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Race, Property, and Citizenship

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RACE, PROPERTY, AND CITIZENSHIP

Eleanor Brown[1] and June Carbone[2]

Abstract

The racial wealth gap is stunning. The net worth of an average white family is nearly ten times greater than that of an African-American family. A 2017 Report finds that, for African-Americans, today's economy is an extractive one; if existing trends continue, the median African-American family will have a net worth of zero by the middle of the twenty-first century. This article examines these trends in terms of the relationship between race, property, and citizenship. American democracy has long celebrated economic independence as a desired element of citizenship, forging reciprocal bonds between state efforts to promote and protect property ownership and property owners' greater investment in community and political stability. African-American have long been excluded from these benefits and, in the process, have never fully enjoyed the benefits of American citizenship. The result creates increased vulnerability, not just to white supremacy, but to economic exploitation. In the modern era, this predation has made home ownership, higher education loans, and marriage—the traditional pathways into middle class status—dramatically riskier for African-Americans than for whites. This article shows how the African-American community's lack of political clout contributes to the lack of regulation and enforcement that allows racially motivated predators to act with impunity, undermining the rule of law and perpetuating racial subordination.

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Introduction

In the United States, property ownership and citizenship have long been linked—and long served to deny African-Americans full participation in American life. The colonies, like Great Britain, limited the franchise to white, male property owners.[3] They believed that "property supplied independence; those without property were presumed to be economically dependent on and subservient to others."[4] African-Americans in the United States at the time of the country's founding were property, and the institution of slavery depended on their subordination. Even after slavery ended, African-Americans were denied the opportunity to acquire the kind of property ownership that allows for economic security and independence.[5] This legacy continues to this day—a product not just of the continuing consequences of slavery, but of the lack of political clout that means that even when African-Americans have the ability to invest in real property, and other forms of ownership, they do not necessarily have the ability to realize the fruits of such investments. The result is a product of the forces that increase American economic inequality more generally, with particularly devastating effects on minority communities.

This article examines the continuing role of racial wealth disparities in American life. Racial disparities in wealth are substantially greater than disparities in income.[6] Between 1983 and 2013, the wealth of median African-American households decreased by 75% (Latino households by 50%),[7] and a 2017 report finds that if present trends continue, the median wealth of African-Americans will be zero by 2053.[8] These patterns contribute to disparities not just in economic independence and well-being, but in families' abilities to manage their investments in human and physical capital that provide pathways for upward mobility. The results deny racial minorities an ownership stake in American society and it makes efforts to acquire middle-class status far more perilous than for whites.

The article will examine three factors that have reduced overall minority equity. The most dramatic results stem from the lingering effects of the financial crisis, which reflect the practices of predatory lenders in deliberately targeting minority communities.[9] Second, student loan debt has disproportionately burdened African-Americans. At college graduation, African-American graduates owe almost 50% more than whites, and over the next few years the racial debt gap more

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[3] By the middle of the eighteenth century, all American colonies except South Carolina had adopted election laws which denied the franchise to those who owned no property. *See* Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335, 339 (1989).
[4] Richard Briffault, *The Contested Right to Vote*, 100 MICH. L. REV. 1506, 1509 (2002).
[5] *See* Roy W. Copeland, *In the Beginning: Origins of African American Real Property Ownership in the United States*, 44 J. BLACK STUD. 646, 648 (2013).
[6] In 2020, whites had net worth's ten times that of African-Americans. Kriston McIntosh, Emily Moss, Ryan Nunn, and Jay Shambaugh, *Examining the Black-White Wealth Gap*, BROOKINGS INST. (Feb. 27, 2020), https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/.
[7] Emanuel Nieves, Chuck Collins and Josh Hoxie, *The Road to Zero Wealth: How the Racial Wealth Divide is Hollowing Out America's Middle Class*, PROSPERITY NOW (Sept.4, 2017), https://prosperitynow.org/resources/road-zero-wealth.
[8] *Id*.
[9] *See, e.g.*, Jacob W. Faber, *Racial Dynamics of Subprime Mortgage Lending at the Peak*, 23 HOUS. POL'Y DEBATE 328 (2013).

than triples, producing a crushing debt load.[10] Part of the reason for the gap is that African-Americans are much more likely than others to be the victims of aggressive lending practices at for-profit universities, while enjoying less of an increase in income than whites from the acquisition of degrees. Third, these disparities increase family instability in ways that magnify the impact.

In each of these cases, intentional public policies—the refusal to rein in predatory lending practices, the underfunding of public universities and the encouragement of for-profit universities as an alternative, and punitive criminal justice and welfare policies—exacerbate the racial disparities.[11] In addition, conservatives have used racial disparities to blame the victim. Vilification of homeowners who borrowed more than they could afford to pay back, for example, persuaded the Obama Administration to limit the assistance it provided to underwater homeowners even as the Administration bailed out large Wall Street banks—and refused to prosecute the bankers responsible for these practices.[12]

The conclusion of this article is that the concept of citizenship involves mutually reinforcing practices. Achieving the economic independence that comes with property ownership and investment enhances the qualities associated with responsible citizenship.[13] Yet, real citizenship, that is, acquisition of a measure of political clout, also creates the ability to protect property investments and make them worthwhile. Truly confronting racism therefore requires seeing these developments in mutually reinforcing terms.

I. Property, Investment, and Citizenship

American independence, while celebrated as a triumph for democracy, also came with wariness about the precarious nature of democratic governance. The Founders thought that the prospects for democracy were best served by the existence of a large middle group, who would promote a stable society. They distrusted both concentrated elite power and the judgment of the masses who lacked a stake in the stability and prosperity of the country.[14] In both cases, they feared that unaccountable power would corrupt democracy, and that a widespread investment stake could align political and economic interests in mutually reinforcing ways.

In denying the franchise to the propertyless (and therefore women, nonwhites, slaves and servants), colonial leaders expressed concern that the powerful, who supplied the economic well-being of the dependent, would also command their votes—magnifying and entrenching the advantages

[10] Judith Scott-Clayton & Jing Li, *Black-white disparity in student loan debt more than triples after graduation*, BROOKINGS INST. (Oct. 20, 2016), https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/

[11] *See* Section II *infra.*

[12] *See, e.g.,* David Lawder, *Bailout watchdogs slam Obama housing programs*, REUTERS (July 20, 2010), https://www.reuters.com/article/us-usa-bailout-support-idUSTRE66K0I520100721

[13] *See* Section I, *infra.*

[14] *See, e.g.,* ARISTOTLE, POLITICS 191-92 (Benjamin Jowett trans., Random House 1943) (306 BC) (observing that "Great then is the good fortune of a state in which the citizens have a moderate and sufficient property.")

associated with wealth.[15] In accordance with these views, property owners, unlike the others, had both a measure of autonomy and a lasting identification with the "destiny of the country."[16] At the same time, the theorists were wary of the propertyless even if they managed to vote independently. James Madison, for example, warned against "the transient, often imprudent, and almost always tyrannical nature of an impassioned majority," who could give rise to ill-considered factions.[17]

The alternative view saw the solution in promoting the conditions that gave rise to a more robust middle class. In accordance with these views, the critical factor was not the restriction of the franchise, but the strength of the center. Brazilian economist Eduardo Giannetti da Fonseca has defined the middle class as "people who are not resigned to a life of poverty, who are prepared to make sacrifices to create a better life for themselves but who have not started with life's material problems solved because they have material assets to make their lives easy."[18] Giannetti da Fonseca's emphasis involves a middle group who, on the one hand, are not so wealthy that they can rig the system to ensure the success of themselves and their children, but, on the other hand, are still capable of producing enough of a surplus to invest in the future.

