

REWRITE THE RACIAL RULES

BUILDING AN INCLUSIVE AMERICAN ECONOMY

A ROOSEVELT INSTITUTE REPORT BY

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REIMAGINE THE RULES

JUNE 2016

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Table of Contents

Acknowledgments

4

Executive Summary

5

Introduction

6

Income

16

Wealth

24

Education

32

Criminal Justice

42

Health

52

Democratic Participation

64

What Will It Take to Rewrite the Rules?

70

Conclusion

79

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SPECIAL THANKS TO

Nell Abernathy, *Vice President, Research and Policy, Roosevelt Institute*
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And to Roosevelt Fellows: Saqib Bhatti, Mike Konczal, J. W. Mason, K. Sabeel Rahman

Andrea Flynn, Dorian T. Warren, Susan Holmberg, and Felicia Wong would like to acknowledge the following people for their input and/or participation in convenings that helped to inform this work. This is not a list of endorsers; any omissions or errors are the authors' alone.

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Randy Albelda, *University of Massachusetts Boston*
Kate Bahn, *Center for American Progress*
Dante Barry, *Million Hoodies for Justice*
Annette Bernhardt, *University of California Berkeley*
Carmen Berkley, *AFL-CIO*
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Lisa Cook, *Michigan State University*

William Darity, *Duke University*
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Katrina Gamble, *Center for Popular Democracy*
Alicia Garza, *National Domestic Workers Alliance; #BlackLivesMatter*
Linda Goler-Blount, *Black Women's Health Imperative*
Darrick Hamilton, *The New School*
Pilar Herrero, *Center for Reproductive Rights*
Deepa Iyer, *Center for Social Inclusion*
Carl Lipscombe, *Black Alliance for Just Immigration*
Ellen Liu, *Ms. Foundation for Women*
Julianne Malveaux, *Economic Policy Institute*
Imani Marshall, *Roosevelt @ Amherst*
Aleyamma Mathew, *Ms. Foundation*
Natalia Mehlman-Petrzela, *The New School*
Suresh Naidu, *Columbia University*
Zachary Norris, *Ella Baker Center*
Amani Nuru-Jeter, *University of California, Berkeley*
Shuya Ohno, *Advancement Project*
Steven Pitts, *University of California Berkeley*
john powell, *Haas Institute*
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Rashid Shabazz, *Campaign for Black Male Achievement*
Purvi Shah, *Center for Constitutional Rights*
Thomas Shapiro, *Brandeis University*
Monica Raye Simpson, *SisterSong*
William Spriggs, *AFL-CIO*
Marbre Stahly-Butts, *Center for Popular Democracy*
Nelini Stamp, *Rise Up Georgia*
Jeanne Theoharis, *Brooklyn College*
Vince Warren, *Center for Constitutional Rights*
Susan Wefald, *Ms. Foundation*
Frederick Wherry, *Yale University*
Jeannette Wicks-Lim, *University of Massachusetts Amherst*
Irene Yen, *University of California San Francisco*
Haeyoung Yoon, *National Employment Law Project*

Additional thanks to Roosevelt staff and consultants for their support and contributions:

Hannah Assadi, Johanna Bonewitz, Amy Chen, Samantha Diaz, Kristina Ensminger, Joelle Gamble, Monica Gonzalez, Claire Levenson, Chris Linsmayer, Marcus Mrowka, Dave Palmer, Camellia Phillips, Alan Smith, Alexandra Tempus

This report was made possible with generous support from Ford Foundation, Open Society Foundations, Arca Foundation, Nathan Cummings Foundation, and Dobkin Family Foundation.

Executive Summary

This report argues that, in order to understand racial and economic inequality among black Americans, we must acknowledge the racial rules that undergird our economy and society. Those rules—laws, policies, institutions, regulations, and normative practices—are the driving force behind the patently unequal life chances and opportunities for too many individuals.

We focus here specifically on the historic and current inequities and injustices experienced by black Americans. For too long narratives about individual deficits, racial bias, and income differentials have been used to explain these disparities, and many experts and policymakers have mistakenly assumed that “colorblind” economic policies alone can sufficiently address these obstacles. But these explanations and the routine ideas for addressing them are either erroneous or overly simplistic.

At every level of education, black Americans are paid less than their white counterparts. At every level of income, black Americans have less in assets than their white counterparts. Compared to white Americans, black Americans have higher rates of unemployment, accrue less wealth, and have lower rates of homeownership. But just as critically, even middle-income black Americans have unequal access to the quality-of-life goods—education, health, and safety—that economic success is expected to guarantee. The reasons for this are a complex web of racial rules.

We examine the racial rules across six different dimensions: income, wealth, education, criminal justice, health, and democratic participation. We illustrate the evolution of those rules through three distinct historic periods: the pre-civil rights eras of slavery and Jim Crow, the civil rights era, and post-civil rights through the present. For each of these we tease out causal mechanisms and mediating pathways that link rules to unequal outcomes and illustrate how the rules have compounding and cyclical effects.

Ultimately, we show why the rules structuring our economy matter for the well-being of black Americans. And, against the backdrop of stark racial economic inequality dating back centuries, we make the case for pushing past both explicit and implicit exclusions, as well as ostensible race-neutrality. We conclude that promoting an agenda of positive rules and targeted universalism is a feasible—perhaps the only feasible—way to promote greater overall economic health and greater racial inclusion.

Introduction

Two dominant conversations drive progressive politics today: one centered on the moral, social, and economic injustices that have arisen from decades of unchecked economic inequality, and another centered on structural racism. A number of intersecting forces have brought these issues to the fore: frustration about Americans' worsening economic circumstances, particularly in the wake of the global financial crisis and so-called economic recovery; outrage over the deaths of people of color at the hands of police; activist movements such as the Movement for Black Lives, Fight for 15, and Occupy Wall Street; and the intellectual work of Thomas Piketty, Joseph Stiglitz, and others focused on economic inequality and the ways in which it is reinforced by political inequality.

At times, we have seen the people who care about these two issues work in tandem to bring questions long ignored by America's elites into the mainstream political debate. Such movements as the Fight for 15 or FedUp have united racial justice and economic justice activists against trickle-down economic policies that disproportionately disadvantage people of color. But too often, progressive leaders mistakenly assume that colorblind economic policies alone can sufficiently address the obstacles to equal opportunity and equitable outcomes for people of color. One cannot separate equality of opportunity from equality of outcomes: The assets one begins life with unquestionably affect one's ability to "climb the ladder."

In this report, we argue that, in order to understand racial and economic inequality in America today, we must look below the surface and understand the web of rules and institutions that lead to unequal outcomes. While those unequal outcomes are very clear to the vast majority of Americans, many still believe they are the result of personal ambition and individual choices, and that the solution is for individuals to take more "personal responsibility."ⁱ This belief is incorrect, and a rules-based analysis will illuminate how and why: Our

rules and institutions are rarely colorblind, and even when policymakers intend on race-neutral results, policies are refracted through historical institutions, current rules, and societal norms, resulting in disparate impacts on black and white Americans.

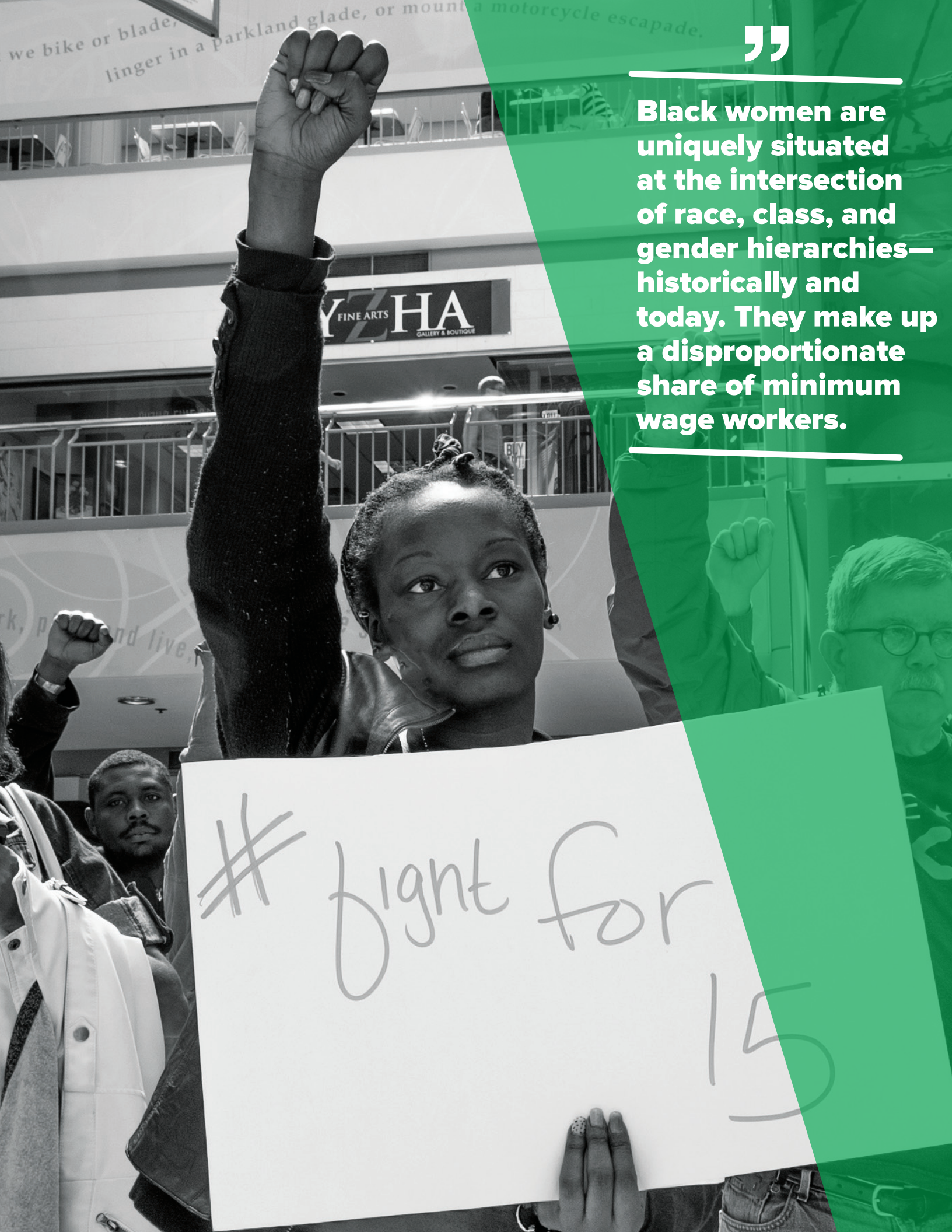
First, we must understand the scope of the problem. As we will describe throughout the report, the disparities are familiar but overwhelming: At every level of education, black Americans are paid less than their white counterparts. At every level of income, black Americans have less in assets than their white counterparts. Compared to white Americans, black Americans have higher rates of unemployment, accrue less wealth, and have lower rates of homeownership. But just as critically, even middle-income black Americans have unequal access to the quality-of-life goods—education, health, and safety—that economic success is expected to guarantee.

These disparities are also gendered. Black women are uniquely situated at the intersection of race, class, and gender hierarchies—historically and today. They make up a disproportionate share of minimum wage workers. They face labor market segregation that pushes them into insecure jobs with low pay and few benefits. They bear the weight of community and familial well-being in the vacuum left by mass incarceration. And persistent racial and gender pay gaps prevent them from earning a just and equitable wage.¹

As noted, many progressives consider economic policy alone to be a sufficient remedy for these issues. But for black Americans, higher incomes or more education do not remove the threat of injustice. Indeed, the continued shooting of unarmed black Americans underscores the limits of economic policy in addressing

ⁱ Most Americans—two-thirds of the general population, including 71 percent of whites and even a majority of blacks, believe that "blacks who have not gotten ahead in life are mainly responsible for their own situation." Pew Research Center. 2007. "Optimism about Black Progress Declines: Blacks See Growing Values Gap Between Poor and Middle Class" Retrieved May 4, 2016 (<http://www.pewsocialtrends.org/files/2010/10/Race-2007.pdf>)





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Black women are uniquely situated at the intersection of race, class, and gender hierarchies—historically and today. They make up a disproportionate share of minimum wage workers.

