too low to warrant even a home improvement loan.[61] This is why a federal financing mechanism is essential to jumpstart such a program. Only the federal government has the ability to make long-term investments by

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53 *See* ALAN MALLACH, THE EMPTY HOUSE NEXT DOOR 4, 22 (Emily McKeigue & Jill Uhlfelder eds., 2018) ("The number of vacant units rose sharply after 2005, going from 9.5 to 12 million between 2005 and 2010, an increase of roughly 2.5 million units. Since then, the number has gradually declined but remains significantly higher, at 11.2 million units, than in 2005.").

54 *See generally* Charles C. Brannas et al., *Citywide Cluster Randomized Trial to Restore Blighted Vacant Land and Its Effects on Violence, Crime, and Fear*, 115 PROC. NAT'L ACAD. SCI. 2946, 2950 (2018) (explaining how vacant land contributes to violence and fear in blighted urban neighborhoods).

55 *See generally* Bob Bryan, *Here Are the 12 US Markets with the Most Vacant Homes*, BUS. INSIDER (Feb. 11, 2016), https://www.businessinsider.com/housing-markets-with-heaps-of-empty-homes-2016-2 (listing cities with high rates of vacant properties).

56 MALLACH, *supra* note 53, at 3.

57 *Id.*

58 *See* Luke Broadwater, *Baltimore City Council Plans Hearing on Bringing Back 'Dollar House' Program*, BALT. SUN (Oct. 23, 2017) https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-dollar-house-20171020-story.html.

59 *See* Jacqueline Luqman, Opinion, *What's Behind America's Racial Wealth Gap?*, TRUTHDIG (Aug. 28, 2019), https://www.truthdig.com/articles/whats-behind-americas-racial-wealth-gap.

60 *See id.*

61 *See id.*

using Treasury funds, appropriations, and monetary policy. Local programs must rely on private bank lending and without federal government support, private banks are constrained in their ability to lend because they must rely on "market values" and appraisals which discount the very homes that need financing most. The New Deal was uniquely successful in spurring housing values and production because it was a federally financed program that reduced the risks and costs of private lending.[62]

If adopted, the Homestead Act proposal has the potential to revive towns with distressed housing markets and declining economic prospects through wholesale property development. Such a program could begin with a pilot of five to seven cities before expanding nationwide. Just as cities made bids for the new Amazon headquarters by offering public funds to match the investment,[63] so too can cities, states, and counties make bids to be chosen as a revitalized region by offering to match federal funds or offer other tax breaks and public infrastructure investments.

Take the city of Detroit as an example.[64] The federal government in conjunction with the state would possess these properties—many of the homes are abandoned and others are priced at a few thousand dollars. Revitalization requires mass-scale purchase of all of these properties without displacing current residents.[65] Once acquired, these properties would either be torn down and rebuilt or rehabilitated. The reconstruction of the city will serve as the first employment opportunity for current area residents. Once rebuilt, the homes will be sold to residents on mortgages with a lien requiring long-term residency. The lien requires that the individual occupy the home for ten years or repay the lien. After ten years, the holder of the mortgage owns the property free and clear of the lien. The program will be open to any individual who meets the following criteria:

Residents must be low-income individuals or families, residents must either have lived in formerly redlined areas for the previous five years or in any area across the country that has been historically segregated by state or local law.[66] These residents have right of first refusal. If more homes remain available, the program should be opened to refugees and other recent

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62 *See* 2 HISTORIC EVENTS FOR STUDENTS: THE GREAT DEPRESSION, HOUSING 1929-1941, at 98 (Richard C. Hanes & Sharon M. Hanes eds., 1st ed.) (2002); *see also FDR and Housing Legislation*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBR. & MUSEUM, https://www.fdrlibrary.org/housing (last visited Feb. 24, 2020).

63 *See generally* Leticia Miranda et al., *Here Are the Most Outrageous Incentives Cities Offered Amazon in Their HQ2 Bids*, BUZZFEED NEWS (Nov. 14, 2018), https://www.buzzfeednews.com/article/leticiamiranda/amazon-hq2-finalist-cities-incentives-airport-lounge (providing examples of different incentives offered by cities across the nation).

64 Saunders, *supra* note 24.

65 *Id.*

66 *See generally* Perry & Harshbarger, *supra* note 5 (using old redlining maps to allocate government benefits to close the homeowner gap).

immigrants. If successful, such a revitalization can be repeated in cities across the country.

In order to achieve a full revival of these cities, citizens must have access to well-paying jobs. Much of the decline of these cities was a result of their loss of major industries that employed a significant proportion of the population.[67] Instead of making unrealistic promises that these jobs will return, we must account for the changing nature of employment and create the environment, tools, and facilities that will employ the future of American labor. The future of American jobs will occur in the service sector, healthcare, and technology.[68] The new communities must account for these trends.