This conception of a center, willing to take risks, but also promoting stability resonates with the civic republican views of the founders. Madison and Jefferson, for example, favored relative economic as well as political equality,[19] and believed that a well-educated citizenry would be more resistant to demagogic appeals.[20] At the time of the country's founding, they associated property ownership with an alignment of interests between citizens and polity—and with the promotion of civic virtue.[21]

The experience of African-Americans in the United States serves as counterpoint to every aspect of this account. At the time of the country's founding, the vast majority were slaves—treated as property, denied the franchise, the right to own property, and viewed as incapable of full citizenship. Those who favored the use of state efforts to promote a stable middle class to provide a ballast for American society did not see African-Americans as appropriate candidates for that investment. Those who feared the rabble—a propertyless majority with little stake in the country—readily assigned African-Americans to the group that they feared. And the legacy of slavery made many of these views a self-fulfilling prophecy.

The results involve a pincer movement. On the one hand, the ability of economic predators to strip African-Americans of property rights with impunity prevents the accumulation of the physical, social, and political capital necessary to assert political power. On the other hand, the absence of political power makes it difficult to limit the predatory behavior. The result is not just the

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[15] *See* Steinfeld, *supra* note 3, at 340-41; *see also* Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1590 (1988) (describing distrust of concentrations of wealth).
[16] Steinfeld, *supra* note 3, at 376, n. 71.
[17] J. Michael Marshall, *Close Encounters of the Referendum Kind*, 84 FLA. B.J. 56, 56 (2010) (citing THE FEDERALIST No. 10 63 (James Madison)).
[18] John Parker, *Burgeoning Bourgeoisie*, ECONOMIST (Feb. 12, 2009),https://www.economist.com/sites/default/files/special-reports-pdfs/13092764.pdf.
[19] *See* 14 J. MADISON, THE PAPERS OF JAMES MADISON 197-98 (R.A. Rutland ed., 1983) (favoring limits on wealth).
[20] *See, e.g.*, JAMES BRYANT CONANT, THOMAS JEFFERSON AND THE DEVELOPMENT OF AMERICAN PUBLIC EDUCATION 98 (1962) (describing Jefferson's emphasis on the importance of education to a democracy).
[21] Classic republicans, however, emphasized civic virtue over self-interest. *See* Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1547-48 (1988).

impoverishment of African-American communities but their political marginalization. They become frozen outside the group that matters in the construction of the American polity, both lacking the surplus that allows for investment in the future and constituting a potential threat to those who have benefitted from such an unjust system.

II. Property, Vulnerability, and Disinvestment

By the middle of the twentieth century, the Civil Rights movement sought to dismantle Jim Crow restrictions and enforce equal rights across the board. During the same period, African-Americans strove to become members of an economically prosperous middle class. The markers of middle-class status had become home ownership, education, and marriage. Each involved producing enough of a surplus to support investment. Each also involved a measure of increased vulnerability and risk.. By the turn of the twenty-first century, African-American investors also faced a renewed threat from predators, particularly predators who targeted the politically marginalized. Today, these developments threaten the gains that African-Americans made during the Civil Rights Era and again threatens the possibility of full participation in American life.

A. Home Ownership

1. The Ideal

As a marker of full citizenship and middle-class investment, home ownership remains a potent symbol.[22] Precisely because property is hard to transfer, it constitutes a commitment to the community, the state, and the country.[23] While property ownership as a precondition for civic participation faded with the industrial revolution, the idea that some residents may have a greater stake in community well-being than others remains.[24] In this sense, responsible citizenship is still associated with an ownership stake in the well-being of society.

Home-ownership has historically been seen as a critical part of the "American dream," contributing to economic security and civic virtue.[25] Homeowners, have been described as financially independent citizens who embody the "core American values of individual freedom, personal responsibility and self-reliance."[26] Rising home values allow homeowners to share in the benefits of economic growth[27] and home ownership—at least if the homeowner has significant equity in the property—can provide a measure of economic security.[28]

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[22] *See* Jared Ruiz Bybee, *In Defense of Low-Income Homeownership*, 5 ALA. C.R. & C.L.L. REV. 107, 118 (2013) (identifying home ownership with autonomy, community, and power).
[23] *Id.* (contrasting, the dangers of absentee ownership with ownership by community residents).
[24] Indeed, many today continue to see majoritarian preferences as "formed against the backdrop of disparities in power and limitations in both opportunities and information." Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539, 1544 (1988).
[25] A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always A Good Thing*, 84 IND. L.J. 189, 189-90 (2009).
[26] *Id*. at 190.
[27] *Id.* at 192 (observing housing markets are often a bellwether for the general economy).
[28] *Id.* at 191.

For these reasons, the federal government, as it promoted the creation of a strong middle class in mid-century America, encouraged home ownership through subsidization and interventions that supported and stabilized the housing and mortgage markets.[29] Government agencies contributed to the development of the thirty-year fixed mortgage and created incentives that increased mortgage lending.[30]

2. Race and Reality

Almost simultaneously with government efforts to promote homeownership, came efforts to exclude African-Americans. In *The Color of Law*, Richard Rothstein writes that the Federal Housing Administration (FHA) promoted segregation. It pioneered a policy called "redlining" that refused to insure mortgages in and near African-American neighborhoods.[31] It also encouraged the creation of racially restrictive covenants, and channeled greater resources to communities that adopted them.[32] While subsidizing the creation of entire subdivisions for whites, it provided little funding for African-American neighborhoods and at times mandated that the homes in better off communities not be sold to African-Americans.[33]

The exclusion of African-Americans from the federal mortgage efforts made them more vulnerable to predatory lending practices. In Chicago, in particular, African-Americans relied heavily on contract lending to purchase homes. Contract lending differed from conventional mortgage loans in that they involved large down payments, monthly payments at high interest rates, and title passing to the homeowner only when all the payments had been made and all the contract conditions were met. The contract seller held the deed and could seize the property if the buyer missed even a single payment.[34] Over the period of the contract, the buyer acquired no equity in the home and did not benefit from regulation of the practices.[35]

A 2019 Report, which examined these practices, concluded that between 75% and 95% of African-American homeowners in Chicago during the fifties and sixties purchased their homes through these contracts, the price markup on these homes was 84%, and African-Americans who entered into these contracts "paid, on average, an additional $587 (in current dollars) more a month than if they had a conventional mortgage."[36] These practices made home ownership much riskier for

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[29] *Id*.

[30] *See* Christopher L. Peterson, *Fannie Mae, Freddie Mac, and the Home Mortgage Foreclosure Crisis*, 10 LOY. J. PUB. INT. L 149, 154 (2009) (describing the federal role in the creation of the thirty-year mortgage loan).

[31] Terry Gross, *A 'Forgotten History' Of How The U.S. Government Segregated America*, NPR (May 3, 2017), https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america.

[32] Lisa Rice, *Long Before Redlining: Racial Disparities in Homeownership Need Intentional Policies*, SHELTER FORCE (Feb. 15, 2019), https://shelterforce.org/2019/02/15/long-before-redlining-racial-disparities-in-homeownership-need-intentional-policies/.

[33] *See* J. William Callison, *The Color of Law A Forgotten History of How Our Government Segregated America by Richard Rothstein*, 26 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 5, 10 (2017) (observing that in funding the creation of Levittown in Long Island, the FHA "required a commitment not to sell to African Americans").