Fight for

15

STRUCTURE OF THIS REPORT

This report examines the racial rules across six different dimensions:

INCOME

WEALTH

EDUCATION

CRIMINAL JUSTICE

HEALTH

DEMOCRATIC PARTICIPATION

For each of these areas we tease out causal mechanisms and mediating pathways that link rules to unequal outcomes. Of course, these mechanisms vary, and the ways in which the rules connect to different historical eras play out differently. But we also find common ground. Further, we know that the rules in these various sectors have compounding effects. Real people live in different neighborhoods and have varying levels of access to jobs and health care and fresh food; these things are all related. But teasing out specific rules that drive outcomes in each of these areas of our society is also important and, we hope, valuable.

In the end, we show why the rules structuring our economy matter for black well-being. And, against the backdrop of stark racial economic inequality dating back centuries, we make the case for pushing past both explicit and implicit exclusions, as well as ostensible race neutrality.

We conclude that promoting an agenda of positive rules and targeted universalism is a feasible—perhaps the only feasible—way to promote greater economic and societal health and greater racial inclusion.

systemic racism. A progressive economic agenda that seeks to raise the minimum wage, for example, will benefit black Americans, but it will not change the fact that a dollar of income in black hands buys less safety, less health, less wealth, and less education than a dollar in white hands. Nor will it address the underlying structures of racial exclusion and discrimination that cause black Americans to be overrepresented among unemployed and low-wage workers and underrepresented in the middle class, let alone the 1 percent.

In this report, we will show that racial rules undergird our economy and society and are the driving force behind the patently unequal life chances and basic opportunities for people of color and women. We build on and extend the framework described in *Rewriting the Rules*, the 2015 policy report published by Joseph Stiglitz and the Roosevelt Institute. That report challenges traditional economic thinking to argue that inequality is a choice we make with the rules we create to structure our economy. These rules, the report argues, shape the economy and thus shape opportunities and outcomes. They are the “regulatory and legal frameworks that make up the economy, like those affecting property ownership, corporate formation, labor law, copyright, anti-trust, monetary, [and] tax and expenditure policy.” As

such, these rules quite clearly include the institutions that perpetuate structural exclusion and inequality.²

Throughout this paper we define and outline a broad collection of these rules, many of which have deep historical roots. The historical arc of our nation’s racially exclusionary and discriminatory policies is long, and remedying today’s injustices will require looking backward and understanding the inextricable link between the policies of our past and present. As epidemiologist Camara Phyllis Jones writes, “the association between socioeconomic status and race in the United States has its origins in discrete historical events but persists because of contemporary structural factors that perpetuate those historical injustices.”³ As such, we trace the ways in which the wealth-building and income constraints of slavery, Jim Crow, and New Deal policies continue to reverberate in asset-poor African-American communities. We also examine how other rules of those periods have shaped contemporary outcomes across a range of social and economic realms.

Most of the more contemporary rules that disproportionately impact people of color are less explicitly discriminatory. We describe how the structure of the criminal justice system, while nominally colorblind, is deeply racialized in practice. “Colorblind” rules, such as cuts to public services and the social safety net, shape the socioeconomic opportunities available to communities of color, as demonstrated so clearly by the water crisis in Flint, Michigan. Other rules are simply norms that codify personal bias, which is often unconscious—for example, occupational segregation that results from the repeated channeling of people of color into lower-wage positions or the role that social networks play in acquiring jobs and job promotions.

What Other Explanations Miss

NEOCLASSICAL ECONOMICS

The view we take here stands in contrast to a number of other explanations for racial inequities. Over the last 30 years, proposed solutions to disparate economic outcomes have focused primarily on either individual responsibility or developing human capital—more rigorous education standards, more skilling programs, investments in pre-kindergarten, etc. However, these solutions do not account for the very unequal life chances faced by people of color, nor can they address the increasingly limited social mobility of poor children and children of color, which results from growing inequality. Education has not been the silver bullet that was promised, either; black Americans at every level of education earn less than their white counterparts.⁴

It is no surprise that these solutions have failed given the faulty classical economics from which they derive. The human capital approach is based on economic models that assume compensation is driven solely by productivity—the effort an individual is willing to exert and the skill with which it is exerted. The most influential version of this theory, associated with Gary Becker’s *The Economics of Discrimination*, holds that discrimination cannot exist in labor markets that have at least some employers who are not racially biased.⁵ The theory goes that in a perfectly competitive economy, as long as there are some individuals who do not have racial (or gender or ethnic) prejudices, they will hire members of the discriminated-against group because their wages will be lower than those of similarly qualified members of the not-discriminated-against group. A large body of literature has demonstrated why Becker was wrong: Markets are not perfect, and decades of field experiments have proven the quite common-sense observation that discrimination persists in labor markets.⁶

Arthur Okun, Lyndon Johnson’s Chairman of the Council of Economic Advisors, famously argued that there was an inherent trade-off between equality and efficiency insofar as government institutions interfered with the free market. Okun’s argument has been hijacked and simplified to argue against redistribution or legal protection of human rights. However, two facts must be noted. First, most recent research, from case studies to cross-country analysis, shows no negative relationship between redistribution and economic



The association between socioeconomic status and race in the United States has its origins in discrete historical events but persists because of contemporary structural factors that perpetuate those historical injustices.

- Camara Phyllis Jones

performance.⁷ⁱⁱ Which is to say, if the chief argument against enacting the kind of policy agenda for which we advocate is a concern about long-term economic growth, the preponderance of evidence suggests there is no validity to that concern. Second, indulging in the premise of Okun’s 1970s argument, he himself claimed an exception to his “trade-off” was the case of efforts to reduce discrimination because it under-utilizes human capital. As the U.S. moves toward a majority-minority population, continued barriers to building or utilizing human capital for people of color could increasingly impoverish our national assets.

OBSERVABLE BIAS

Another set of policies to reduce the racial income gap includes a combination of improving educational outcomes and reducing discrimination in hiring. While these are more complex and effective prescriptions, they are also grounded in simplistic economic models that fail to account for the full system of racially discriminatory structures. Many economists estimate the cost of job market discrimination to African Americans as the pay differential between similarly educated white and black workers. In this tradition, economists such as James Heckman calculate that

ii In *The Price of Inequality*, Stiglitz presents a set of theoretical arguments explaining why there might not be such a trade-off. The existence of the trade-off is predicated on the premise that the economy is initially efficient, and that the well-being of one individual and his performance is unrelated to that of others. These premises have been questioned.

much of the disparity in earnings and outcomes experienced by black Americans is due to differences in skills rather than discrimination.⁸

However, we argue that the models and regression results underpinning these approaches mostly capture the effects of individually mediated bias. As such, they fail to account for the degree to which other tested independent variables (education, skill, experience) are themselves dependent variables produced by actions and choices that are embedded in a political economy shaped by racially exclusionary and discriminatory rules. In plain language, the education and skills of a given job candidate are outcomes of life choices made in a world constrained by racialized rules.ⁱⁱⁱ

PROGRESSIVE ECONOMICS: A FOCUS ON CLASS

A more progressive economic framework understands the role of rules and institutions in circumscribing the economic outcomes for some and privileging the outcomes for others. This approach tends to begin and end with a focus on class: asking how best to improve the economy for the least wealthy and powerful, but rarely considering race or gender. The latest iterations of the inequality debate in the U.S. derive from this framework and have zeroed in on important drivers of economic inequality: weakened financial regulations, rampant short-termism in corporate decision-making and an increase in corporate power, the erosion of labor protections, and the lack of collective power of working families and ordinary people. The policy agenda flowing from this diagnosis attempts to distribute power and income more broadly, whether through tax-and-transfer redistributive approaches or through “pre-distribution,” i.e., increasing wages before redistribution or expanding access to the labor market.⁹

We certainly agree with this general approach. But we also know that even if a rising tide were to lift all boats, and even if it were to benefit communities of color proportionally more than white Americans, this approach would be insufficient. For example,

iii If an important part of “human capital” is on-the-job learning experiences, and African Americans are denied these job experiences, then their lower lifetime income is in no small measure a result of discrimination. Moreover, the knowledge that they are less likely to be hired and promoted given any set of qualifications reduces the incentives for acquiring skills. Thus, even if all wage differentials could be explained as a result of “statistical discrimination,” (Phelps, 1972) the differences in outcomes themselves can be explained as a result of discrimination; an effective affirmative action program eliminating the ability to differentiate individuals on the basis of race would in fact lead to a new equilibrium in which the differences that gave rise to and justified the discrimination would in fact disappear (Hoff and Stiglitz, 2010; Stiglitz, 1974).

a significant increase in the minimum wage might positively benefit a greater percentage of African Americans compared to whites. However, it would not address the root causes behind the disproportionate representation of black Americans and other non-whites in low-wage jobs. In short, more aggressively inclusive economic policies would certainly benefit people of color, but they would not undo the system of racial rules that render a black boy walking down his street with a bag of Skittles in his hand a target of violence.

Racial Rules: An Alternative Framework

Our alternative institutionalist or structural framework, which we characterize as a theory of racial rules, argues that rules matter and having the power to write the rules matters. As we have argued, the economy is shaped by choices—choices determined by, among other factors, legal, regulatory, and expenditure policies. It is also shaped by institutions that codify societal norms. In this way the values and interests of the powerful (in terms of class, race, gender, etc.) are baked into the economy and can thus circumscribe opportunities and outcomes for the less powerful.

When the rules are written to benefit those who already hold privilege and power, as they too often are, the incentives for preserving and reinforcing those rules increase, and more resources are devoted to shaping the rules in favor of the powerful. In this kind of “rent-seeking” economy and society, short-term gains for the privileged (the “rent-seekers”) are accompanied by long-term losses for the majority of individuals and for the economy as a whole.¹⁰ And when the rules divert resources away from black Americans and black communities, as they have for more than two centuries, the result is not only racial inequality—a continued violation of human rights and American values—but also long-term costs to families of color and all Americans.

Rules are both formal and informal. Formal rules are the regulatory and legal frameworks that make up the economy and society—including those that affect property ownership, corporate formation, labor and employment laws, copyright, antitrust laws, monetary policy, tax and expenditure policy, and other economic structures.¹¹ These laws, policies, and regulations are enacted and enforced by political decision-makers.



When the rules are written to benefit those who already hold privilege and power, as they too often are, the incentives for preserving and reinforcing those rules increase, and more resources are devoted to shaping the rules in favor of the powerful.

Informal rules are not codified but are instead normative practices, behaviors, and standard operating procedures. These rules also often result in unequal racial outcomes. Informal rules can be structural or institutional—for example, the well-documented practice of steering people of color into lower-paying occupations.¹² They can also manifest as personal racial bias; e.g., shopkeepers providing poor service, no service, or overt hostility to African-American customers.

Especially on matters of race, formal and informal rules interact, and both have very clear effects on economic outcomes and overall well-being. Within this broader framework, this paper examines three distinct categories of racial rules:

- » **Exclusionary rules**, which include racially explicit laws, such as slavery, Jim Crow, and the redlining of mortgages or other services, all of which actively sought to keep black Americans socially and economically separate from the rest of American society. Exclusionary rules also include racially implicit laws, such as the omission of domestic and agricultural workers from 1930s labor provisions, or today’s mandatory minimum sentencing laws that have a disproportionate impact on people of color. Both historically and today, implicit exclusions continue to have outsized impacts on economics, health, and well-being. Also in this category is racial bias, both structural and personal.