As the cities are revived over time, some jobs naturally will become available in the service sector. Enough funds should be provided to enable a thriving public service sector, which will have a treble benefit of providing full employment, creating a thriving community, and offering necessary services.[69] For example, if we provide funds for full-time childcare facilities, children can benefit from early educational opportunities, fathers and mothers can return to work if they choose, and childcare professionals can be employed in these facilities. Adequate funding for public schools that offer a variety of STEM, arts, and vocational training can have multiple benefits, including job creation.

In order to provide the tools for job growth, these regions should be equipped with free high-speed internet access. These services will enable residents to access jobs across the globe and will also attract technology companies. Several cities, including Chattanooga, Tennessee and McKee, Kentucky have invested in tech infrastructure and have successfully created jobs for residents and attracted new firms to their cities.[70] These programs

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67 *See* HARTLEY, *supra* note 34, at 1 (noting that population and median income decline in four Rust-Belt cities coincided with the decline in the manufacturing industry); *see, e.g.*, Ann R. Markusen & Virginia Carlson, *Deindustrialization in the American Midwest: causes and responses*, *in* DEINDUSTRIALIZATION AND REGIONAL ECONOMIC TRANSFORMATION: THE EXPERIENCE OF THE UNITED STATES 29, 31-35 (Lloyd Rodwin & Hidehiko Sazanami eds. 1989) (discussing the link between manufacturing plant closings and job losses in midwestern cities).

68 *See* MCKINSEY GLOB. INST., THE FUTURE OF WORK IN AMERICA: PEOPLE AND PLACES, TODAY AND TOMORROW, at vi (2019).

69 For one proposal to create public service jobs, see ECON. POLICY INST., AMERICAN JOBS PLAN: A FIVE-POINT PLAN TO STEM THE U.S. JOBS CRISIS 14–15 (2009), https://www.epi.org/files/page/-/american_jobs_plan/epi_american_jobs_plan.pdf, which proposes a large-scale block grant program to fund direct job creation in areas such as community improvement, public safety, and access to public services.

70 *See* Sue Halpern, *The One-Traffic-Light Town with Some of the Fastest Internet in the U.S.*, NEW YORKER (Dec. 3, 2019), https://www.newyorker.com/tech/annals-of-technology/the-one-traffic-light-town-with-some-of-the-fastest-internet-in-the-us (discussing the impact of tech infrastructure investment in McKee, Kentucky); Rob Marvin, *Gig City: How Chattanooga Became a Tech Hub*, PC MAG. (May 4, 2018), https://www.pcmag.com/news/gig-city-how-chattanooga-

have also had the added benefit of driving up demand for new housing, to the surprise of city officials.[71] This is a natural benefit, however, as the housing market is determined by the availability of community resources and jobs.[72] These revived communities should therefore have access to high-speed internet as well as technical education programs.

Healthcare is another domain of future job growth. The federal government spends billions in healthcare for an aging population.[73] As baby boomers age in the coming years, many will need additional resources in order to provide adequate healthcare.[74] A program to create elderly care facilities in revitalized towns can attract elderly residents from across the country and employ current residents to provide care. Currently, many federal funds must pass through private insurance companies or hospitals before they reach the patient, inflating the price of care.[75] Funds can be streamlined by the federal government creating the care facilities and hospitals themselves.

Another one of the most urgent healthcare crises facing the country today is opioid addiction.[76] The crisis has devastated many of the same communities that suffer from joblessness.[77] In addition to funding healthcare

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became-a-tech-hub (discussing the city's trailblazing investment in high-speed internet service). There are efforts in larger cities like New York to adopt such strategies. *See* Patrick McGeehan, *Technology Industry Seen Growing Fastest in New York*, N.Y. TIMES (May 9, 2012), https://www.nytimes.com/2012/05/10/nyregion/new-yorks-tech-industry-tops-us-in-growth-study-finds.html (detailing the growth of technology jobs in the city).

71 *See* Sam Sturgis, *Why Housing Is Key to Chattanooga's Tech-Hub Ambitions*, CITYLAB (Mar. 6, 2015), https://www.citylab.com/equity/2015/03/why-housing-is-key-to-chattanoogas-tech-hub-ambitions/386776 (explaining how the city's investment in high-speed internet drove up demand for new housing in the downtown area).

72 *See id.*; P.E. Moskowitz, *Chattanooga Was a Typical Postindustrial City. Then It Began Offering Municipal Broadband.*, NATION (June 3, 2016), https://www.thenation.com/article/archive/chattanooga-was-a-typical-post-industrial-city-then-it-began-offering-municipal-broadband; *cf.* Marvin, *supra* note 70 (attributing improvements in Chattanooga's quality of life to its technology infrastructure).

73 Andrea M. Sisko et al., *National Health Expenditure Projections, 2018-27: Economic and Demographic Trends Drive Spending and Enrollment Growth*, 38 HEALTH AFF. 491, 494–99 (2019).