[34] David Dayen, *African-Americans Are Still Being Victimized by the Mortgage Market*, THE NEW REPUBLIC (May 27, 2014), https://newrepublic.com/article/117912/reparations-how-mortgage-market-hurts-african-americans.

[35] Natalie Moore, *Contract Buying Robbed Black Families In Chicago Of Billions*, NPR (May 30, 2019), https://www.npr.org/local/309/2019/05/30/728122642/contract-buying-robbed-black-families-in-chicago-of-billions.

[36] *Id. See The Plunder of Black Wealth in Chicago: New Findings on the Lasting Toll of Predatory Housing Contracts*, SAMUEL DUBOIS COOK CTR. ON SOC. EQUITY (May 2019), https://socialequity.duke.edu/wp-content/uploads/2019/10/Plunder-of-Black-Wealth-in-Chicago.pdf; *see also* BERYL SATTER, FAMILY PROPERTIES:

African-Americans. Speculators drained money from African-American communities, and neighborhoods where contract lending predominated were subject to higher levels of turnover and decline than other areas.[37] Discriminatory federal policies created the conditions that allowed the predatory lending practices to occur, and the lack of African-American political clout made it harder to fight the discrimination and predation.[38]

3. The Financial Crisis, Race and Disinvestment

The impact of redlining—and reverse redlining[39]—in the middle of the twentieth century pale in comparison with the impact of the mid-2000's housing bubble and the financial crisis that followed. Scholars have written that "the financial crisis is nothing short of the preeminent civil rights issue of our time, erasing, as it has, a generation of hard fought wealth accumulation among African Americans."[40] Between 2007 and 2013, African-American college graduates lost an astounding 60% of their accumulated wealth and Latino college grads lost an even greater amount, in comparison to a 16% loss during the same period for white college graduates.[41]

The housing bubble and the financial crisis followed a period of financial deregulation that fueled predatory lending practices.[42] Legislative changes in the eighties and nineties facilitated a shift from direct lending by banks and thrifts to the growth of less regulated non-bank lenders.[43] Banks that made direct loans and held the loans in their own portfolios had incentives to secure loan value through underwriting practices that appraised long term home value and guarded against the borrower's likelihood of default.[44] The revenue of non-bank mortgage originators came from "points, fees, origination charges, and especially the size of the gap between the prevailing interest rate index and the rate paid by borrowers, commonly known as the 'yield spread.'"[45]

What this meant is that the more loans the loan brokers originated, the more money they made. And the higher the fees, origination charges, and yield spread premium that they could command, the higher their reported revenue. The least scrupulous lenders thus sought to grow rapidly, emphasizing origination of the mortgages generating the greatest revenue and fees, with little

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HOW THE STRUGGLE OVER RACE AND REAL ESTATE TRANSFORMED CHICAGO AND URBAN AMERICA 4 (2009) (estimating the total at 85%).

[37] *See* Sarah L. Swan, *Discriminatory Dualism*, 54 GA. L. REV. 869, 904 (2020) (observing that such neighborhoods quickly declined).

[38] *Id.*.

[39] Reverse redlining has been defined as "the practice of extending credit on unfair terms" to communities that have been historically denied access to credit, predominantly on the basis of race. Hargraves v. Capital City Mortg. Corp., 140 F. Supp.2d 7, 20 (D.D.C. 2000).

[40] Charles L. Nier, III & Maureen R. St. Cyr, *A Racial Financial Crisis: Rethinking the Theory of Reverse Redlining to Combat Predatory Lending Under the Fair Housing Act*, 83 TEMP. L. REV. 941, 942 (2011).

[41] William R. Emmons & Lowell R. Ricketts, *College Is Not Enough: Higher Education Does Not Eliminate Racial and Ethnic Wealth Gaps,* 99 FED. RES. BANK ST. LOUIS REV. 9, 17 (2017)https://www.minneapolisfed.org/institute/working-papers/17-12.pdf.

[42] *See* WILLIAM K. BLACK, THE BEST WAY TO ROB A BANK IS TO OWN ONE: HOW CORPORATE EXECUTIVES AND POLITICIANS LOOTED THE S&L INDUSTRY 30 (2013) (describing deregulation of interest rates on deposits and growth of adjustable-rate mortgages).

[43] Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 632 (2010).

[44] Justin P. Steil et al., *The Social Structure of Mortgage Discrimination*, 33 HOUS. STUD. 759, 776 (2017).

[45] *Id.*

attention to loan quality, that is, little attention to the value of the underlying collateral or the borrowers' ability to repay the loan.[46] At the height of the housing bubble of the mid-2000s, "the subprime market was the Wild West. Over half the mortgage loans were made by independent lenders without any federal supervision."[47]

The result produced a sophisticated Ponzi scheme.[48] Both top executives and the individual brokers who initiated loans "received compensation based on the volume of loans originated, rather than the quality of the loans made.[49] The search was for the vulnerable, the unsophisticated, and politically powerless borrowers who could be persuaded to take out loans that industry insiders referred to as "toxic."[50]

The expanding army of loan brokers disproportionately found such borrowers in minority communities.[51] Scholars observe, "after being denied credit for years these communities represented an untapped market with established home equity and ample room for increased homeownership populated by borrowers with little financial experience."[52] African-American and Latino borrowers remained "more likely than whites to be turned down for a mortgage, even when controlling for income and home location."[53] Mortgage originators seeking to peddle non-prime loans on a wholesale basis saw an opportunity.[54]

Non-prime loans grew dramatically,[55] driven by the mortgage originators, who often used predatory practices to pressure wary or unsophisticated borrowers to take out loans on adverse terms.[56] The results were particularly devastating for minority communities.[57] The mortgage brokers were not trying to provide a service tailored to meet borrower needs.[58] Instead, they were

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[46] *Id.*
[47] Paul Krugman, *A Catastrophe Foretold*, N. Y. TIMES (Oct. 26, 2007), https://www.nytimes.com/2007/10/26/opinion/26krugman.html..
[48] *See, e.g.*, Arthur E. Wilmarth, Jr., *The Dark Side of Universal Banking: Financial Conglomerates and the Origins of the Subprime Financial Crisis*, 41 CONN. L. REV. 963, 1008 (2009) (describing financial crisis as a Ponzi scheme); *see also* June Carbone, *Once and Future Financial Crises: How the Hellhound of Wall Street Sniffed Out Five Forgotten Factors Guaranteed to Produce Fiascos*, 80 UMKC L. REV. 1021, 1026 (2012) (describing "the central factor in a Ponzi scheme-the ability to earn large sums in the present through activities likely (or even certain) to lead to the eventual failure of an enterprise").
[49] Carbone, *id.*, at 1058.
[50] *Id*. at 1055.
[51] Steil, et al., *supra* note 44, at 773 (observing that "[t]aking advantage of residential segregation, originators developed specialized strategies and marketing materials aimed at identifying black and Latino borrowers as subprime lending marks").
[52] *Id.*
[53] Nier & Cyr, et al., *supra* note 40, at 947.
[54] Steil, et al., *supra* note 44, at 765 (attributing the racially segmented practices to the "persistence of high levels of racial segregation combined with structural changes in the lending industry.")
[55] Nier & Cyr, et al., *supra* note 40, at 944 (stating that between 1993 and 2006, subprime lending increased from less than five percent of all home-loan originations to twenty-three percent).
[56] Indeed, loan officers testified that they targeted minority communities because they believed that they would be less savvy in evaluating nonprime loans with onerous terms. Steil et al., *supra* note 44, at 775.
[57] *See* Rugh & Massey, *supra* note 43, at 632 (observing that predatory lenders aggressively targeted minority communities).
[58] As Steil, *et al.*, *supra* note 44, at 773 (explaining that "loan originators tended to specialize in either prime or subprime loans (but not both) and some subprime lenders targeted neighborhoods with large shares of black and Latino residents.")
Id. at 774.