- » **Inclusionary rules**, which are the laws, regulations, and policies that advance racial inclusion and equity. These rules are often “race-conscious” remedies—such as *Brown v. Board of Education*, the 1964 Civil Rights Act, the 1965 Voting Rights Act, and affirmative action in employment—intended to address racial injustices.
- » **Non-rules**, or the absence of rules, that allow discrimination and racially unequal consequences to persist.^{iv}

Throughout this paper we examine the cyclical nature of these racial rules, illustrating how they intersect and reinforce one another, thus codifying preexisting societal norms and shaping future norms.

Racialized rules can fuel and perpetuate different forms of racism:^v

- » Institutional or structural racism, which “stresses how past mistreatment drives current inequities” and is “codified in our institutions of custom, practice, and law.”¹³ As Camara Phillips Jones explains, this results in racially unequal access to goods, resources, opportunities, and power.¹⁴ It also includes informal norms, practices, and behaviors that result in racially inequitable outcomes.
- » Personally mediated or interpersonal racism, which includes prejudice—“differential assumptions about the abilities, motives, and intentions of others according to their race”—and discrimination—“differential actions towards others according to their race.”¹⁵ As Phillips Jones explains, this type of racism can be intentional or unintentional and includes acts of “commission as well as omission.”

These rules are the products of distinct historical eras. American history has primarily been a story of racial

^{iv} We might think of these as regulatory gaps. For instance, in the banking sector, the lack of rules to curb a range of predatory lending behavior in the run-up to the financial crisis of 2007–2008 was a regulatory gap that, combined with personally mediated or interpersonal racism (racial bias, racial incentives) resulted in racialized consequences (loss of wealth and assets) harmful to communities of color. Non-rules also refers to domains in which rules to advance racial equity are warranted but do not exist (such as rules against “wage theft” wage theft, which affects millions of workers of color” and change “sorely needing it” to “sorely in need of regulation” affecting millions of workers of color). Non-rules also refer to what political scientists call “non-decisions.” What E.E. Schattschneider called the “mobilization of bias” and what Jacob Hacker later called “policy drift,” this is when power is exercised to keep issues off of the agenda, resulting in non-decisions, or non-rules, in areas sorely needing it.

^v Our framework of racial rules takes into account various types of racism as well as concepts of “white supremacy,” particularly ideologies that place whites at the top and blacks at the bottom of a social hierarchy or racial order which assigns rights, resources, and values white bodies over black bodies.

exclusion, beginning with the institution of slavery. The past always weighs heavily on the present, and as recent calls for African-American reparations remind us, much of today's status quo is the product of racially exclusionary rules made long before our time.¹⁶ But ours is also a story of winning fights for greater inclusion. We have seen two periods of reconstruction: Both the post-Civil War Reconstruction (1865–1877) and the civil rights era (1954–1980) saw active movements and progress that drove the creation of rules and practices that benefited black Americans and improved economic outcomes.

In broad outlines, these eras and their associated rules are as follows:

REMEMBERING RACIAL INCLUSION: THE FIRST RECONSTRUCTION (1865-1877)

The first Reconstruction, in the period immediately after the Civil War, was an era of far-reaching ambition in its attempts to reverse the social and economic effects of enslavement on newly freed African Americans. The 13th Amendment abolished slavery, and, going far beyond that, Reconstruction ushered in racially inclusionary rules. The Reconstruction Amendments

STRATEGIC RACISM

Strategic racism is described by Ian Haney-López as “purposeful efforts to use racial animus as leverage to gain material wealth, political power, or heightened social standing.”³⁵ Politicians and lawmakers have used strategic racism as an electoral weapon to scapegoat racialized communities in order to advance pro-corporate, neoliberal rules that also harm middle-class, working-class, and poor whites.³⁶ As Haney-López writes, “The driving force behind strategic racism is not racial animus for its own sake or brutalizing nonwhites out of hate; it is the pursuit of power, money, and/or status.” Many scholars and political commentators in the 1980s argued that differences in racial opportunities and outcomes were the result of individual choices; others argued that a “tangle of pathology” or “culture of poverty” were the reasons for racial inequalities.³⁷³⁸ Notions that black Americans in particular are “lazy” or “government cheats” have been used strategically for decades as “dog whistles,” allowing politicians to communicate to whites in racially coded language in order to win elections.³⁹ This very calculated stoking of racial fear, anger, and anxiety clearly interacts with other racial rules to help win and maintain political control. It also heightens Americans’ focus on personal responsibility and ignores the role that rules play in driving the United States’ vast and growing racial and class inequities.

WHY FOCUS ONLY ON BLACK AMERICANS?

This paper focuses specifically on the experiences of black Americans for a number of reasons. First, the United States’ history and enduring legacy of black slavery is built into our current institutions, policies, programs, and practices and has multigenerational impacts on the life chances and outcomes of black Americans. Second, as we will describe throughout this report, black Americans face among the worst social and economic outcomes of all ethnic and racial groups, and the factors that drive those outcomes are often unique to the historic experience of black Americans and deserve an in-depth analysis.^{vi} Third, the marginalization of black Americans also generates unequal outcomes for other racially marginalized groups, particularly Latinos and Asians, as well as poor and working-class whites. To paraphrase Lani Guinier and Gerald Torres, issues of race are the “miner’s canary,” warning of conditions in American democracy and the economy that pose a threat to us all.⁴⁰ Finally, the focus on black Americans is a response to the proliferation of and increased attention to police violence and mass incarceration, and to the demand from grassroots movements for leaders at all levels to acknowledge our nation’s long history of devaluing blackness and black inequality in virtually every segment of American political, economic, and social life.

^{vi} Indigenous or Native Americans also experience some of the worst social and economic outcomes in American society, for some similar but also many different causal reasons.

granted former slaves full citizenship and voting rights, enforced by a panoply of federal policies.^{vii} The attempt to integrate former slaves into a free labor economy, the reunion of families, and the founding of essential civic institutions, such as schools and churches for African Americans, were all part of the Reconstruction legacy. But this success was short-lived for a number of reasons, including a political backlash in Congress, the Supreme Court's ruling in *Plessy v. Ferguson*, and a series of subsequent rulings that paved the way for new racial exclusions.¹⁷

RACIAL EXCLUSION AND JIM CROW (1877–1954)

The 19th century ended and the 20th century began with the establishment of a complex system of racial exclusions. Jim Crow formalized second-class citizenship status for black Americans, legislating segregation throughout the South in neighborhoods, schools, and all public accommodations. The early 20th century also saw a system of more implicit exclusions nationwide, including provisions in the New Deal that essentially excluded African Americans and other people of color from the initial Social Security Act, other critical labor law provisions, homeownership, and the G.I. Bill. These provisions were a path to economic security and well-being for millions of Americans, and in fact many African Americans did ultimately support and benefit from the New Deal. But overall, the New Deal path to middle-class prosperity was blocked for many people of color, with consequences that persist today.¹⁸

RACIAL INCLUSION AND CIVIL RIGHTS (1955–1980)

The civil rights movement, which many dub a Second Reconstruction, fought to reverse Jim Crow. During the mid-20th century, civil rights leaders and their political allies ushered in an era of inclusion, rethinking the moral and legal consequences of our national legacy.¹⁹ The Supreme Court's 1954 ruling in *Brown v. Board of Education* was paramount, dealing a fatal legal blow to Jim Crow and de jure segregation by ruling formal separation inherently unequal.²⁰ Of course, implementing actual integration, both as a legal matter and as a social and political ideal, proved fleeting. But civil rights achievements were very real,

vii These include the Civil Rights Act of 1866 establishing penalties for violation of the 14th and 15th Amendments; the Reconstruction Act of 1867 guaranteeing political inclusion and participation for former slaves; the Civil Rights Act of 1871 enabling federal supervision and enforcement against voter suppression tactics; and the Civil Rights Act of 1875, guaranteeing equal access to public accommodations and enabling jury duty for former slaves.



The past always weighs heavily on the present, and as recent calls for African-American reparations remind us, much of today's status quo is the product of racially exclusionary rules made long before our time.

and as a result of new race-conscious and inclusive laws and norms, and the strengthening of the federal government in support of civil rights overall, we began to see real and positive effects in housing, education, and other realms.^{viii} The economic expansion of the American economy also worked in favor of black Americans. From the 1940s through the 1960s, African-American employment shifted from primarily southern agricultural to urban, blue-collar private sector jobs as well as public sector employment in teaching, state and local government, and the military. Much of this work was unionized and brought steady salaries and benefits. Overall, this economic growth added to the stability of civil rights-era inclusions.²¹

TODAY'S EXCLUSIONS: RETRENCHMENT AND STALLING OUT (1980–PRESENT)

The era beginning around 1980 saw a complex interplay of trends that reinforced exclusion and severely hurt African Americans. The first was the loss of jobs in the manufacturing sector due to both large-scale changes in the global economy and rules that favored capital-intensive, rather than labor-intensive, job development in the U.S.²² Along with weak labor markets and unemployment, wage stagnation, which has been a long-term trend for all American workers since the late 1970s, hit black Americans particularly hard.²³

The second trend was the weakening and ultimately the reversal of civil rights-era inclusionary rules: antidiscrimination laws, affirmative action, the drive

viii Research shows that inclusive rules of the civil rights movement improved educational outcomes for black Americans (see Education section) and expanded home ownership opportunities (see Wealth section).

for racially balanced schools, and voting rights laws.^{ix} This anti-civil rights backlash was predicated on a set of individualist, “pull yourself up by your bootstraps” beliefs very closely related to Reagan-era supply-side, or trickle-down, economics. The end result was, at best, ironic. By the 1980s, African Americans had in fact gained political authority in cities, winning mayor’s races in America’s major urban centers, from Los Angeles to Chicago to New York. But the ability of that authority to bring positive social and economic results for black individuals, families, and communities was curtailed by a failing industrial base, a radical expansion and harshening of the penal system, and a rollback of inclusionary racial rules.²⁴

OUR FRAMEWORK AND ITS PREDECESSORS

Our rules framework attempts to be broad and comprehensive. Our focus is on identifying the rules and structures that perpetuate unequal racial outcomes in an attempt to identify solutions.²⁵

We build on an extensive, related literature. Perhaps most closely related is John Powell’s concept of “racialization,” which he defines as “set of practices, cultural norms, and institutional arrangements that are both reflective of and simultaneously help to create and maintain racialized outcomes in society.”^{x26} We also draw on many other scholars who advance historical and sociological explanations of persistent and durable racial inequality.²⁷ Of particular note is the work of William Darity, Jr., who counters traditional economics’ focus on individual behavior with “stratification economics,” which highlights the “structural and intentional processes generating hierarchy and, correspondingly, income and wealth inequality between ascriptively distinguished groups.”²⁸ Institutions and rules are thus designed to protect privilege, Darity argues, and the deficit narrative utilized in American politics is itself is a tool to defend and perpetuate material benefits.

Our framework is slightly different, in that it does not attempt to identify the motive behind racial rules. We do not argue that racial inequality is simply a byproduct

ix This rollback was in large part the result of a series of Supreme Court decisions—from *Bakke* to *Bollinger* to *Ricci* to *Parents Involved* to *Shelby County*. See Education section of report.

x Powell explains that “Because racialization is a historical and cultural set of processes, it does not have one meaning. Instead, it is a set of conditions and norms that are constantly evolving and interacting with the socio-political environment, varying from location to location, as well as throughout different periods in history.” This conflicts with how we traditionally think of race and racism, as a “well defined and a limited set of discrete practices that remain constant over time, in spite of social changes.”

of efforts to secure material privilege or that material privilege is simply a byproduct of racism. But Darity and others have greatly influenced our thinking.