74 *See* James R. Knickman & Emily K. Snell, *The 2030 Problem: Caring for Aging Baby Boomers*, 37 HEALTH SERV. RES. 849, 849–50 (2002) (discussing the healthcare implications of the year 2030, when the baby boomer population will be aged 66 to 84).

75 *See* Thomas Bodenheimer et al., *Capitalizing on Illness: The Health Insurance Industry*, 4 INT'L J. HEALTH SERV. 583, 590–95 (1974) ("Under [Medicare and Medicaid], providers of health care deal directly with intermediaries rather than with the federal or state governments.").

76 *See What Is the U.S. Opioid Epidemic?*, U.S. DEP'T OF HEALTH & HUMAN SERV., https://www.hhs.gov/opioids/about-the-epidemic/index.html (last visited Feb. 3, 2020).

77 *See Opioid Misuse in Rural America*, U.S. DEP'T OF AGRIC., https://www.usda.gov/topics/opioids (last visited Nov. 18, 2019); ROBIN GHERTNER & LINCOLN GROVES, U.S. DEP'T OF HEALTH & HUMAN SERVS., THE OPIOID CRISIS AND ECONOMIC OPPORTUNITY: GEOGRAPHIC AND ECONOMIC TRENDS 5 (2018),

facilities, the revival efforts should also provide drug rehabilitation facilities to serve these devastated communities. The benefits of these services cannot be overstated because they have the potential to save many lives.

These revitalized areas should also be the hub of education opportunities. Community colleges, technical colleges, schools, and daycare education facilities should be built as part of this Homestead Act. These programs will draw professional educators from communities from across the country, invest in the talent of the future, and retrain jobseekers for the jobs of the future.

Studies that have measured the impact of additional low-income housing on neighborhoods show that the potential gains of such a program would be exponential. Even modest housing development through the Low Income Housing Tax Credit (LIHTC) program was found to help revitalize low-income neighborhoods with improvements in home prices, crime rates, and both racial and income diversity.[78] Further, such programs improve welfare in low-income areas by up to $23,000 per local homeowner and $6500 per local renter, with aggregate welfare benefits to society of $116 million.[79]

Creating public facilities of any kind has the potential to create jobs. As an illustrative example, the state of Georgia invested in creating a public port in Savannah to compete with the private ports of other port cities along the Eastern seaboard.[80] This port has been a phenomenal success. The state's $127 million investment helped the port become the nation's fourth-busiest gateway, tripling its traffic since 2000 and creating tens of thousands of jobs.[81] According to *The New York Times*, it also has helped draw the manufacturing operations of foreign automakers to the region.[82] In total,

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https://aspe.hhs.gov/system/files/pdf/259261/ASPEEconomicOpportunityOpioidCrisis.pdf (analyzing the confluence of opioid prescriptions and drug overdoses in areas with high poverty and unemployment).

78 *See* Rebecca Diamond & Tim McQuade, *Who Wants Affordable Housing in Their Backyard? An Equilibrium Analysis of Low-Income Property Development*, 127 J. POL. ECON. 1063, 1114 (2019).

79 *Id.* at 1111.

80 *See Our History*, GA. PORTS AUTHORITY, https://gaports.com/our-port/our-history (last visited Feb. 24, 2020) (detailing the history of the deepwater ports in Savannah and Brunswick); *see also* Press Release, Ga. Ports Auth., Ports Draw $5B Investment, 12K Jobs to Georgia (Sept. 12, 2019), https://gaports.com/press-releases/ports-draw-5b-investment-12k-jobs-to-georgia.

81 *See* Press Release, Ga. Ports Auth., *supra* note 80 (noting that recent port-related investments have created 12,000 jobs in Georgia); Harvey J. Gilbert, *The Port of Savannah: A Recipe for International Success*, SAVANNAH NOW (Oct. 30, 2012, 4:10 PM), https://www.savannahnow.com/article/20121030/BUSINESS/310309806; Patricia Cohen & Natalie Kitroeff, *Booming Savannah Port Sees Trade Tensions as Just a Hiccup*, N.Y. TIMES (May 18, 2018), https://www.nytimes.com/2018/05/18/business/economy/savannah-port-trade.html (discussing the $127 million investment).

82 Cohen & Kitroeff, *supra* note 81 (noting that Kia, Toyota, BMW, and other car companies have opened factories in the Southeast).

these public and private investments now support more than 430,000 jobs in the state, accounting for roughly one out of every eleven jobs in Georgia.[83]

All these revitalized cities can potentially house public infrastructure projects that will yield funds, new business opportunities, jobs, and increased housing value. The public treasury can make such investments that can bring manifold returns to the people and repay the investment over time. As these cities are revitalized, residents will grow wealth through homeownership, communities will keep growing and expanding, and the cumulative effect will have many positive externalities and alleviate overcrowding in other cities across the country.