seeking to peddle as many high revenue loans as possible.[59] The predatory lenders who targeted vulnerable communities often focused on well-off minority borrowers, borrowers who might otherwise have qualified for more advantageous prime loans.[60] As a result of these practices, "low-risk African-American borrowers were 65% more likely than similar white borrowers to receive a subprime home-purchase loan and 124% more likely to receive a subprime refinance loan."[61] By 2006, "roughly one out of every two loans made to African American (53%) and Latino (46%) borrowers were high-cost, compared to fewer than one out of five loans made to white borrowers (18%)."[62]

Compounding the effect, roughly two-thirds of the subprime loans at the height of bubble were made to homeowners who already owned their homes and were refinancing them,[63] particularly in minority communities. In addition to charging higher fees and interest rates, some of these loans offered "temporary low teaser rates, interest only mortgages, or mortgages with 40-year payment terms that ballooned in later years."[64] Others involved prepayment penalties that made it harder to refinance to avoid the jump in monthly payments in later years.[65] Yet, the lenders evaluated the borrower's ability to repay the loan based only their ability to afford the initial teaser rate.[66]

The combination of more expensive rates and the lack of underwriting to determine the borrowers' ability to repay the loan made foreclosure more likely.[67] And these practices, particularly when they resulted in multiple foreclosures in the same neighborhood, slowed the recovery in property values.[68] Entire communities became burdened with increased debt, reducing the assets available for other investments and contributing to neighborhood devaluation.[69]

Ramirez and Williams conclude that the financial crisis "contributed to the greatest upward transfer of wealth in modern American history."[70] In part because of falling housing values, African-American households experienced a 53% decline in net worth during the financial crisis,

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[59] *Id.* at 778-79 ("Compensation for loan originators was based primarily on commissions from the loans they completed and thus depended on the number of loans, their size, and the fees and interest rates that could be extracted from borrowers. Put quite simply, loan originators wishing to maximize profits had to convince customers with good credit to accept higher-cost, higher-risk lending products.").
[60] *See* Emma Coleman Jordan, *The Hidden Structures of Inequality: The Federal Reserve and A Cascade of Failures*, 2 U. PA. J.L. & PUB. AFF. 107, 122 (2017) (explaining how "lenders encouraged their mortgage brokers to sell more subprime loans by offering larger commissions" and this contributed to the targeting of minority neighborhoods underserved by more conventional lenders).
[61] Nier & Cyr, *supra* note 40, at 949.
[62] Steil, et al., *supra* note 44, at 759.
[63] *Id.* at 762.
[64] Steil, et al., *supra* note 44, at 770.
[65] *See* McGlawn v. Pennsylvania Human Relations Com'n, 891 A.2d 757, 769 (Pa. Commw. Ct. 2006) (describing onerous practices and fraud).
[66] Steil, et al., *supra* note 44, at 770.
[67] Nier, et al., *supra* note 40, at 948.
[68] By 2017, white homeowners at all income levels showed at least some appreciation in property while African-Americans at all income level continued to show home values below those in 2006. Michela Zonta, *Racial Disparities in Home Appreciation*, CTR. AM. PROGRESS (July 15, 2019), https://www.americanprogress.org/issues/economy/reports/2019/07/15/469838/racial-disparities-home-appreciation/.
[69] Nier, et al., *supra* note 40, at 948.
[70] Steven A. Ramirez & Neil G. Williams, *Deracialization and Democracy*, 70 CASE W. RES. L. REV. 81, 139 (2019).

while Hispanic households experienced a 66% decline.[71] These figures should be compared to the 16% decline experienced by white households.

African-American and Latino homeowners were targeted because they were vulnerable.[72] Yet, in the aftermath of the financial crisis, conservative commentators tried to shift the blame to government policies that encouraged expansion of lending to previously excluded groups[73]—or to the borrowers themselves for borrowing more than they could afford.[74] The purpose of many these efforts was to block regulatory reform and government sponsored relief for the homeowners.[75] While some reforms occurred and some homeowners prevailed in suits against the predatory lenders,[76] Janis Sarra and Cheryl Wade describe the reforms as "pathetically weak," and "the actual relief given to families suffering the devastating effects of the meltdown [as] woefully inadequate."[77] The relief to homeowners paled in comparison with the Wall Street bailouts that kept the major financial institutions that had profited from the practices afloat. It also undermined the financial base of many minority communities.

B. Higher Education

The second pathway into the middle class is education, particularly higher education. Thomas Jefferson viewed education much the same way he did property ownership—as facilitating the independent thought necessary for democratic self-government.[78] Goodwin Liu argues that education is a central component of the concept of equal citizenship, both historically and today.[79]

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[71] Jordan, *supra* note 60, at 112.

[72] *See, e.g.*, Sarah L. Swan, *Discriminatory Dualism*, 54 GA. L. REV. 869, 879 (2020) (describing the role of the history of redlining and reverse redlining in explaining vulnerability during the financial crisis); Hila Keren, *Law and Economic Exploitation in an Anti-Classification Age*, 42 FLA. ST. U. L. REV. 313, 316 (2015) (describing a court stating that a "jury might well conclude that [the borrowers] were targeted not on the basis of being African-Americans, but because they were vulnerable, low-income, unsophisticated, first-time home buyers who *happened* to be African-American").

[73] *See generally* PETER J. WALLISON, HIDDEN IN PLAIN SIGHT: WHAT REALLY CAUSED THE WORLD'S WORST FINANCIAL CRISIS AND WHY IT COULD HAPPEN AGAIN 218 (2015) (insisting that excessive government intervention in the housing market to promote lending to low-income groups caused the financial crisis).

[74] *See, e.g.*, andré douglas pond cummings, *Racial Coding and the Financial Market Crisis*, 2011 UTAH L. REV. 141, 205 (2011). *Cf.* Christina Parajon Skinner, *Misconduct Risk*, 84 FORDHAM L. REV. 1559, 1570 (2016) (observing that the consensus view is that the housing bubble was fueled by supply side demand (*i.e.*, the desire of the lenders to originate more mortgages) rather than greater borrower demand.)

[75] *See, e.g.*, Natalie Goodnow, *'Hidden in Plain Sight': A Q&A with Peter Wallison on the 2008 financial crisis and why it might happen again*, AEIDEAS (Jan. 13, 2015), https://www.aei.org/economics/hidden-plain-sight-qa-peter-wallison-2008-financial-crisis-might-happen/. (explaining that the result was to get the government out of the housing market entirely).

[76] *See, e.g.*, Mayor & City Council of Baltimore v. Wells Fargo Bank, N.A., 677 F. Supp.2d 847 (D. Md. 2010) (detailing costs incurred by Baltimore as result of Wells Fargo's alleged predatory lending practices).

[77] JANIS SARRA & CHERYL L. WADE, PREDATORY LENDING AND THE DESTRUCTION OF THE AFRICAN-AMERICAN DREAM 1-2 (2020).