We also draw on a number of scholars who describe the cross-cutting dimensions of inequality based on class, gender, sexuality, and geography as they play out within black communities.²⁹ And we owe a debt to those who focus on structural transformations of the economy and the rise of concentrated urban poverty, including most prominently William Julius Wilson. Wilson highlights the importance of class in African-American life chances, and links deindustrialization and the disappearance of good-paying manufacturing jobs, racial residential segregation, and the pushback against fully enforced civil rights laws combined to create racialized urban poverty at the same time as mass incarceration accelerated.³⁰ Loïc Wacquant describes the current U.S. criminal justice system as one of our nation’s four “peculiar” race-producing institutions, one of “forced confinement” built on years of racial subjugation and exclusion.^{xi31} A number of others have illustrated how our vast racial inequities—along with the specific penal system changes of the last three decades—have only deepened and reinforced the systemic social and economic exclusions experienced by black Americans, their families, and their communities. As Frederick Harris, Valeria Sinclair-Chapman, and Brian McKenzie show, these forces undercut the rise of black political power in the post-civil rights period.³²

And finally, we draw on the work of those who show how geography and place are significant determinants of racial inequality.³³ To paraphrase sociologist Patrick Sharkey, African Americans are “stuck in place” in high-poverty and racially segregated neighborhoods, which constrain their life chances and outcomes much more than individual effort.³⁴ And it is a combination of racial rules we describe in this report that creates and perpetuates the conditions of “stuckness” for far too many black Americans.

By focusing on black Americans we do not suggest that racial rules do not touch the lives of other racial and ethnic groups in the United States. But racial rules are often particular to specific racial groups, and too often we refer to “people of color” as a monolithic group, without disaggregating data and understanding how racial rules impact groups under that umbrella

xi Wacquant defines four ‘peculiar institutions’ that “have operated to define, confine, and control African-Americans in the history of the United States.” Those four institutions are: chattel slavery; Jim Crow; the northern “ghetto” that corresponded with the Great Migration that ended in the 1960s; and the modern penal system.



in distinct ways. For example, the federal government relegated Indigenous Americans to reservations and many Native children were forced into residential, segregated schools where they endured cultural genocide and physical, emotional, and sexual abuse. The Chinese Exclusion Act of 1882 prohibited only Chinese laborers from immigrating to the United States. Jim Crow laws targeted the comprehensive social and economic segregation of African Americans specifically. Our current failure to implement comprehensive immigration reform has left millions of families—mostly of color—without access to fair-paying jobs, proper health care, quality education, or legal recourse in the face of human rights violations. This report is just the beginning of the Roosevelt Institute’s inquiry into how the racial rules of our economy and society have a unique impact on individuals across race, gender, and ethnicity.

Rewriting the Rules of Racial Inclusion: Goals and Objectives

Examining the intersection of racial rules and economic and social outcomes entails a peculiar and specific set of challenges. Certainly, the literature around race and inequality is vast. However, at this juncture in American political life, we believe this effort can have particular value.

First, we hope to add to the theoretical conversation about racial disparities by challenging several different and still predominant schools of thought. By cataloguing and showing the effects of the racial rules, we refute mainstream economic arguments. Racial exclusion and discrimination has yet to compete itself away. This is (yet another) set of reasons that perfect markets and perfect rationality assumptions are insufficient to explain the outcomes we see around us.^{xii} We also argue that class-based economic policies alone will not improve racial inequities and that changing course requires a comprehensive agenda of racially targeted solutions. Our rules-based approach is an emergent one, bridging sectorial and historical analyses and showing the ways in which different kinds of rules reinforce each other over time, and can have deeply problematic effects.

Second, we illustrate the cyclical and complex system of racial rules that lead to unequal opportunities and

^{xii} Bargaining power, for instance, determines who benefits the most from labor negotiations, and that power is affected by the strength of unions, the legal and economic environment, and how globalization is structured. In markets with imperfect competition, firms have their own form of market power: the power to set prices. Likewise, the political power of various groups determines their ability to have the rules of the market written and enforced in their favor.

These rules are the products of distinct historical eras. American history has primarily been a story of racial exclusion, beginning with the institution of slavery.

outcomes for black Americans. We aim to enumerate many of the rules that drive and contribute to economic inequality by race and by gender across a range of dimensions of life. The number of rules that drive this inequality are vast, and their effects are compounding. Their sheer range and scope is impossible to document in a single report, but we strive to highlight the most egregious in order to demonstrate the ways in which they intersect and reinforce each other.

Third, cataloging the rules will make it clear that racial inequality, like economic inequality, is a choice. We can and must rewrite our current exclusionary and discriminatory rules—as we have twice before—to create a more inclusive economy and a more racially just society. Throughout this report, we make the case for a comprehensive policy overhaul, one with targeted solutions that will have universal benefits. The demands of racial justice advocates have recently pushed Democratic presidential candidates to acknowledge the impact of racial inequality and propose certain policy solutions for addressing it. However, progressive candidates and policymakers continue to lack a deep analysis of why we must tackle economic inequality and racial inequality simultaneously, and have yet to put forth adequately comprehensive proposals for doing so. This report, while not a deep policy agenda, will set forth a framework for the kinds of policies we want to see. We know that without proposals that policymakers and advocates can fight about and fight for, we will not see real change.

Finally, we hope this report will serve as a bridge between academics whose work has identified the racial rules driving and contributing to racial inequality, advocates who have called attention to the deeply unequal and unjust lived experiences of black Americans, and those in a position to rewrite the rules.

Income

Black workers today face a dual crisis of high unemployment rates and low wages, which intersect and reinforce one another.¹ The black American unemployment rate is twice that of white workers at nearly every level of education, and as of 2011 black households earn only 59 cents for every dollar of white median household income.² This gap has expanded since 1967, when it was \$19,000; as of 2014 the gap was approximately \$25,000.³

In this section, we examine some of the racial rules that shape labor market outcomes, describe how they have changed over time, and note both those that have served to close the earnings gap and those that seem to increase the disparity. We argue that the key drivers of current earnings disparities are laissez-faire rules, from “colorblind” approaches to employment policy to the rise of neoliberal economic regulation. By ignoring the racialized institutions undergirding our economy, these rules implicitly exclude black Americans from full participation. Specifically, we examine:

- » The lack of inclusive rules designed to curb bias and correct for historical exclusions
- » A failure to address the transitioning structures of the economy
- » A shift away from full-employment and fair wage policies

Social scientists have offered a variety of alternative explanations for the persistence of the racial wage gap. Most often researchers attribute differences in compensation to human capital differentials in education, skills, personal attributes, and other factors. Yet while unequal educational outcomes and unequal access to educational opportunities certainly account for some share of the wage differential, they do not fully explain the gap.⁴ In terms of wages, even black college graduates fare little better than whites with two-year associate degrees and face unemployment rates similar to white high school dropouts.⁵

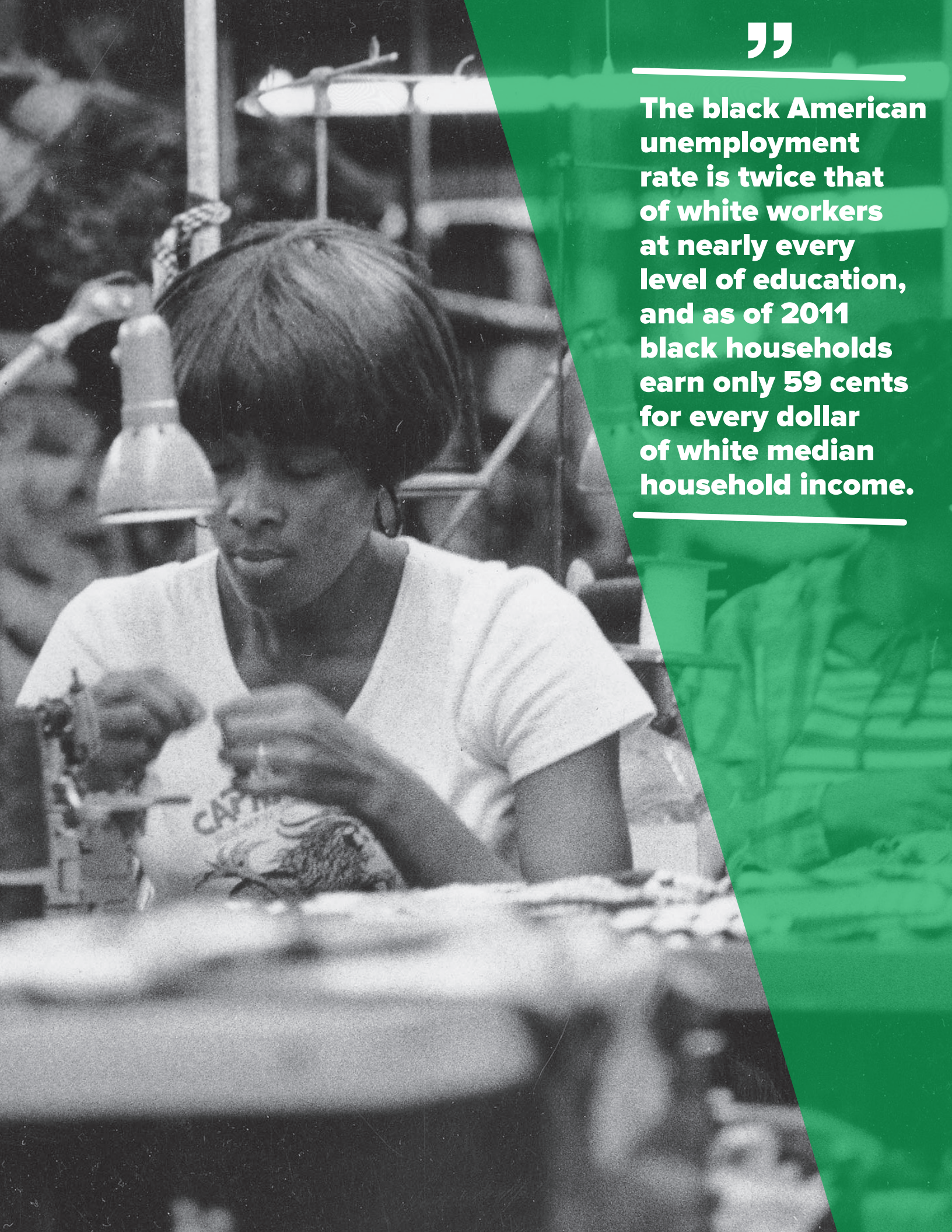
A second common explanation for the racial gap in household income is family structure. For decades, black mothers—particularly black single mothers—have been blamed for high rates of poverty, for poor economic outcomes among black families, and for being a drag on the economy. Moreover, they have been used as scapegoats for seemingly colorblind cuts to social and economic programs that disproportionately hurt people

of color. But the focus on female-headed households ignores how economic forces—along with other dynamics such as the increasing incarceration of men of color, the hollowing out of the middle class, and decreasing investments in communities of color—have shaped family structure rather than the other way around.¹ It also ignores the stark discrimination that black women face in the labor market, which contributes to yawning gaps in wealth and income among black female-headed households. Even aside from these other factors, the prevalence of black single mothers cannot explain away the household income gap given that the rate of female-headed households has risen at the same pace in white and black communities.⁶ For the purposes of this paper, however, we focus on individual earnings as opposed to household income.

Some share of the earnings income gap is, of course, attributable to individual bias—for example, an employer channeling a new hire to a specific role based on stereotypes. We will explore the role of discrimination and the range of field studies and experiments that have shown us the effects of labor market bias.

However, we argue that a complex web of variables—education, gender discrimination, and racial bias, to name a few—interact with and are shaped by a historical and ongoing set of rules that drive unequal outcomes. The contemporary post-industrial economy is highly stratified, with the preponderance of job growth in low-wage retail and food service sectors, continued job loss in the public sector (especially state and local), and a significant lack of diversity in the highest-paying sectors (technology, finance and banking). We also see worsening educational disparities by race.

¹ As Linda Harris of the Center for Law and Social Policy has written, “The over criminalization and disproportionate incarceration of young black men early in their adult life result in a sizable segment of the young male population in low-income, minority communities being marginalized in the labor force, with little prospect of earning a family-sustaining wage. This ultimately poses considerable barriers to successful family formation and positive civic engagement.”