In some communities with high housing vacancies, outside investors have purchased abandoned homes with a wait-and-see strategy.[84] They purchased these homes at rock-bottom prices not with an intent to occupy them but as an investment. These investors plan to hold these homes until the prices rebound, at which point they will sell them for a profit. The federal government should make these investors whole by buying back the homes through a takings process and compensating these investors with their initial investment. Otherwise, private equity funds would reap the windfall of revived communities.

II
THE SECOND NEW DEAL

A process of "greenlining," or reversing the damage of redlining, can include a variety of housing and mortgage programs including down payment assistance, mortgage insurance, public housing development, and vouchers.[85] In the most direct analogy to New Deal era mortgage programs, a government entity such as HUD or the FHA would underwrite first-time mortgages for any potential home buyer who meets certain qualifications (e.g., low income, from formerly segregated communities, has not purchased a home in the previous three years).[86] However, instead of private banks

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83 DeAnn Komanecky, *Study: One in 11 Georgia Jobs Related to Savannah, Brunswick Ports*, SAVANNAH NOW (Mar. 26, 2018, 6:16 PM), https://www.savannahnow.com/business/20180326/study-one-in-11-georgia-jobs-related-to-savannah-brunswick-ports.

84 SARAH TREUHAFT ET AL., POLICYLINK, WHEN INVESTORS BUY UP THE NEIGHBORHOOD: PREVENTING INVESTOR OWNERSHIP FROM CAUSING NEIGHBORHOOD DECLINE 3 (2010) ("[A]s . . . neighborhood stabilization strategies begin to take hold, . . . private investors . . . have seen a business opportunity in the foreclosure crisis and are rapidly buying up properties to sell or rent out for a profit.").

85 *See* Sharon Velasquez, *The Community Reinvestment Act at 40: It's Hard to Fight Redlining If You're Colorblind*, GREENLINING INST. (Oct. 31, 2017), https://greenlining.org/blog-category/2017/community-reinvestment-act-fight-redlining.

86 *See, e.g.*, Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing*

issuing a mortgage, the mortgage would be issued by a special bank chartered in tandem with this legislation. Banking regulators have the power to create specific banking charters for a specific purpose.[87] These special charters would be available to public entities such as states, cities, or municipalities and would be designed as cooperative banks in the spirit of building and loan associations and credit unions. Cities and municipalities can charter banks with treasury funds.[88] The municipality itself owns the shares of the bank instead of a group of private shareholders.[89] These public banks would issue the loan, which would be guaranteed against default by the federal government. These banks will be limited in their product offerings and will be regulated by bank regulators.[90] They will be able to receive deposits and must follow FDIC regulations if they choose to operate as a depository. These banks will be able to offer mortgages and small business loans. All loans must meet standard requirements. These requirements will be adjusted to enable low-income residents to purchase homes without a large down payment. These loans would have to be made available to current residents of the area so as not to displace residents and induce outsiders to take advantage of the guarantees.[91] In the event of loan default, the bank will foreclose on the property and re-sell the loan.[92]

III
DOWN PAYMENT ASSISTANCE FUND

One of the major barriers to homeownership is the burden of coming up with a sufficient down payment. Lower down payment rates are available in some circumstances, but they typically require the borrower to purchase additional borrower's insurance which drives up the price of the mortgage while extending the amount of time for the debt interest to compound,

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Our Communities, 27 U. MICH. J.L. REFORM 773, 792 (1994) (providing the successful example of Opportunity Lands Corporation, a real estate development corporation that "bought this dilapidated group of twenty housing units from The Resolution Trust Company for $125,000, negotiated $250,000 worth of mortgages and, with a $143,000 grant from the city of Pine Bluff and assistance from HUD's rental rehabilitation program, rehabilitated the units").

87 *See, e.g.*, *Exploring Special Purpose National Bank Charters for Fintech Companies*, OFFICE OF COMPTROLLER OF CURRENCY (2016), https://www.occ.gov/topics/supervision-and-examination/responsible-innovation/comments/pub-special-purpose-nat-bank-charters-fintech.pdf.

88 *See* Mario Koran, *California legalized public banks. But can they work?*, GUARDIAN (Oct. 15, 2019), https://www.theguardian.com/us-news/2019/oct/14/california-public-banking-san-francisco-los-angeles.

89 *See* Sarah Jones, *Why Public Banks Are Suddenly Popular*, NEW REPUBLIC (Aug. 10, 2018), https://newrepublic.com/article/150594/public-banks-suddenly-popular.

90 *See id.*

91 *See* JASON JUDD & HEATHER MCGHEE, DEMOS, BANKING ON AMERICA: HOW MAIN STREET PARTNERSHIP BANKS CAN IMPROVE LOCAL ECONOMIES 6–7 (2011).