[78] *See* JAMES BRYANT CONANT, THOMAS JEFFERSON AND THE DEVELOPMENT OF AMERICAN PUBLIC EDUCATION 98 (1962) (describing Jefferson's belief in the importance of education).

[79] *See* Goodwin Liu, *Education, Equality, and National Citizenship*, 116 YALE L.J. 330, 342 (2006) (arguing that "citizenship implicates not only the civic republican values of political participation and democratic self-governance, but also the ethical values of mutual respect, personal responsibility, and equal dignity.").

African-Americans were excluded from this tradition during slavery. Slave owners believed that education would undermine slavery because "if slaves were permitted to learn to read and write the English language, they could begin to think and act on their own and rebellion was inevitable."[80] South Carolina became the first Southern state to pass prohibitions on educating slaves in 1740,[81] and most of the other slave states followed suit.[82] With emancipation, the South faced the task of building a public school system for the first time.[83] In contrast with the rest of the country, none of the Southern states had well-developed public-school systems in 1870—for whites or African-Americans.[84]

By the middle of the twentieth century, university education expanded and became more critical to individual advancement. At the beginning of this expansion, public colleges and universities were relatively affordable.[85] But since the end of the 1980s, public funding of university education has declined as a percentage of total cost,[86] tuition has increased substantially, and student borrowing has made up the difference.[87]

African-Americans, from Emancipation forward, have sought the same educational opportunities as other Americans.[88] Yet, they have had less access to affordable, good quality education and pervasive discrimination has made the payoff from their investments less than for whites with comparable degrees.[89] The Great Recession made all of this worse and set the stage for a new round of predatory practices, with racially disparate effects.

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[80] Monique Langhorne, *The African American Community: Circumventing the Compulsory Education System*, 33 BEVERLY HILLS B. ASS'N J. 12, 13 (2000).
[81] *Id.*
[82] *See* Paul Finkelman, *Coming to Terms with Dred Scott: A Response to Daniel A. Farber*, 39 PEPP. L. REV. 49, 67 (2011) (stating that most of the slave states "made it a crime to educate any blacks, slave or free.").
[83] *See* STANLEY LIEBERSON, A PIECE OF THE PIE: BLACKS AND WHITE IMMIGRANTS SINCE 1880 134 (1984) (commenting on the absence of statewide systems of public education in the South at the time of the Civil War and observing that relatively few public high schools existed throughout the South until after the beginning of the twentieth century).
[84] *See* Goodwin Liu, *supra* note 79, at 388 (stating that, in the 1880's, the tax base in the Northeast, with high school enrollment levels and low illiteracy, was four times the base in "the South, where enrollment rates were low and illiteracy rates high").
[85] Public institutions and funding reached their height in the postwar era, and the percentage of students attending public colleges and universities increased from one in five at the beginning of the twentieth century to two in three by the beginning of the twenty-first century. *See See* CLAUDIA GOLDIN & LAWRENCE F. KATZ, THE RACE BETWEEN EDUCATION AND TECHNOLOGY 130, 266 (2008) .
[86] S*ee* 120 YEARS OF AMERICAN EDUCATION: A STATISTICAL PORTRAIT 71-72, Figure 20 (Thomas D. Snyder ed. 1993); Jonathan D. Glater, *Student Debt and Higher Education Risk*, 103 CAL. L. REV. 1561, 1577 (2015) (explaining that not just have state allocations to public universities fallen but federal student grants have also failed to keep pace with rising costs).
[87]*See* John R. Brooks, *Income-Driven Repayment and the Public Financing of Higher Education*, 104 GEO. L.J. 229, 247-51 (2016) (describing increase in student loans). Brooks reports, "In the 1975-1976 academic year, total federal grants were four times the volume of federal loans, but by 1981-1982, loans became a greater share of federal funding, and by 2012 the volume of federal grants was about half the volume of federal loans." *Id.* at 248.
[88] *See, e.g.*, Herman N. Johnson Jr., *From Status to Agency: Abolishing the "Very Spirit of Slavery"*, 7 COLUM. J. RACE & L. 245, 262 (2017) (observing that "freed Black persons valued education as a central tenet of freedom, and this value reflected the desire for autonomy and self-improvement they believed to be so indicative of freedom").
[89] *See, e.g.*, Emmons & Ricketts, *supra* note 41, at 7 (concluding that differences in wealth persist even with equal levels of education).

First, financial downturns are often seen as a good time to stay in school.[90] Second, financial downturns, absent increased federal expenditures, undercut state tax bases, undermining support for public education.[91] This can make public universities more expensive as they raise tuition to compensate[92] or harder to get into.[93] Third, the decline in income and asset values made it harder for parents to contribute to their children's education, increasing reliance on student loans. Fourth, an additional degree can be seen as essential to gain employment in a tight labor market.[94]

During the financial crisis, for-profit universities were poised to take advantage of these circumstances to engage in predatory lending practices. Their expansion depended on the existence of federal loan guarantees without appropriate oversight of the institutions profiting from the loans. In 1965, Congress passed legislation to encourage greater student lending.[95] Student borrowers, who typically have no income, assets or credit history, are poor credit risks for traditional lenders.[96] The federal government, by guaranteeing loan repayment, encouraged private lenders to extend credit at lower rates.[97] In 2005, Congress substantially increased the amount students, especially graduate students, could borrow.[98] Congress also passed legislation limiting the ability to discharge student loans in bankruptcy, a boon to creditors and increasing borrowing limits over time.[99]

The result was a dramatic increase in student borrowing, with African-Americans seeing the largest overall increases.[100] From 1992-93 to 2007-08, overall student loan debt rose substantially, tripling for Latinos, quadrupling for whites, and rising almost sixfold for African-Americans.[101] Graduate borrowing accounted for 45% of the racial disparities.[102] The most startling finding, however, was that this increased African-American graduate enrollment was concentrated in for-

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[90] *See* Scott-Clayton & Li, supra note 10 (indicating that higher African-American graduate enrollment rates may reflect higher unemployment rates as "the Great Recession hit black college graduates much harder than white college graduates," and evidence indicates that "employers are more likely to discriminate against minorities in weak labor markets").
[91] Brooks, *supra* note 87, at 246 (explaining that State higher-education budgets are often the first to be cut in a downturn).
[92] *Id.* (observing that tuition rates rise during recessions and do fall afterwards).
[93] *But see* Glater, *supra* note 86, at 1573 (noting that some suggest that "institutions raise their prices to capture greater revenue").
[94] *See* Brooks, *supra* note 87, at 237 (noting the link between education and lower unemployment).
[95] *See* 20 U.S.C. § 1071 (2005); *see also Timothy Naegele, The Guaranteed Student Loan Program: Do Lenders' Risk Exceed Their Rewards?* 34 HASTINGS L.J. 599, 599 (1983) (observing that the Act was designed to increase the financial assistance available to students).
[96] *Id.* at 222-23.
[97] Naegele, *supra* note 95, at 601 (noting that although the act was originally designed to benefit low-income borrowers, it was eventually extended to all student borrowers).
[98] The Higher Education Reconciliation Act of 2005 (HERA 2005) greatly increased federal borrowing limits, particularly for graduate students. Higher Education Reconciliation Act of 2005, Pub. L. No. 109-71, 120 Stat. 4, 158-60 (2005) (codified as amended in scattered sections of 20 U.S.C.). *See also* C. Aaron LeMay, Robert C. Cloud, *Student Debt and the Future of Higher Education*, 34 J.C. & U.L. 79, 91 (2007) (describing the increase in loan limits).
[99] Brooks, *supra* note 87, at 248 (calling this legislation "essentially an additional subsidy to lenders.")
[100] *See* Scott-Clayton & Li, *supra* note 10.
[101] *Id*. at Figure 1 (showing an increase in total debt from below $10,000 to over $50,000 per student).
[102] *Id*. at Figure 2 (attributing 45% of racial disparities to graduate borrowing).

profit institutions, accounting for more than a quarter (28%) of African-American graduate enrollment in comparison to only nine percent for whites.[103]

The growth in for-profit institutions is recent. In 2004, for-profit institutions enrolled less than seven percent of the students in any racial group.[104] Yet, by 2008, they accounted for almost a third of African-American graduate students.[105] This growth has had a major impact on the student loan picture, particularly for African-Americans.