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The black American unemployment rate is twice that of white workers at nearly every level of education, and as of 2011 black households earn only 59 cents for every dollar of white median household income.

Employment and Income Disparities and Inequities

There is no clear strategy for addressing any of these trends. Thanks to the hard work of many strategists and organizers, we have a robust minimum wage movement, and we have a move to diversify the labor movement, built on a history of very active black participation (per capita) in unions. Both of these efforts are very important, but they are not enough to overcome the wage and job disparities that black Americans face.

Today's fissured workplace and the rise of the caring economy and service economy are—in the absence of a clear plan designed to lift workers of color—very unlikely to produce better outcomes, and in fact are likely to perpetuate the cycle of racial inequality in today's labor markets.

Yet history teaches us that this cycle is neither intractable nor inevitable. In the mid-20th century, we saw an improvement in the racial wage gap. Through mobilization and civil disobedience, thousands of ordinary people in the civil rights movement challenged explicit racial inequality in American economic, social, and political institutions and rewrote the rules of the economy to make them racially inclusive, ushering in black participation in both the public and private sectors. Local, state, and national political decisions and policies—changes in the rules—that led to better labor market outcomes often focused on explicit racial inclusion: affirmative action policies that increased black representation in public sector and union jobs, enforcement of anti-discrimination policy, and desegregation of education, to name a few.

Our stalled progress on this front has been a choice. Only by recalibrating employment and wage growth strategies for our changed and changing economy—with a specific focus on black American workers and other workers of color—will we be able to make progress again, for the good of individuals as well as for the greater economy.

By some measures, the income gap between rich and poor is the highest it has been in the U.S. since 1928. As with the wealth gap and so many other economic inequities, this disparity is not colorblind. At every level of education, earnings for black men and women lag behind those of their similarly skilled white counterparts (see below chart).

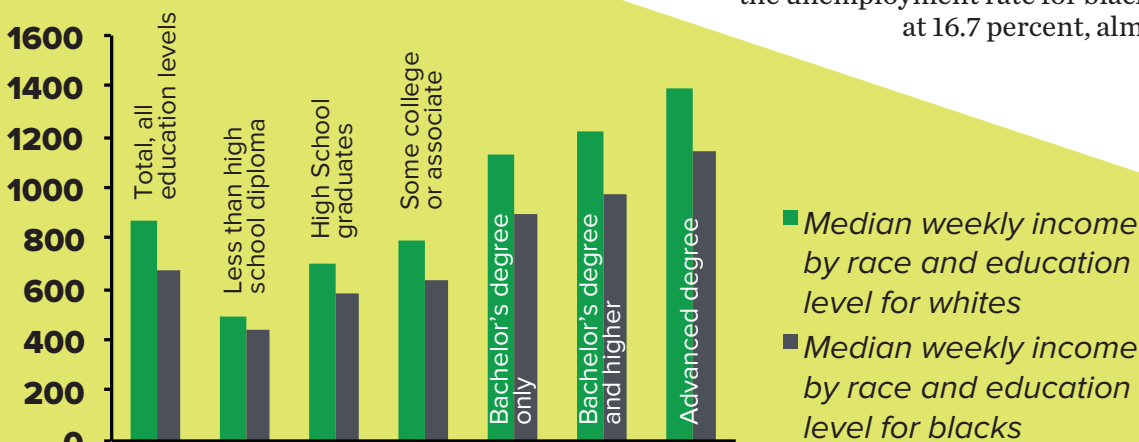
In 2008, among workers with a bachelor's degree or a high school degree, black men earned 74 percent of what white men earned, and among workers with less than a high school degree, black men earned 61 percent of what white men earned.⁷ For younger black men, ages 25–34, the pay gap often widens at higher levels of education.⁸ The pay gap for black women has also not budged in recent decades.⁹

The burden of unequal pay falls especially hard on women of color. While white women earn an average of 78 percent of what white men earn, black and Latina women earn an average of just 63 percent and 54 percent of white male wages, respectively.¹⁰ Women of color are often segregated into jobs that traditionally pay low wages, do not guarantee reliable schedules, and do not offer benefits such as paid sick leave or paid family leave, making many women choose between a paycheck or their family's health.^{11 12}

Black workers, especially black women, are disproportionately represented among minimum wage earners. While the vast majority (76.3 percent) of the nearly 3 million hourly workers earning minimum wage or below are white, 3.5 percent of black men and 5 percent of black women earn at this level, compared to only 2.8 percent of white men.¹³

Occupational segregation works in tandem with high unemployment to drive unequal labor outcomes. For the last 30 years, the unemployment rate for black Americans has averaged about twice the unemployment rate for white Americans. During the Great Recession, the unemployment rate for black Americans peaked at 16.7 percent, almost twice the peak

MEDIAN WEEKLY INCOME BY RACE AND EDUCATION LEVEL, 2014



9.3 percent unemployment rate for white Americans. Because black Americans—particularly black women—represent a disproportionate share of public sector workers, post- Great Recession public sector cuts were disproportionately devastating for women of color. Between 2007 and 2011, state and local governments shed about 765,000 jobs; of those losses, 70 percent were jobs held by women and 20 percent were held by black Americans.¹⁴ Research from the University of Washington showed that in the years after the recession, the black-white public sector employment gap for women increased almost six-fold, to 5.5 percentage points in 2011 from less than a percentage point in 2008.¹⁵ By 2013, public sector employment rates for black men had returned to pre-recession levels, while rates for black women remained even lower than in 2008.¹⁶

How did we get here? To understand contemporary racial disparities in the labor market, we must turn back to history in order to unearth the racial rules of our economy that have disadvantaged black workers from the very beginning.

The Racial Rules of Income

PRE-CIVIL RIGHTS EXCLUSIONARY RULES

Slavery and the Deprivation of Earnings

From the earliest days of our nation, notions of “race” and racial groups were inextricably tied to the rules of our economy.ⁱⁱ Except for the brief Reconstruction period (1865–1877), the racial rules of the economy from 1619 to 1965 were such that “racial and labor regimes were mutually dependent,” resulting in the exploitation of black workers, exclusion of blacks from political and social institutions, and opportunity hoarding in the labor market by free whites, who were defined in relation to slaves and so-called “free blacks.”¹⁷ This racial apartheid system, rooted in the American South, would shape labor market outcomes and racial income gaps throughout the 20th century and well into the 21st.

Relying on the exploitation of black indentured and slave labor, the American economy was de facto racially inclusive, but in the most pernicious way. In many ways, slavery was a “full employment” economy, although one defined by “unfreedom” for black slaves and their children.¹⁸ For a brief time following the Civil War, in the wake of the 13th Amendment’s abolition of slavery, blacks saw a short period of freedom and a shift toward racial equality. But, as early as 1865 with the Southern states’ passage of new racially exclusive rules known

ii “Race” as the defining ascriptive characteristic of a social, political and economic hierarchy of inequality did not take root immediately, but developed and evolved over time through rules, practices, and an ideology of white supremacy, as historian Barbara Fields reminds us.

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The pay gap for black women has also not budged in recent decades, and today black women earn a mere 63 percent of what their white male counterparts earn.

as “Black Codes,” what emerged quickly after the post-Emancipation period was “slavery by another name,” whereby the Southern economy relied on the exploitation of sharecropper labor.¹⁹ These new racially explicit rules around vagrancy and contract labor criminalized blacks’ physical movements and lack of employment.

Implicit Exclusion from New Deal Protections

Growing economic inequality at the turn of the 20th century would lead to the financial and economic collapse of the Great Depression, providing an opportunity to rewrite the rules of the economy. Those new rules gave birth to New Deal social reforms, creating our uniquely “exceptional” American welfare state.²⁰ In addition, the post-war “labor accord” created a private welfare state of employer-provided health insurance, retirement security, and paid vacations for a newly emergent middle class.

But the New Deal, which would generate labor stability, rising productivity, and declining inequality for white Americans over the next 40 years, perpetuated black exclusions.²¹ As an entire field of social science scholarship explains, the New Deal institutionalized race and gender exclusions in labor market and social policy rules, with long-term consequences for racial equity and wealth-building.^{iii 22}

Prima facie race-neutral rules excluded domestic and agricultural workers from New Deal provisions. In reality, these exclusions, a political compromise with Southern Democrats, were far from colorblind.^{iv} In 1930, the legacy of slavery had perpetuated employment channels such that 41 percent of black workers were

iii For example, Robert Lieberman shows how “race and class were mutually constitutive in the making and growth of the American welfare state,” while Suzanne Mettler argues that the gendered nature of New Deal social welfare policy created “divided and unequal citizens” by race and gender throughout the polity. (See Lieberman, 1998.)

iv Southern political elites’ incentives to create and maintain these unequal racial rules of the economy explain the compromise between the Southern and Northern wings of the Democratic Party that led to these exclusions. (See Farhang, Sean, and Ira Katznelson, 2005.)

employed in agriculture (vs. 26 percent of white men) and 63 percent of black women worked as domestics (vs. 20 percent of white women).²³

The New Deal's exclusionary rules were replicated in the 1935 Social Security Act (SSA) and National Labor Relations Act (NLRA)—the labor movement's "Magna Carta," which enabled workers to organize and bargain collectively into unions—along with the Fair Labor Standards Act (FLSA) of 1938, which implemented a host of labor protections, including the 40-hour work-week, a national minimum wage, and prohibition of most child labor.^v While these rules vastly expanded labor protections for white workers, they—and the labor rules that would follow in the next four decades—continued the New Deal's legacy of excluding blacks by excluding agricultural and domestic workers. As a result, racial exclusion was built into the foundation for the white middle class that emerged in the 1940s and 1950s.^{vi} Even today, domestic workers—nannies, housekeepers, and home health aides, who are disproportionately women of color—remain overwhelmingly unprotected thanks to exclusions in the NLRA and many other labor rules.^{vii 24}

THE CIVIL RIGHTS ERA: EXPLICIT INCLUSION (1955–1980)

The decades following the Civil Rights Act saw a steep decline in de jure labor market discrimination and led to a significant decrease in the wage gap between white and black men in the late 1960s and 1970s. For example, the disparity in average weekly earnings fell to 25 percent in 1980, down from 40 percent in 1960 for men born in 18 previously segregated southern states.²⁵ While the Civil Rights Act removed many rules that specifically excluded or segregated black Americans, an additional set of statutes promoted explicitly racialized rules of inclusion. The range of policies and programs promoted in the post-Civil Rights Act era emphasized two key paths to the middle class for black Americans: unionized manufacturing jobs and public sector employment.^{viii 26}

v The original Social Security legislation, for instance, proposed coverage of unemployment benefits for all workers, but was ultimately changed to exclude domestic and agricultural workers, which were widely known to be predominantly black occupations, particularly in the South.

vi The 1933 National Industrial Recovery Act (NIRA) fixed minimum wages and maximum hours across industries. However, the National Recovery Administration (NRA) charged with deciding and implementing the regulatory codes, put in place occupational and geographic classifications that allowed employers to pay lower wages to black workers.

vii Homecare workers are not protected by the National Labor Relations Act. Domestic workers were not only excluded from NLRA protections. They were also excluded from Title VII of the Civil Rights Act of 1964, the 1971 Occupational Safety and Health Act, the 1993 Family and Medical Leave Act, the 1990 Americans with Disabilities Act, and the Age Discrimination in Employment Act.

viii This included advocating for policies focused on increasing human capital through education and greater skill development, and the creation of the legal tool in Title VII of the 1964 Civil Rights Act to eliminate racism in employment and in labor unions. Enforced by the newly created Equal Employment Opportunity Commission (EEOC), notably separate from the National Labor Relations Board and the Department of Labor, advocates assumed that African Americans and other racially excluded workers would be finally integrated into unions and manufacturing industries. Op. Cit. Frymer, Paul.