92 *See id.* at 15.

leading to a much more expensive home for the purchaser.[93]

The federal government should create a revolving down payment assistance fund.[94] Qualified borrowers can use funds to purchase a standard mortgage anywhere in the country. The mortgage loans will be structured by the federal government as fifteen-year mortgages with low interest. The loans will be insured by the FHA. The down payment will be repaid to the revolving down payment fund during the loan term.

The main benefit of a flexible down payment program is that it would disrupt historic segregation patterns. The program would need to be designed as a housing voucher program, which has already been tested by some municipalities.[95] To date, these vouchers have only applied to rental properties or section 8 housing. However, in order to build wealth, these vouchers would need to be tied to a wealth-creating property.

IV
SHARED EQUITY MORTGAGES

The federal government or interested states, cities, and municipalities will create "shared equity mortgages" (SEMs) or "shared appreciation mortgages," a hybrid debt/equity mortgage.[96] The essential structure is that a borrower who might not be able to come up with a down payment on her own would enter into a joint mortgage agreement with a public investor, like a federal, state, or local government fund, which would supply the down payment.[97] The borrower occupying the home would make mortgage payments and the equity is shared between the borrower and the fund. At the

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93 *See What Is Private Mortgage Insurance?*, CONSUMER FIN. PROTECTION BUREAU (July 28, 2017), https://www.consumerfinance.gov/ask-cfpb/what-is-private-mortgage-insurance-en-122 (noting that private mortgage insurance, commonly required when the down payment accounts for less than twenty percent of the home's purchase price, may increase the overall cost of the loan); *see also* Sebastian Obanda, *PMI – 4 Things You Should Know About Private Mortgage Insurance*, FORBES (Feb. 3, 2020, 9:41 AM), https://www.forbes.com/advisor/mortgages/pmi-4-things-you-should-know-about-private-mortgage-insurance (noting the additional costs associated with private mortgage insurance, and recommending that borrowers avoid it if at all possible).

94 *Cf.* N.Y.C. DOWN PAYMENT ASSISTANCE FUND, https://www.nycdownpaymentfund.com (last visited Mar. 23, 2020) ("With flexible down payment loans, **DPAF** will assist pre-qualified **nonprofit** developers to move more rapidly into contract for vacant properties, eliminating a growing obstacle to development on privately-owned sites." (emphasis in original)).

95 *See* Press Release, MIT Sloan Sch. of Mgmt., Reducing Segregation and Increasing Upward Mobility in American Cities, One Housing Voucher at a Time (Aug. 4, 2019), https://mitsloan.mit.edu/press/reducing-segregation-and-increasing-upward-mobility-american-cities-one-housing-voucher-a-time (describing a pilot program in Seattle using vouchers to promote housing mobility).

96 Hannah Rounds, *Buying a Home with a Shared-Equity Mortgage*, LENDINGTREE (July 6, 2018), https://www.lendingtree.com/home/mortgage/buying-a-home-with-a-shared-equity-mortgage.

97 *See id.* (noting that U.S. government entities have used this framework to help buyers by providing down payment assistance loans).

end of the mortgage cycle or upon sale, the equity would be split between the government investor and the borrower. The property will be held as a joint tenancy with survivorship until the loan is repaid at which point, the property will be held in fee simple by the borrower.[98] In case of borrower default, the investor could take possession of the home and the debt.[99] This arrangement would allow low-income individuals who otherwise could not own a home to own half of the value of a home and begin to accrue wealth. The public investment fund is protected from the downside because they own the property as a joint tenant, which means that they own it in full if the borrower stops paying the mortgage payments.

One important benefit of an SEM in greenlined areas would be that it would provide an incentive for the government to make sure that the property appreciates in value.[100] Property values rise when schools, parks, and public facilities are improved. Research and history show that when individuals own their homes, they are more invested in their community.[101] This double investment would link individuals and government entities in improving neighborhoods.

Public institutions could also deliver these loans directly. For example, instead of using banks or investors as middlemen, federal, state, or local funds could be used to lend into these areas with the profits returning to the public treasury instead of being shared by the bank. A state or municipality can even establish a public bank for this purpose.[102] For example, North Dakota has a public state bank, one of the most successful functions of which has been to offer credit to regions of the state that private banks have neglected, such as by providing rural mortgages.[103] Public banking actually works best when there is a well-defined mission that the market is not meeting. This has been the model for development banks abroad as well as our own historic Government Sponsored Enterprises (GSEs), FHA

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98 *See generally* Stanley L. Iezman, *The Shared Appreciation Mortgage and the Shared Equity Program: A Comprehensive Examination of Equity Participation*, 16 REAL PROP. PROB & TR. J. 510, 545 (1981) (explaining that shared appreciation mortgages allow borrowers to obtain mortgages with lower monthly payment requirements).