First, the level of borrowing is higher at for-profits than at other educational institutions. At all institutions, African-Americans borrow more than other students.[106] At for-profit institutions, students generally are more dependent on student loans, with 95% of African-Americans at these institutions taking out loans.[107]

Second, the benefit from attending a for-profit institution is less. Five years after entering these programs, students are less likely to be employed and are less likely to be satisfied with their course of study than students attending public or private nonprofit schools.[108]

Third, given these factors, it is unsurprising that African-Americans have higher default rates than other borrowers[109] and that student defaults in repaying loans at for-profit institutions are "vastly higher" than at other educational institutions.[110] These effects reinforce each other. Judith Scott-Clayton reported, for example, that "only 4 percent of white graduates who never attended a for-profit defaulted within 12 years of entry, compared to 67 percent of black dropouts who ever attended a for-profit."[111]

Fourth, Scott-Clayton finds that about a quarter of the racial gap in student loan debt reflects differences in rates of repayment and interest accrual,[112] further compounding the impact of student debt. African-Americans are much more likely than whites (48% compared to 17%) to have interest accumulate faster than repayments, increasing their debt loads after graduation.[113] Net, she observes that "black graduates owe 6 percent more than they have borrowed, while white graduates owe 10% less than they have borrowed, four years after graduation."[114] Scott-Clayton concludes that for African-Americans, the rates are at "crisis levels" and continuing to rise.[115]

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[103] *Id*. at Figure 4.
[104] *Id.*
[105] *Id*. at Figure 5.
[106] *See* Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers*, CTR. FOR AM. PROGRESS (Oct. 16, 2017), https://www.americanprogress.org/is-sues/education-postsecondary/news/2017/10/16/440711/new-federal-data-showstudent-loan-crisis-african-american-borrowers. .
[107] *Id*. at Table 1.
[108] *Id*. at 156, 159. They also have lower earnings, but the effects are not statistically significant. *Id*. at 159.
[109] *See* Judith Scott-Clayton, *The Looming Student Loan Default Crisis is Worse than We Thought*, BROOKINGS INST. (Jan. 11, 2018) (finding that black B.A.'s have five times the default rates of white B.A.s).
[110] David J. Deming et al., *The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?* 26 J. ECON. PERSP. 139, 143, 153 (2012).
[111] Scott-Clayton, *supra* note 109.
[112] Scott-Clayton & Li, *supra* note 10, at Figure 2.
[113] *Id.*
[114] *Id*.
[115] Scott-Clayton, *supra* note 109.

While some for-profit institutions perform a useful service, training students for example in health care and technology,[116] a number are outright frauds.[117] The growth of for-profit educated institutions, like the role of unregulated mortgage lenders, reflected neoliberal ideology.[118] As Congress cut back on grants, it expanded the availability of federally guaranteed loans and it treated the growth of for-profit institutions as evidence of the wisdom of the market.[119] Yet, increasing the availability of federal student loan guarantees without increasing supervision of the quality of educational institutions creates what economists call "moral hazard."[120] With for-profit institutions, which derive up to 90% of their revenue from federal aid programs,[121] this created an incentive to enroll as many students as possible.[122] With each student enrolled, the college or university would receive the federal guaranteed loans up front, insuring that the institution would profit whether or not the student ever repaid the loans and whether or not they graduated.[123]

The obvious response to this type of asymmetric risk is oversight of the institutions and, indeed, the federal government requires accreditation for eligibility to participate in the federal guarantee loan program.[124] Yet, oversight has been lax[125] and under former Secretary of Education Betsy DeVos, the Department of Education has rolled back measures designed to strengthen them.[126]

The incentives to grow—and to spend as little as possible educating students[127]—led to the use of aggressive marketing campaigns designed to find students willing to take out the loans necessary

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[116] *See, e.g.*, Deming, et al., *supra* note 110, at 143 (stating that's some "appear to be nimble critters that train nontraditional learners for jobs in fast-growing areas, such as health care and information technology").
[117] *See e.g.*, Adam Looney & Constantine Yannelis, *A crisis in student loans? How changes in the characteristics of borrowers and in the institutions they attended contributed to rising loan defaults*, BROOKINGS INST. (2015), https://www.brookings.edu/bpea-articles/a-crisis-in-student-loans-how-changes-in-the-characteristics-of-borrowers-and-in-the-institutions-they-attended-contributed-to-rising-loan-defaults/ (describing some of the worst insttitutions).
[118] *See* Black, *supra* note 42, at 273-76 (describing deregulatory mindset that led to the financial crisis).
[119] *See, e.g.*, Jacob Alderdice, *The Informed Student-Consumer: Regulating for-Profit Colleges by Disclosure*, 50 Harv. C.R.-C.L. L. Rev. 215, 224–25 (2015) (observing that "state spending on higher education has decreased in the last several decades, falling from 4.1% of total state government spending in 1984 to 2.4% in 1994 to 1.8% in 2004" and that in this period loans have increasingly been preferred to direct spending or grants).
[120] Black, *supra* note 42, at 6 (describing moral hazard as the "temptation to seek gain by engaging in abusive, destructive behavior, either fraud or excessive risk taking" and explaining that "moral hazard arises when gains and losses are asymmetrical").
[121] Stephanie Riegg Cellini & Claudia Goldin, *Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges*, 6 AM. ECON. J.: ECON. POL'Y, 174, 176 (2014).
[122] Joseph Sipley, *For-Profit Education and Federal Funding: Bad Outcomes for Students and Taxpayers*, 64 RUTGERS L. REV. 267, 291 (2011) (describing incentives created by moral hazard).
[123] *Id*.
[124] Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (codified as amended at 20 U.S.C. § 1002(b)(1)(A)(ii)(II) (2006)) (an institution must be accredited). *See also* Matthew Adam Bruckner, *The Forgotten Stewards of Higher Education Quality*, 11 UC IRVINE L. REV. 1, 12 (2020) (describing weaknesses in accreditation oversight).
[125] Bruckner, *id*., at 14-15.
[126] Brooke Seipel, *DeVos rolls back Obama-era policy that aimed to curb abuse from for-profit colleges*, THE HILL (June 28, 2019), https://thehill.com/homenews/administration/450982-devos-rolls-back-obama-era-policy-that-aimed-to-curb-abuse-from-for (describing DeVos's opposition to further regulation).
[127] *See* Dalié Jiménez & Jonathan D. Glater, *Student Debt Is A Civil Rights Issue: The Case for Debt Relief and Higher Education Reform,* 55 HARV. C.R.-C.L. L. REV. 131, 158 (2020) (describing how for-profit entities had incentives to spend less on educational programming for the tuition charged).

to pay the relatively high tuition at these institutions.[128] A Senate investigation in 2012, for example, found that for-profit institutions spend hundreds of millions a dollar a year on marketing, often more than they spend on instruction.[129] The for-profit institutions average $400 in advertising per student, in comparison with $14 per student at public institutions.[130] The advertising typically targets the vulnerable: veterans, single parents, low income, and minority students.[131]

The responses to the growth in minority student loan debt have been twofold. Just as the financial crisis led to critics questioning the value of home ownership, so has the growth in student debt led to renewed questioning of the value of a college education. Crippling debt is given as a major reason for questioning the value of a college degree[132] and, indeed, the payoff is least for those snookered into attending poor quality for-profit schools.[133] Since 2010, African American college enrollment has fallen.[134] The other response has been to increase the pressure for across-the-board student debt forgiveness.[135] The critical question going forward, however, is the role of education as a pathway into the middle class.