Affirmative Action and Unionization

New policies focused on access to education but also on direct intervention to promote the inclusion of black workers in public and private enterprises. Title VII of the 1964 Civil Rights Act provided legal tools to combat racism in employment and in labor unions. Enforced by the newly created Equal Employment Opportunity Commission (EEOC), notably separate from the National Labor Relations Board and the Department of Labor, the Civil Rights Act was followed by an increase in private sector employment.²⁷ Numerous studies of Fortune 500 firms during this period prove that affirmative action worked in both hiring and promotion.²⁸

The existing industrial economy had transformed the cities of the Northeast and Midwest into bases for industrial capitalism during World War II and the post-war era and catalyzed the second Great Migration of Southern black Americans to northern industrial cities.²⁹ Unionization of transport and manufacturing industries, in many cases led by black workers, produced stable employment, decent working conditions, greater racial equality in the workplace, and a path to the middle class for many black Americans.³⁰ While this era provided welcome inclusion for some, it did not deliver progress for all, as black Americans were never fully integrated into northern cities in the years after the Great Migration.³¹

The "tragic irony of postwar African American history," writes Josh Sides, is that the "decline in industrial employment began just as the civil rights movement was finally making headway in America's largest industries."³² The aim was to reduce racial and gender exclusion by focusing on changing the composition of employment rather than its underlying structure. The economic and political developments of the civil rights era took for granted the permanence of our post-war, middle-class industrial economy. That is, most policymakers and activists assumed that an industrial America was here to stay and would continue providing good jobs for working and middle-class Americans.³³ According to Sides, despite the good intentions of these approaches, "the great tragedy of the War on Poverty is not that it failed to eradicate poverty and unemployment among the black population but that it failed to recognize the new, as well as the old, causes."³⁴ The nation's nascent era of racial inclusion collided with dramatic changes in the economic rules: deindustrialization, the rise of the service-sector economy, the fissuring of the workplace, and the rise of neoliberal economic policies all led to increasing numbers of low-wage jobs with greater insecurity, volatility, and reduced benefits and workplace standards.³⁵

Public Sector Employment

Another path to economic security and middle-class life for many black Americans (and women of all races) emerged in the 1950s and exploded in the

1960s and 1970s: the expansion of public sector employment—and the benefits from public sector unions specifically—as blacks created an ethnic niche in local, state, and federal employment.³⁶

Executive Order 11246, signed by Lyndon Johnson, extended inclusion to the public sector by banning discrimination in federal government and among federal contractors and by requiring affirmative action policies. Government, in its role as a direct employer, has the ability to hire directly, advance inclusive racial and gender goals such as affirmative action more effectively than the private sector, and remain more accountable to pressure from constituents, especially insofar as voters can replace their “bosses” every two or four years. Further, between 1965 and 1980, the Office of Federal Contract Compliance successfully drove a large increase in black employment by requiring affirmative action policies.³⁷ In one example, from 1969 to 1980, the percentage of federal procurement dollars going to minority-owned business rose from 0.03 percent to 3.20 percent.³⁸

As a causal mechanism and pathway for black economic mobility and security, public sector employment was arguably as important in the late 20th century as manufacturing was from the 1940s through the 1970s.^{ix 41} The election of greater numbers of black Americans to local, state, and national office from the 1970s to the present did have a positive effect on black employment outcomes, and the public sector’s role as the sole remaining “ethnic niche” for upwardly mobile black workers is even more pronounced in comparison to the ravaging effects of deindustrialization on black communities that Wilson and others have long identified.⁴² Yet the rise of neoliberal discourses and policies of privatization of public goods and services, as well as conservative attacks on public sector collective bargaining rights, has put this ethnic niche at risk.

THE CURRENT RULES: IMPLICIT EXCLUSION (1980–PRESENT)

We argue that by assuming away the rules and institutions that structure markets and shape opportunities, the neoliberal policies of the last 35 years have reinforced historical exclusions and continued individual bias. The move toward “colorblind” policies that fail to actively promote racial inclusion has furthered implicit exclusion from labor markets, perpetuating biased hiring, channeling, and more. The changing nature of the economy and *laissez-faire*

ix Focusing on the empirical case of Chicago, the exemplary city analyzed in accounts of the effects of the rise and fall of manufacturing on blacks, Parks argues that “government, more so than manufacturing, served as black Chicagoans’ most persistent and disproportionate sector of employment throughout the second half of the twentieth century—a singularly African American employment trend”. (See Parks, 2010.)

The changes driven by the civil rights movement ushered in the election of black elected officials at all levels. Black communities in large metropolitan areas were even able to elect black mayors (Atlanta, Cleveland, Gary, Chicago, Los Angeles, New York, Detroit, Newark, etc.). Racial democracy, as exemplified by black political empowerment, did create a new and expanded black middle class that still occupies

an “ethnic niche” in public employment today, albeit one that is quite precarious.³⁹ Yet we now know, as Adolph Reed and J. Phillip Thompson have shown in their work on the structural constraints and policy consequences of black urban

responses have destabilized the pathways to economic security first extended to black Americans in the middle of the 20th century. The results have devastated the white middle class and halted much of the limited progress of black Americans. We will explore these trends in greater detail below.

regimes, black working class and poor populations often saw little benefit from this triumph of black electoral power.⁴⁰

“Colorblind” Policies When Racial Bias Persists

Federal, state, and local governments, often assuming that personal bias no longer operates in labor markets, have haltingly enforced and at times gutted the anti-discrimination frameworks and affirmative action programs first promoted during the civil rights era. Public rhetoric suggests that because we have ended *de jure* segregation, colorblind policies now provide the most opportunity and justice for all.

In truth, our workplaces are still highly segregated by race, ethnicity, and gender.⁴³ What we know from social science research is that we made some progress for about 15 years in terms of desegregation in the workplace by race and gender. However, after 1980, this desegregation progress plateaued, and in many firms and occupations re-segregation has occurred.⁴⁴ Racial and gender occupational segregation at the workplace is particularly problematic because it is a causal factor in systemic and persistent racial and gender wage disparities.⁴⁵

Many workers also face significant barriers even gaining access to the labor market. One of the most significant problems of the 21st century labor market is the incredibly high incarceration rate in the United States, which we discuss at length in the criminal justice section. In recent decades, a spate of field studies comparing similarly skilled job candidates of different races and ethnicities has consistently identified barriers for non-white candidates. Researchers have argued that hiring in low-wage service work may, in

fact, provide more room for discrimination and job channeling than hiring for manufacturing work. This is because positions that require “soft skills” like customer service require a more subjective assessment of a job applicant’s abilities than “hard skill” positions. Thus the transformation of the U.S. economy has facilitated discrimination and created barriers for non-white American workers.⁴⁶

In a 2009 study, sociologists Devah Pager, Bruce Western, and Bart Bonikowski identify three distinct ways in which contemporary racial discrimination creates barriers to job market success for non-white workers: categorical exclusion, shifting standards, and job channeling.

- » Categorical exclusion refers to circumstances in which job applicants are rejected without consideration of their qualifications simply due to race, ethnicity, or gender.⁴⁷ It is exemplified by field experiments that show examples of black job candidates being told positions had been filled while white candidates were offered opportunities to present resumes or to interview. A similar phenomenon is displayed in a much-cited experiment in which researchers submitted thousands of otherwise identical resumes that had been randomly assigned “white-sounding” names (like “Brendan”) and “black-sounding” names (like “Jamal”). The latter elicited 50 percent fewer interview callbacks.^{x 48}
- » Shifting standards refers to a consistent trend of employers willingly overlooking missing qualifications in white job applicants and weighing qualifications differently depending on the applicants’ race. In their field experiments, Pager et al. found “evidence that the same deficiencies of skill or experience appear to be more disqualifying for the minority job seekers.”⁴⁹ In fact, Pager’s previous research found that black applicants with no criminal record were offered jobs at a rate as low as white applicants who had criminal records.⁵⁰
- » Channeling, which has historic roots in slavery and the Jim Crow era, refers to ways in which bias affects employers’ decisions to place workers in certain positions.^{xi} Pager’s research showed that employers were more likely to channel white workers “up” into more skilled or more client-facing positions while black workers, by contrast, were more likely to be channeled down into back-office or assistant-level positions.

Failure to Respond to the Transitioning Economy

While we do not aim to identify all factors driving the

x Similar results were found in audit studies conducted in the 1990s, which paired white and black men and were trained to represent themselves in similar ways, and handed out equivalent credentials and correspondence tests. Young white men (ages 19-25) were three times more likely to get jobs as were young black men. See Mincy (1993). These and similar studies are not “double blind” and testers may thus act in ways that affect the results. The data generated by correspondence testing do not measure actual hiring decisions but only interview callbacks

current earnings gap, we identify key sets of rules that have curbed progress. The effects of globalization and structural changes in the economy in our post-industrial transition have adversely affected workers, especially workers of color, over last the 40 years. Deindustrialization has coincided with cuts in government regulation, services, and public investment. While the impetus of anti-government activism is debatable, the consequences for black workers have been clear. Specifically, the decline of unionization rates and—more recently—cuts in public sector employment have eroded the two primary channels to middle-class incomes for black workers.

Changes in the structure of our economy since the mid-1970s ushered in deindustrialization and a shift toward an economy based on service, information, and technology.⁵¹ This has led to a devastating economic decline in many of the old Rust Belt cities due to the loss of hundreds of thousands of manufacturing jobs, which has in turn led directly to the de-unionization of the workforce and increased unemployment. The effects of these changes have been most pronounced in black communities where work has “disappeared.”⁵² By 1979, nearly one-quarter of black workers were in manufacturing; by 2007, that share had fallen to 9.8 percent.⁵³ Similarly, black unionization rates fell from 31.7 percent in 1983 to 15.7 percent in 2007.⁵⁴ The ladders to the middle class eroded before many black families were able to secure a place there.

Meanwhile, in our transition to a service economy, we have failed to develop new rules or structures that would build the middle class. In the growing health and home care industry, the legacy of New Deal discrimination is perpetuated through low wages and limited protections. As we have detailed earlier, occupations predominantly held by black Americans and women in the last century were exempt from labor laws and social protections. Due to the legacy of explicitly racialized rules, these same jobs remain among the most underpaid and under-protected and are still disproportionately filled by people of color. Similarly, the emerging fissured economy has proven challenging to unionization efforts in the fast-growing retail and food service sectors. Walmart, the nation’s largest private employer and the largest employer of blacks, Latinos, and women, is notorious for anti-union efforts in its stores and subcontracted warehouses.⁵⁵ And while the emerging Fight for 15 movement targeting fast food corporations and their franchisees has won many legislative victories to raise the wage floor for low-wage workers in cities around the country, successfully unionizing the thousands of fast food franchisees has proven difficult.

The Rise of Trickle-Down Employment and Macroeconomic Policies

Deindustrialization was not only the result of apolitical economic processes such as “capital flight” and increased global competition. Local, state, and

national political decisions and policies—changes in the rules—were also consequential. The hollowing out of the post-war industrial economy also coincided with increasing political polarization and a rightward shift in American politics. Efforts to retrench and roll back the racially inclusive economic rules won in the civil rights movement began in the 1970s and gained momentum with the election of Ronald Reagan in 1980.⁵⁸ The ideological and political shift to the right in all branches of government chipped away at the effectiveness and legitimacy of these rules.⁵⁹

A broad web of rule changes fueled by trickle-down ideology has increased the power and privilege of capital holders and CEOs at the expense of median- and low-wage workers, thus disproportionately affecting black Americans. Changes in financial regulation, corporate governance, tax policy, and public investment have fueled the famed rise of the 1 percent.