99 *Cf. id.* at 533 (noting that a defaulting partner in a shared equity purchase (SEP) is normally subject to a buyout agreement, if not forfeiture of her interest).

100 *See* Rounds, *supra* note 96 (explaining the financial benefits obtained by municipal lenders of SEMs when the underlying asset appreciates in value).

101 *See* Denise DiPasquale & Edward L. Glaeser, *Incentives and Social Capital: Are Homeowners Better Citizens?*, 45 J. URB. ECON. 354, 356 (1999) ("Homeowners are approximately 10% more likely to know their U.S. representative by name. They are 9% more likely to know the identity of their school board head. Homeowners are 15% more likely to vote in local [elections] and 6% more likely to work to solve local problems.").

102 *See supra* notes 87–89 and accompanying text.

103 Eric Hardmeyer, *Why Public Banking Works in North Dakota*, N.Y. TIMES (Oct. 1, 2013, 4:58 PM), https://www.nytimes.com/roomfordebate/2013/10/01/should-states-operate-public-banks/why-public-banking-works-in-north-dakota.

programs, postal banking operations, and even federally backed funds like the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve, which have stepped in to fill a void created by the private market.[104] Indeed, it would be fitting for a quasi-public entity like the FHA to be created to fix the problem the FHA itself created.

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The drawback of all of these mortgage program plans is that they attempt to break the cycle of poverty, unemployment, and community decline by focusing on housing. This is what the FHA did after the Great Depression; it yielded the desired results,[105] but can mortgages lead to prosperity today? Credit today is not what credit was in post-war America. In a growing and dynamic economy, credit meant wealth creation. Some economists have warned that America is headed toward an era of stagnant growth or even decline,[106] which could mean that it would be unwise to attempt to create wealth through mortgage debt without changing the fundamental structure of the economy. If a program only increases debt without adding opportunities such as increased incomes and wealth generation through property appreciation, the expected gains will not be realized. However, there is reason to believe that some of this stagnant growth can be remedied by focusing on inequality. In other words, by bringing back the New Deal era ethos of a mixed economy, or a government-private partnership, the economy can be spurred toward creation. Dealing with inequality can have trickle-up effects and raise all boats.[107]

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104 *See* MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY 14–18 (2015) (explaining how government entities, particularly the Federal Reserve and GSEs like Fannie Mae and Freddie Mac, provide "market-enabling structures" which allow banks to "benefit from loans they could not make otherwise").

105 *See* Edward Szymanoski, *The Federal Housing Administration: 80 Years Young and Going Strong*, U.S. DEP'T OF HOUSING & URB. DEV., https://www.huduser.gov/portal/pdredge/pdr_edge_frm_asst_sec_081114.html (last visited Nov. 18, 2019) (describing FHA's role in reassuring the lending market through mortgage insurance programs).

106 *See, e.g.*, TYLER COWEN, THE GREAT STAGNATION: HOW AMERICA ATE ALL THE LOW-HANGING FRUIT OF MODERN HISTORY, GOT SICK, AND WILL (EVENTUALLY) FEEL BETTER (2011) (noting that the country's recent economic recoveries have been characterized by stagnant job and wage growth); ROBERT GORDON, THE RISE AND FALL OF AMERICAN GROWTH (2016) (arguing that the U.S. economy will grow more slowly in the future than it has in the past).

107 *See* GORDON, *supra* note 106 (explaining that global inequality will continue to push against growth); Paul Krugman, *Why We're in a New Gilded Age*, N.Y. REV. BOOKS, May 8, 2014 (reviewing THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014)) (arguing that wealth and inheritance taxes are an effective remedy for inequality); *see also* JACOB S. HACKER & PAUL PIERSON, AMERICAN AMNESIA: HOW THE WAR ON GOVERNMENT LED US TO FORGET WHAT MADE AMERICA PROSPER (2016) (arguing that the American public's distrust of redistributive government has hampered the country's economic vitality); THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014) (advocating for progressive taxation as a means for reducing unsustainable wealth concentration);

In addition to wealth-building through housing, there are many other important routes to minimizing the racial wealth gap, including access to education, access to credit, and access to essential community services. Any project aimed at closing the wealth gap must acknolwedge the impact of segregation and racist policies on every single aspect of community life.

V
FULLY FUND CHILDCARE

Childcare costs are prohibitive to most working parents across the country, resulting in young parents not being able to work or children being left in undesirable care situations.[108] The government must provide universal daycare in order to spur economic growth. These facilities should focus on education. A decade ago, economist Robert Lynch found that investing in quality preschool led to billions of dollars in economic benefit to the federal and state governments.[109] Since then, more research has shown that pre-kindergarten betters children's lives well into the future and better levels the playing field for lower-income Americans.[110] Providing universal daycare and pre-k for every four-year-old in the United States would better prepare young people to enter the workforce and defy the cycle of poverty.[111] The effects of early childhood education carry on beyond one generation. A 2017 study by scholars from Texas A&M University and the University of Notre

Joseph E. Stiglitz, *Inequality and Economic Growth*, 86 POL. Q. 134, 134 (2015) (arguing that, amid growing inequality, "the rising tide has only lifted the large yachts"); Paul Krugman, Opinion, *Is Vast Inequality Necessary?*, N.Y. TIMES (Jan. 15, 2016), https://www.nytimes.com/2016/01/15/opinion/is-vast-inequality-necessary.html (arguing that redistribution and economic progress are not incompatible).