The COVID-19 pandemic, together with the Trump Administration's weakening of regulatory oversight, has raised the specter of a new wave of unnecessary indebtedness.[136] Enrollment in for-profits is again on the rise and corresponds with substantial drops in community college attendance.[137] Particularly concerning is the increased attendance of first-time college students enrolling at for-profit colleges right out of high school.[138] Creating second-class private institutions to address the unmet need for post-secondary education simply invites fraud—fraud that further undermines the basis for full citizenship and strong communities.

C. Marriage

Marriage has also been foundational for entry into the middle class and marshalling the resources for investment in the next generation. Extensive commentary addresses the decline in marriage,

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[128] *See* Cellini & Goldin, *supra* note 121, at 176 (finding that for-profit colleges that qualified for the federal student loan program charged substantially higher tuition and fees than non-profit colleges offering similar programs without the federal loan guarantees).
[129] Alderdice, *supra* note 119, at 225.
[130] Cellini & Goldin, *supra* note 121, at 177.
[131] *Id.* at 226.
[132] *Is a College Education Worth It?*, BRITANNICA PROCON (Jan. 30, 2020), https://college-education.procon.org/.
[133] *See* Stephanie Riegg Cellini, *The alarming rise in for-profit college enrollment*, BROOKINGS INST. (Nov. 2, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/11/02/the-alarming-rise-in-for-profit-college-enrollment/.
[134] Megan Zahneis, *Why Has Black-Student Enrollment Fallen?*, CHRONICLE HIGHER EDUC. (Aug. 18, 2019), https://www.chronicle.com/article/why-has-black-student-enrollment-fallen/?cid2=gen_login_refresh&cid=gen_sign_in.
[135] *See* Kate Smith, *Biden's Department of Education Secretary pick Miguel Cardona says student debt relief will be "a priority"*, CBS (Jan. 26, 2021), https://www.cbsnews.com/news/student-loans-miguel-cardona-education-department-priority/.
[136] Kenneth K. Wong, *Trump's administrative presidency and its effort to weaken federal oversight in public education*, BROOKINGS INST. (Oct. 12, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/10/12/trumps-administrative-presidency-and-its-effort-to-weaken-federal-oversight-in-public-education/.
[137] Cellini, *supra* note 133.
[138] *Id*.

and the disproportionate impact on African-Americans.[139] What has received less commentary is the impact of debt and financial instability on family relationships. Financial reverses and family instability almost certainly interact, increasing the impact of the predatory lending practices.

Entering into the right marriage has long been considered necessary to assemble the resources required for investment in children. Historian Stephanie Coontz maintains that for thousands of years, marriage served as a "way of raising capital, constructing political alliances, organizing the division of labor by age and gender," and ordering the relationship between children and their parents.[140] Marriage served as the principal means "of transferring property, occupational status, money, contacts, tools, livestock and women across generations and kin groups."[141]

Orlando Patterson that modern marriages continue to constitute a form of social dowry that increases the links to richer and more powerful parts of society.[142] He further argues that African-American women are the least likely of any group to marry and the least likely to marry outside of their immediate ethnic and social group.[143] That in itself diminishes the resources available to the next generation and makes entry into the middle class more difficult.[144] The problem arises not just from the lack of marriage per se, but from the lessened ability to construct the alliances that encourage investment in children and in the pathways to middle class status.[145]

The reasons why African-American family ties are more fragile involves a long and complex history.[146] As the preconditions for stable relationships have become harder to meet, however, three factors in the modern era undermine not just marriage, but relationship stability outside of marriage.

The first is the impact of racism on African-American men. In their introduction to a 2009 retrospective on the inflammatory 1965 Moynihan Report on the African-American family, Douglas Massey and Robert Sampson observe that "Moynihan's core argument was really rather simple: whenever males in any population subgroup lack widespread access to reliable jobs, decent earnings, and key forms of socially rewarded status, single parenthood will increase, with negative side effects on women and children."[147] The inability to secure the pathways into middle class status continue to disproportionately affect African-American men, with reinforcing effects on African-American family stability.[148]

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[139] *See, e.g.*, ORLANDO PATTERSON, RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES 154 (1998) (describing African-American family patterns as one of the biggest challenges for racial advancement). THE MOYNIHAN REPORT REVISITED: LESSONS AND REFLECTIONS AFTER FOUR DECADES, 621 Annals 6 (2009).
[140] Stephanie Coontz, *The World Historical Transformation of Marriage*, 66 J. MARRIAGE & FAM. 974, 978 (2004).
[141] *Id*.
[142] Patterson, *supra* note 139, at 155.
[143] *Id*. at 157.
[144] *Id*. at 154-157 (describing the various ways in which the disappearance of marriage and enduring relationships exacerbates the isolation of poor African-American women).
[145]. *Id.* at 150-54 (explaining that extended families ties do not compensate for the lack of marriage).
[146] *See, e.g.,* Patterson, *supra* note 139, at 28 (on the effects of slavery and its aftermath).
[147] Douglas S. Massey & Robert J. Sampson, *Introduction: Moynihan Redux: Legacies and Lessons*, 621 ANNALS 6, 13 (2009).
[148] R. Kelly Raley, Megan M. Sweeney, & Danielle Wondra, *The Growing Racial and Ethnic Divide in U.S. Marriage Patterns*, 25 FUTURE CHILD 89, 89 (2015).

The second is the mismatch between African-American men and women. Sociologists Marcia Guttentag and Paul Secord found that in societies in which women outnumber men, marriage declines, and women invest more in their own resources, networks and earning capacity.[149] Among African-Americans, gender disparities increase over time, as African-American male death rates outpace those of the women.[150] Mass incarceration policies exacerbate the ratios further.[151] Educational differences further separate African-American men and women. A 2007 report found that only 47% of African-American boys graduated from high school in comparison with 69% of the girls.[152] The disparities in college graduation rates are even greater, with twice as many African-American women as men graduating from college.[153] Harvard sociologist Bill Wilson concluded that in some African-American communities, marriageable women outnumber marriageable men by two-to-one.[154]

The third factor is gender distrust. As intimate relationships have become more egalitarian, they depend to a greater degree on shared expectations about committed relationships.[155] Yet, when women outnumber men in a given marriage market, that trust tends to decline[156] and when men and women in a given culture have different expectations about intimate relationships, the foundation for long term commitment is harder to establish.[157]

The result is different patterns of family formation. In 2018, for example, 39.6% of births in the United States were non-marital, with African-Americans (69.4%), Native Americans (68.2%), and Latinos (51.8%) having the highest rates.[158] Moreover, births to "solo" mothers, who are neither married or cohabitating, constitute almost half of African-American births in contrast with 9% of births to whites and 16% of births to Latinas.[159] And African-American marriages are substantially more likely than white marriages to end in divorce.[160] Moreover, for African-Americans, higher