An example is Federal Reserve monetary policy. Since the early 1980s, the Federal Reserve has focused on using monetary policy to keep inflation low at the expense of pursuing full employment. This seemingly technocratic policy is in fact a political choice to prioritize the interests of financial asset holders over workers. Indeed, estimates show that rising unemployment has a disproportionate impact on families in the 20th percentile of the income distribution (disproportionately minority households), who see incomes fall 2.2 percent for each percentage increase in the unemployment rate. In comparison, median-income families see incomes fall by 1.4 percent and families in the 95th percentile see incomes fall just 0.7 percent. Moreover, workers of color face larger increases in unemployment in response to contractionary monetary policy.⁶⁰

Public Sector Lay-Offs

With the decline of the manufacturing sector, the public sector has become the most significant source of good jobs for black Americans, particularly black women; 21.2 percent of all black workers and 23.6 percent of black women were public employees between 2008 and

Since 1968, the value of the federal minimum wage has been allowed to erode from a real value of about \$8.54 an hour to \$7.25 an hour.⁵⁶ Given current U.S. GDP, cross-country comparison would predict a U.S. minimum closer to \$12.⁵⁷ The erosion of value not only hurts minimum-wage workers but also has spillover effects for all low-wage workers. While black workers are disproportionately represented among minimum- and low-wage workers, the vast majority of these workers are white. Efforts to correct broken minimum wage rules are just one example of policy fixes that would lift black and white workers together.



Not only were black workers disproportionately impacted simply due to higher rates of public sector employment, but, in the wake of these layoffs, unemployment rates for black public sector workers increased significantly more than for white public sector workers.

2010, compared to 16.3 percent of non-black workers.⁶¹ Significantly, these have been good-paying jobs with a smaller wage differential between black and white workers than any other sector and a higher median wage for black workers than in any other sector.⁶²

In the wake of the Great Recession and austerity measures, federal, state, and local governments laid off nearly 600,000 workers.^{xi} Not only were black workers disproportionately impacted simply due to higher rates of public sector employment, but, in the wake of these layoffs, unemployment rates for black public sector workers increased significantly more than for white public sector workers.⁶³

Conclusion

The brief survey of rules structuring black labor markets points to some positive direction for policymakers. It has been proven that policy has the power to greatly reduce income gaps and expand employment for black Americans. Inclusive rules that promoted unionization and full employment provided particular opportunity for black workers. Just as significantly, a combination of targeted investments in human capital, affirmative action, and rigorous anti-discrimination laws succeeded in boosting black wages and work.

xi Greenstone, Michael and Adam Looney. 2012. "A Record Decline in Government Jobs: Implications for the Economy and America's Workforce." Washington, DC: The Brookings Institution. Retrieved May 5, 2016 (<http://www.brookings.edu/blogs/jobs/posts/2012/08/03-jobs-greenstone-looney>).

Wealth

The racial rules of the economy—historically and today—have not only hampered black Americans’ earnings and employment opportunities but also have led to deep and persistent racial wealth gaps. Economists and policymakers have often looked to income disparities to explain these wealth gaps, ignoring how wealth (or lack thereof) shapes our country’s growing economic and racial inequities. But as economists Darrick Hamilton and William A. Darity and their colleagues have written, wealth itself may be “one of the main mechanisms for perpetuating racial economic inequality by facilitating a lock-step intergenerational transmission of socioeconomic status.”¹

In this section, we illustrate the contours of the United States’ vast racial wealth gap. We argue that the gap is the result of racial rules that have constrained asset-building opportunities for black Americans and non-whites more generally while simultaneously helping affluent white Americans accrue assets that are often passed down through generations.¹ The effects of de jure exclusion from wealth building have compounded overtime, limiting black American access to a key form of asset-building: intergenerational wealth transfers. Further, continued de facto practices of predatory lending and housing discrimination circumscribe opportunities to build wealth through homeownership.

Why does wealth matter? In many ways, it takes wealth to build wealth: to invest in homes, education, new businesses, and future generations, and to provide a buffer in times of economic strife. Current policy conversations about economic and racial inequality focus largely on closing gaps in education and income. However, without addressing wealth disparities—an issue at the root of so many other inequities—other policy prescriptions will fall flat.

In particular, this section focuses on the various rules limiting wealth accumulation—not only racially explicit historical rules such as slavery and Jim Crow, but also racially implicit rules that had the effect of severely curtailing black homeownership from the mid-20th century to the present. And it is a painful and ironic fact that just as credit markets were becoming more open

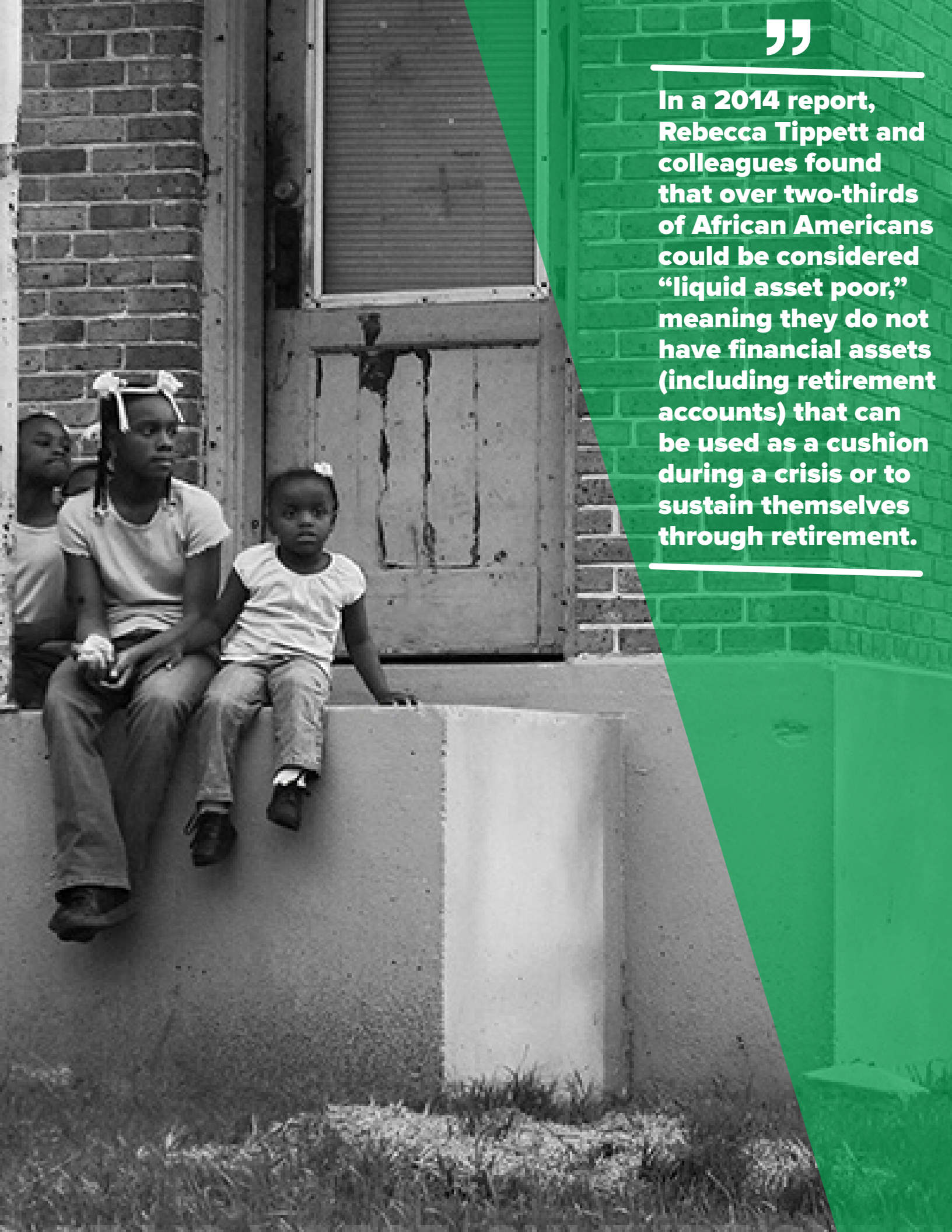
¹ Poor whites have also suffered socially and economically, especially since the 1980s as the top one percent has broken away and eroded the middle class.

to black Americans in the 1980s, markets themselves were increasingly securitized and risky for individuals, with devastating wealth consequences for black borrowers. This mirrors much of the other evidence catalogued throughout this paper: Just as economic opportunities were opening up for blacks in the 1970s and 1980s, the economy transformed in ways that benefitted wealth-holders at the very top and created disproportionate risk and loss for the rest of the population, with particularly devastating consequences for black Americans.

Wealth Disparities and Inequities

The gulf between the wealth of white and black Americans is vast. In 2013, Thomas Shapiro and colleagues found that between 1984 and 2009, the racial wealth gap between white and black families nearly tripled from \$85,000 to \$236,500.² In a 2014 report, Rebecca Tippet and colleagues found that over two-thirds of African Americans could be considered “liquid asset poor,” meaning they do not have financial assets (including retirement accounts) that can be used as a cushion during a crisis or to sustain themselves through retirement.³ Despite some gains in income relative to white earners between 1967 and 2013, the net worth for the typical black household in 2011 (\$6,446) was lower than in 1984 (\$7,150), while the net worth for white households was almost 11 percent higher.⁴

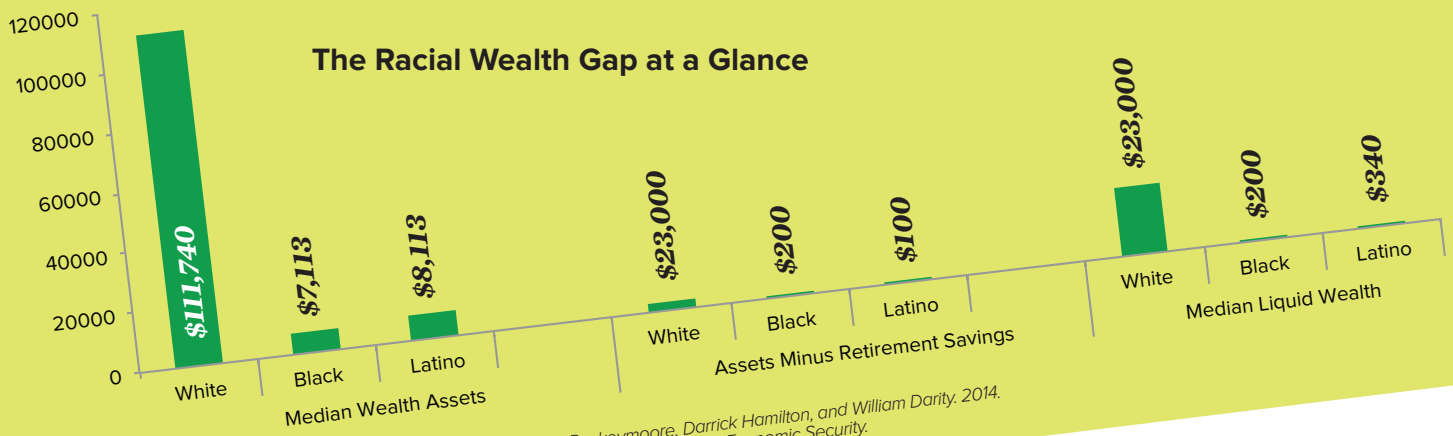
In 2011, the median white household had \$111,740 in wealth assets as opposed to \$7,113 for the median black household and \$8,113 for Latino households.⁵ That year, African Americans had a median liquid wealth of only \$200; whites had \$23,000 and Latinos had \$340. When retirement savings were subtracted they had a mere \$25, compared to \$3,000 for white families and \$100 for Latinos.⁶



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The Racial Wealth Gap at a Glance



Source: Tippet, Rebecca, Avis Jones-DeWeever, Maya Rockey Moore, Darrick Hamilton, and William Darity, 2014. "Beyond Broke: Why Closing the Racial Wealth Gap is a Priority for National Economic Security."