108 *See* Herwig Immervoll & David Barber, *Can Parents Afford to Work? Childcare Costs, Tax-Benefit Policies and Work Incentives* 4–5 (Inst. for the Study of Labor Discussion Paper No. 1932, 2006) https://ssrn.com/abstract=878665 (reviewing the costs of childcare in developed countries).

109 ROBERT G. LYNCH, ENRICHING CHILDREN, ENRICHING THE NATION: PUBLIC INVESTMENT IN HIGH-QUALITY PREKINDERGARTEN (2007), https://www.epi.org/publication/book_enriching.

110 *See, e.g.*, Kenneth A. Dodge et al., *Impact of North Carolina's Early Childhood Programs and Policies on Educational Outcomes in Elementary School*, 88 CHILD DEV. 996, 1010–13 (2017) (finding that early childhood programs produce long-lasting benefits for elementary students); Deborah Phillips et al., *The Effects of Tulsa's CAP Head Start Program on Middle-School Academic Outcomes and Progress*, 52 DEVELOPMENTAL PSYCHOL. 1247, 1259 (2016) (concluding that an early childhood program helped produce better academic achievement among middle school students).

111 *See* Greg Duncan, Jens Ludwig, and Katherine Magnuson, *Reducing Poverty Through Preschool Interventions*, 17 FUTURE OF CHILDREN (PUBMED) 143, 146 (2007), https://www.researchgate.net/publication/5943029_Reducing_Poverty_Through_Preschool_Interventions (describing improved outcomes for poor children who go through early childhood programs). *But see* GROVER J. WHITEHURST, BROOKINGS INST., WHY THE FEDERAL GOVERNMENT SHOULD SUBSIDIZE CHILDCARE AND HOW TO PAY FOR IT (2017), https://www.brookings.edu/research/why-the-federal-government-should-subsidize-childcare-and-how-to-pay-for-it.

Dame found that the benefits of early childhood education carry on into the next generation with beneficiaries' offspring experiencing increased educational attainment, reduced teen pregnancy, and reduced criminal engagement.[112]

VI
ELIMINATE CASH BAIL

The Eighth Amendment bars the federal government from charging accused people excessive fines for pretrial release. However, for many poor Americans, making bail is unduly challenging.[113] Bail must be met quickly, paid by another person, and does not necessarily reflect how dangerous a person's crime was.[114] Bail sets a price on freedom. And if a person has money, then they can be free; if a person is poor, then they must remain behind bars. During the wait between the poor person's arrest and their trial date, they could lose a job, a home, and even custody of children.[115] The alternative is to seek out a high-interest bail bond that could further destabilize a person's economic situation.[116] Far from being merely a minor inconvenience, requiring poor people to pay cash bail can fundamentally upend the economic social network. This is why the federal government should eliminate cash bail.

The most effective policy reform is likely the most comprehensive as well: a version of California's Money Bail Reform Act that eliminates the use of bail and uses a data-driven risk assessment to guide pretrial detention decisions. This approach, if applied through the lens of a race-neutral risk assessment like the Virginia Pretrial Risk Assessment Instrument or the Public Safety Assessment, quickly releases defendants who are low- to

112 Andrew Barr & Chloe R. Gibbs, *Breaking the Cycle? Intergenerational Effects of an Anti-Poverty Program in Early Childhood* 17–18 (EdPolicyWorks Working Paper Series No. 61, 2017), https://curry.virginia.edu/sites/default/files/files/EdPolicyWorks_files/61_Anti_Proverty_Effects_ECE.pdf.

113 *See* Nick Pinto, *The Bail Trap*, N.Y. TIMES MAG. (Aug. 13, 2015), https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (detailing examples of accused persons unable to make bail).

114 *See* Malia Brink, *ABA Bail Policy: Taking Steps to Achieve Reform*, HUM. RTS. MAG. (Dec. 10, 2019), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-justice/aba-bail-policy--taking-steps-to-achieve-reform (noting that bail is generally a function of an accused person's ability to pay, rather than of the risk posed by release); *see also* Udi Ofer, *We Can't End Mass Incarceration Without Ending Money Bail*, ACLU (Dec. 11, 2017), https://www.aclu.org/blog/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail (arguing that, under a cash bail system, wealthy persons can almost always obtain release).