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[149] MARCIA GUTTENTAG & PAUL F. SECORD, TOO MANY WOMEN? THE SEX RATIO QUESTION 189 (Beverly Hills: Sage Publications 1983).
[150] *Id*.
[151] *See* WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY 83 (1987) (describing the factors that contribute to marriageability).
[152] Sterling C. Lloyd, *Gender Gap in Graduation*, EDUC. WEEK (July 6, 2007), http://www.edweek.org/rc/articles/2007/07/05/sow0705.h26.html. *See also* Raley, et al., *supra* note 148, at 108 (observing that in the early 2000s, more than one-third of young African-American men who had not attended college were incarcerated, and nearly twice as many African-American men under age 40 had a prison record than a bachelor's degree.).
[153] RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE?: HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 41 (2011) (observing that twice as many African-American women than men graduate from college).
[154] WILSON, *supra* note 151, at 83.
[155] Patterson, *supra* note 139, at 67-69 (describing distrust and different expectations toward relationships between African-American men and women).
[156] *See* Kristen Harknett & Sara McLanahan, *Racial and Ethnic Differences in Marriage after the Birth of a Child*, 69 AM. SOC. REV. 790, 794, 807-88 (2004) (describing how fathers' perceptions about the availability of other mates affects relationships); Kristen Hartnett, *Mate Availability and Unmarried Parent Relationships*, 45 DEMOGRAPHY 555 (2008) (discussing the impact on alternative mate availability on unmarried relationships).
[157] Patterson, *supra* note 139, at 67-69 (concluding that gender distrust undermines African-American relationships).
[158] Joyce A. Martin et al., *Births: Finals Data for 2018*, 68 NAT'L VITAL STAT. REP. 1 (2019). .
[159] Megan M. Sweeney & R. Kelly Raley, *Race, Ethnicity, and the Changing Context of Childbearing in the United States*, 40 ANNUAL REV. SOC. 539, Table 2 (2014).
[160] Raley, et al., *supra* note 148, at Table 2.

levels of education and income have less of a protective effect. African-American women with B.A.s are also less likely to marry and stay married than other college graduates.[161]

The interaction between family structure and economic vulnerability increases the importance of a financial cushion before marriage.[162] Marriage itself tends to be associated with higher levels of these resources, whether from savings, homeownership, or parental contributions.[163] Those without such safety nets have a harder time recovering.[164] In today's marriage markets, therefore, it is not surprising that "both women's and men's earnings are positively associated with marriage and that the positive association between women's earnings and marriage has been increasing over time."[165]

In the absence of such reserves, commitment to a partner who may need support is a risky proposition. Many individuals are reluctant to commit to a partner who is not financially stable for fear that the relationship will deplete their own resources.[166] Economic insecurity accordingly increases family instability. Going through a foreclosure makes it more likely that a married couple will divorce.[167] And so does student loan debt. One study found that "13% of divorcees blame student loans specifically for ending their marriage" and a larger number suggested that such debt contributed to financial tensions.[168]

All these factors disproportionately affect African-Americans. It also increases the attractiveness of student loans. African-American women, who are more likely than white women to believe that they will need to rely on their own resources, see additional education as critical to their advancement.[169] African-American women's educational achievement started to eclipse that of African-American men in 1980 and has steadily increased ever since.[170] In the meantime, African-American men's college completion rates flattened with the beginning of the mass incarceration

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161 Banks, *supra* note 153, at 42.
162 Naomi Cahn & June Carbone, *Uncoupling*, 53 Ariz. S. L. J. (forthcoming 2021).
163 Raley, et al., *supra* note 148, at 98 (observing that African American's lesser access to these resources depresses marriage rates).
164 *See, e.g.*, ARNE KALLEBERG, GOOD JOBS, BAD JOBS: THE RISE OF POLARIZED AND PRECARIOUS EMPLOYMENT SYSTEMS IN THE UNITED STATES: 1970'S TO 2000'S 103-04 (2011) (indicating that while white collar workers often switch jobs, blue collar workers are more likely to experience involuntary layoffs, with longer periods between jobs and long-term declines in income).
165 Raley, et al., *supra* note 148, at 98.
166 *See e.g.*, Linda M. Burton & M. Belinda Tucker, *Romantic Unions in an Era of Uncertainty: A Post-Moynihan Perspective on African American Women and Marriage*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 132, 135-36 (2009) (observing that many African-American women were concerned that "monetary entanglements with another would deplete their resources").
167 *See* Rebecca Diamond, Adam Guren, & Rose Tan, *The Effect of Foreclosures on Homeowners, Tenants, and Landlords* 1, at 4 (Nat'l Bureau of Econ. Research, Working Paper No. 27358), https://www.nber.org/system/files/working_papers/w27358/w27358.pdf. (finding that the biggest effect was on "marginal" borrowers, that is, borrowers who with a loan modification might have been able to avoid foreclosure).
168 Ben Luthi, *Survey: Student Loan Borrowers Wait Longer and Pay More to Get Divorced*, STUDENT LOAN HERO (Dec. 3, 2018), https://studentloanhero.com/featured/survey-student-loan-borrowers-and-divorce/.
169 *See generally* Stéphane Mechoulan, *The External Effects of Black Male Incarceration on Black Females*, 29 JOURNAL OF LABOR ECONOMICS 1 (2011) (describing how mass incarceration policies correlate with increased emphasis on African-American female employment).
170 Richard V. Reeves & Katherine Guyot, *Black women are earning more college degrees, but that alone won't close race gaps*, BROOKINGS INST. (Dec. 4, 2017), https://www.brookings.edu/blog/social-mobility-memos/2017/12/04/black-women-are-earning-more-college-degrees-but-that-alone-wont-close-race-gaps/.

era, with the exception of a brief increase in the mid-2000s, as student loan availability increased.[171] Male college completion rates, however, quickly declined with the financial crisis, while African-American female rates continued to increase.[172]

These trends magnify the racial wealth gap.[173] For African-Americans, the lack of access to marriage has compounded social, economic, and political marginalization.[174]

Conclusion

As the United States has dismantled the protections that fueled stable prosperity in the middle of the twentieth century, the pathways into the middle class have become more perilous and those perils have become particularly treacherous for African-Americans. Home ownership, higher education, and marriage remain important sources of advancement for most; yet, the security that such investments traditionally provided has become harder to achieve. This has occurred in part because the nature of the American political system has changed with the country's changing demographics. Instead of the prospect of shared prosperity has come increasing inequality. These changes came to a head with the financial crisis in 2008 and its subsequent aftermath. While whites have largely recovered, the financial crisis destroyed a stunning percentage of African-American wealth, with dramatically less of a recovery in both housing values and income potential when compared to white communities. The result undermines political as well as economic equality, threatening the prosperity of what has been the most upwardly mobile parts of minority communities and discouraging future investment.

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[171] *Id.*
[172] *Id.*
[173] William Emmons & Bryan Noeth, *Why Didn't Higher Education Protect Hispanic and Black Wealth?* FED. RES. BANK ST. LOUIS (Aug. 2015), https://www.stlouisfed.org/~/media/Publications/In the Balance/Images/Issue_12/ITB_August_2015.pdf. (observing that African-American college graduates have an average net worth that one-tenth that of white college graduates).
[174] *See generally* Patterson, *supra* note 139, at 6.