115 *See* Pinto, *supra* note 113 (discussing issues faced by hourly workers unable to return to work because of their inability to make bail).

116 *See* Ofer, *supra* note 114 (noting that bail bond companies typically require a nonrefundable ten percent fee).

medium-risk for committing new crimes or failing to appear at subsequent judicial proceedings. For defendants judged to be high-risk, judicial oversight and adversarial proceedings provide a means to potentially secure pretrial release.

The net result of this reform is likely more Black defendants being released as the racial biases inherent in the current system are filtered out through the risk assessment, and defendants are no longer held simply for being unable to pay bail. Because pretrial release correlates to better outcomes at trial,[117] Black defendants could also see reduced incarceration when their case is resolved. Though enacting this reform would place reformers directly at odds with powerful bail bond and prison industry lobbies,[118] the benefits to Black defendants and the potential to reduce the racial wealth gap compel serious effort toward making these changes a reality.

VII
Integrating Schools Through Equitable Taxes

Local property taxes and other taxes account for more than two-thirds of the money that schools receive.[119] Thus, the disparities in homeownership have created inequalities in public schools and resources. We need a new way to fund public education. One option is to integrate the tax code by allowing taxes to flow evenly between schools and districts.[120] By pooling property taxes at the national or state level and assuring that schools are funded equally, we can widen the circle of opportunity for all children.

We must eliminate regressive taxes such as the mortgage interest deduction for state and local property taxes and instead place those funds into housing credits for lower income individuals, a reform which could move us toward a truly progressive tax base. Originally, the Mortgage Interest Deduction (MID) was designed to allow farmers and other small

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117 *See* Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am. Econ. Rev. 201, 236 (2018) (finding that pretrial release significantly decreases a defendant's chance of conviction).

118 *See* Spike Bradford, Just. Pol'y Inst., For Better or for Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice (2012), http://www.justicepolicy.org/uploads/justicepolicy/documents/_for_better_or_for_profit_.pdf (discussing the power of the bail bond industry across the United States).

119 *See* Amy Newcomb & Kristina Barrett, *More Than Half of School Expenditures Spent on Classroom Instruction*, U.S. Census Bureau (June 14, 2017), https://www.census.gov/newsroom/press-releases/2017/cb17-97-public-education-finance.html (noting that, of the $286 billion that schools received, $196 billion came from state and local taxes).

120 *See* Zahava Stadler et al., EdBuild, Building Equity: Fairness in Property Tax Effort for Education 60 (2017), https://edbuild.org/content/building-equity/report.pdf (calling for careful attention to state funding formulas in order to ensure adequate funding for all school districts).

proprietors to deduct any interest they paid on business expenses.[121] Today, it benefits the middle class and wealthy at the expense of the non-homeowning poor. In 2017 Congress established a $10,000 cap on state and local property tax deductions,[122] which was a step in the right direction. However, Congress should end the MID deduction altogether and divert those funds to housing credits for lower income people.[123] Reprioritizing residential housing practices starts with overhauling the concept behind MIDs and reinvesting the savings created from cutting the deduction into affordable housing for lower-income individuals.

CONCLUSION

Unless targeted by concentrated and effective public policy coordinated across federal, state, and local governments, historic injustices that created the racial wealth gap will compound the gap. This Article suggests several steps that can be taken to close the gap, which include housing, jobs, and childcare programs. This Article also proposes that these efforts be coordinated, tracked, and measured across government agencies through a dedicated task force or agency established for a limited amount of time for the sole purpose of closing the racial wealth gap. Such a task force can be built within the existing federal administrative state. For example, the Minority Business Development Agency can be used for such a coordinating purpose.

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[121] *See* Roger Lowenstein, *Who Needs the Mortgage-Interest Deduction?*, N.Y. TIMES MAG. (Mar. 5, 2006), https://www.nytimes.com/2006/03/05/magazine/who-needs-the-mortgageinterest-deduction.html (explaining that early income tax laws allowed for deductions of any and all interest, because at the time almost all interest was business-related).

[122] *See* Glenn Kessler, *The GOP's $10,000 Cap on Property Tax Deductions and How It Affects One Congressional District*, WASH. POST (Dec. 4, 2017), https://www.washingtonpost.com/news/fact-checker/wp/2017/12/04/the-gops-10000-cap-on-property-tax-deductions-and-how-it-affects-one-congressional-district.

[123] *See* MARGERY AUSTIN TURNER ET AL., URBAN INST., HOW WOULD REFORMING THE MORTGAGE INTEREST DEDUCTION AFFECT THE HOUSING MARKET? (2013), https://www.urban.org/sites/default/files/publication/23431/412776-How-Would-Reforming-the-Mortgage-Interest-Deduction-Affect-the-Housing-Market-.PDF (arguing that ending or restructuring the MID would have little long-term impact on housing markets).