Black women are at a particular disadvantage. In 2007, they had a median wealth of \$100, compared to \$45,400 for white women.ⁱⁱ⁷ As we discussed in the previous section, black women face a significant wage gap and are more often segregated in low-paying jobs that lack critical benefits such as paid sick and paid family leave and retirement benefits, all of which make wealth-building exponentially more difficult. These challenges are compounded by the fact that black women are more likely than their white counterparts to be the sole income earners in their families and are more likely to run single-parent households. As of 2014, 66 percent of black children live in single-parent households,⁸ and in 2013, 46 percent of single mother-headed households lived at or below the poverty line.⁹ Black women are more likely to live below the poverty line, have less home equity than white women, and have fewer financial assets such as stocks.ⁱⁱⁱ¹⁰

Racial wealth disparities have only grown since the Great Recession. According to Pew Research Center, in 2013, white households held 13 times the median wealth of black households, compared with eight times in 2010.¹¹ As Hamilton, Darity, and their fellow researchers have shown, the recession had a disproportionate impact on black Americans, who lost 45 percent of their wealth, compared to white Americans, who lost 21 percent. Latinos fared even worse, losing 58 percent of their wealth. Between 2005 and 2009, the average white family lost 16 percent of its wealth, while the average black family lost over half (53 percent) of its wealth.¹² Before the recession, the typical black family had a little less than 10 cents for every dollar in wealth owned by the typical white family. After the recession, they had a mere 5 cents for every dollar in wealth owned by their white counterparts.

ii Latino women had a median net worth of \$120.

iii According to Katherine Richard, in 2007 the average equity of a white woman's home was \$74,000, while the average equity of a Latina and black woman's was \$35,000 and \$47,000, respectively. Forty-five percent of single white women own stock, but only 23 percent of single black women and 14 percent of single Latinas own such assets.

Given these vast disparities in wealth, the high rates of poverty among black communities is not surprising. As of 2014, 26 percent of black Americans lived in poverty, compared to 24 percent of Latinos and 10 percent of white Americans.¹³ Almost 40 percent of black families headed by a single mother live in poverty, and 37 percent of all black children live below the federal poverty line.¹⁴ As of 2014, 32 percent of black children live in a neighborhood of concentrated poverty.^{iv15} As we will discuss, living in poverty—especially for prolonged periods of time—impacts well-being on a multitude of levels, and only further reinforces socioeconomic and racial disparities.

The Racial Rules of Wealth Inequality

Economists have identified a number of overlapping factors as drivers of wealth inequality; key among them are the often interrelated factors of homeownership and intergenerational wealth transfers. One 2013 study by Shapiro and colleagues—which tracked the same group of families over a 25-year period ending in 2009—identified several factors that appear to strongly correlate with “policy and the configuration of both opportunities and barriers in workplaces, schools, and communities that reinforce deeply entrenched racial dynamics in how wealth is accumulated and that continue to permeate the most important spheres of everyday life.”¹⁶ Among the top factors they identified—years of homeownership, household income, unemployment, college education, and inheritance—years of homeownership was the most significant, accounting for 27 percent of the difference in wealth accumulation. Alternatively, Darity and Hamilton and co-authors argue that education, income, and employment disparities fail to explain racial wealth differences and that “by far, the largest factors explaining these differences are gifts and inheritances

iv An area of concentrated poverty is defined as a census tract with poverty rates of 30 percent or more.

from older generations: a down payment on a first home, a debt-free college education, or a bequest from a parent.”¹⁷

Scholars agree that the evidence counters a commonly pedaled “deficits” narrative that has long described the racial wealth gap as a product of individual failure. It is widely agreed that, because wealth inherently begets more and more wealth over time, America’s racial wealth disparities are rooted in historical forces and those forces shape current rules that further perpetuate the wealth gap.

PRE-CIVIL RIGHTS: EXPLICIT EXCLUSION (1877–1954)

Understanding the root causes of the racial wealth gap—and devising policies to effectively address it—requires an examination of the racial rules and historical barriers to wealth-building, such as slave codes, Jim Crow-era laws, and a range of racialized New Deal housing policies.

Building White Wealth on Black Labor

The impact of slavery on today’s racial wealth distribution cannot be overstated. The state-sanctioned deprivation of black wealth is only part of the picture of the racial wealth gap; equally important are the historic racial rules that enabled white Americans to amass wealth at the expense of black wealth, health, well-being, and dignity.

The restrictions of slavery unequivocally prevented slaves from having independent economic lives, which



The restrictions of slavery unequivocally prevented slaves from having independent economic lives, which also prevented them from building a base of economic assets upon which their families and future generations could ultimately build.

also prevented them from building a base of economic assets upon which their families and future generations could ultimately build.¹⁸ However, the history of American slavery is also a story of the creation of massive American (white) wealth on the backs of and at the expense of the enslaved. Various economists have calculated the amount of lost wages of enslaved black workers to be between 6.5 and 10 trillion in today’s dollars.¹⁹ The legacy of this expropriation of wages, which would have served as an asset-building platform that would have compounded over time, certainly explains some percentage of today’s racial wealth gap. More recently, economic historians have identified this legacy of expropriation as a foundation for much of the wealth accumulated by whites.

For centuries, academics dismissed arguments that slavery and the slave trade were key to building U.S. national wealth, but recent research has linked capital from the slave trade and from slave-produced goods to the formation of early U.S. industries. Cheap labor, in the form of slavery, fueled the cotton industry, the engine of economic growth in both the agricultural South and the manufacturing- and finance-dominated North.²⁰ By 1860, raw cotton comprised nearly 60 percent of U.S. exports and cotton manufacturing was the nation’s top industry when measured by share of capital and labor employed and net value of the product.²¹ This global cotton industry relied on a national infrastructure of banks who supplied credit, factories that produced goods for the South and its slaves, and merchants who linked the United States to the rest of the world. And this national infrastructure was embedded in a web of rules created by American political elites. Sven Beckert wrote about these interdependent relationships in his 2015 book *Empire of Cotton: A Global History*:

Slavery was just as present in the counting houses of Lower Manhattan, the spinning mills of New England, and the workshops of budding manufacturers in the Blackstone Valley in Massachusetts and Rhode Island as on the plantations in the Yazoo-Mississippi Delta. The slave economy of the Southern states had ripple effects throughout the entire economy, not just shaping but dominating it.²²

New England merchants built fortunes through the trade of slaves and slave-produced goods.²³ Case studies of individual fortunes provide concrete examples of Northern white capital accumulated through the slave trade and slave-grown cotton. Ronald Bailey provides a detailed account of how Moses Brown and James Brown, of Brown Bros. & Co., built their wealth and that of a key U.S. financial institution on investments in the slave trade and in the slave-holding South.²⁴ The capital accumulated by Lehman Brothers, Berkshire Hathaway, Aetna, Wachovia, and JPMorgan Chase can all be traced

to slave labor, as historians Sven Beckert and Seth Rockman show us.²⁵

During the transition from slavery to Emancipation and Reconstruction, and then soon after to “slavery by a different name” under the rise of Jim Crow, the Southern economy (undergirded by Northern finance) relied on the exploitation of black sharecropper labor and effectively prevented “free” blacks from acquiring wealth.²⁶ As discussed at length throughout this report, the racially exclusive and exhaustive rules of Jim Crow legislated de jure segregation in education and public accommodations, political exclusion and lack of standing as full citizens, and punitive measures such as vagrancy laws that, combined with contract labor rules and a debt peonage system in which workers never got out of debt much less had the ability to build wealth, criminalized blacks’ physical movements and lack of employment.



Various economists have calculated the amount of lost wages of enslaved black workers to be between 6.5 and 10 trillion in today’s dollars.

New Deal Housing Policies

As noted, New Deal policies reinforced racial and gender exclusions and enabled millions of white Americans to become middle class and amass wealth at the expense of black Americans.^v ²⁷ The racial rules around housing and homeownership, the primary asset-building policies of the 20th century, were especially big contributors to the racial wealth gap.

In 1933, President Roosevelt urged Congress to create the Home Owners Loan Corporation (HOLC) in an effort to reduce home foreclosures.³² While refinancing

v In his 2014 work *Fear Itself*, Katznelson makes a strong argument that the New Deal exclusions were a painful ethical compromise that kept the Southern Democrats in the party coalition and kept liberal democracy in power during a time of rising fascism and socialism globally. Robert Lieberman (1998) shows how “race and class were mutually constitutive in the making and growth of the American welfare state,” while Suzanne Mettler argues that the gendered nature of New Deal social welfare policy created “divided and unequal citizens” by race and gender throughout the polity.

thousands of mortgages, HOLC also created a standardized system of loan appraisals for properties and communities, which included an evaluation of the racial composition of communities—otherwise known as “redlining.”^{vi} ³³ The Federal Housing Administration (FHA), created in 1934 as part of the National Housing Act to stimulate and stabilize the housing industry, created a new mortgage system based on low interest rates and small down payments that made home-buying affordable and accessible. Because of the way the administrative rules were set up, the growth in housing was channeled into suburbs at the expense of central cities.^{vii} The G.I. Bill was also implemented in racially exclusionary ways, with very unequal outcomes. For example, in New York and northern New Jersey, “fewer than 100 of the 67,000 mortgages insured by the G.I. Bill supported home purchases by nonwhites.”³⁴

These types of racially exclusionary (yet implicit) rules, combined with the fact that HOLC’s “residential security maps” made it hard for black Americans to secure mortgages in redlined neighborhoods, laid the foundation for the neighborhood racial segregation that persists today.

THE CURRENT RULES: IMPLICIT EXCLUSION (1980–PRESENT)

While the post–civil rights era certainly expanded the black middle class, there has yet to be sustained progress on reducing wealth inequality in America. Much of the progress made in the 1990s was undone in the wake of the financial crisis. Today’s racial rules are less explicitly racist than slave codes or even New Deal housing policies, but they have been equally pernicious. We now look at how a lack of regulations—what we call racial “non-rules”—enabled the evolution of redlining policies, which morphed from their HOLC and FHA origins to become private mortgage discrimination practices, further entrenching residential segregation and the racial wealth gap. We also briefly discuss how the tax code reinforces these disparities.

The Current Rules of Redlining

The civil rights movement ushered in a series of rule

vi Under this system, neighborhoods were marked with different colors—green for those with homes that were new and more homogenous, and red for predominantly low-income, black neighborhoods that were viewed as being in decline. Because these black neighborhoods were considered the worst areas for lending, they were branded in red, or redlined.

vii For example, financing was geared toward single family-detached homes and new homes over renovated ones.

HOMEOWNERSHIP AND WEALTH BUILDING

Policies designed to promote homeownership have been a leading U.S. strategy for building individual and family wealth and providing a springboard for Americans to enter the middle class. Indeed, some scholars argue that the entire foundation of white middle class wealth is in home equity, which can be traced back to fundamental racial rules that have excluded African Americans.²⁸

The community in which an individual owns a home is an important signifier of economic success in today's America. Historical and continued systematic segregation of black and white communities has prevented even middle-class black Americans from accessing the spillover benefits of community wealth. We focus on residential segregation as an overarching impact of past and current rules because it is a significant barrier in shaping the socioeconomic determinants of the racial wealth gap. Multiple studies show that geographic concentration by race is hugely linked to lower economic mobility stemming from problems like concentrated poverty, limited access to jobs and quality education, and worse health outcomes.²⁹

Residential segregation constrains black middle-class households as well as poor and working-class ones, especially when compared to their white counterparts. Research shows black middle-class households making more than \$100,000 per year live in and are ringed by communities with more disadvantages than white households that make less than \$30,000 annually.³⁰ Middle-class neighborhoods of color typically have lower home values and price appreciation, fewer neighborhood amenities, lower-performing schools, and higher crime rates than white middle-class neighborhoods.³¹

Often lauded as a model of broad-based, progressive social and economic reform, FDR's New Deal served as a cornerstone of efforts to build the white middle class through homeownership but systematically excluded black Americans from homeownership and increased geographic segregation. In other words, the 20th century white middle class was built explicitly on anti-black racism encoded into New Deal racial rules and policies.

changes to prevent historic racial exclusion and discrimination in housing markets. The 1968 Fair Housing Act and 1977 Community Reinvestment Act targeted racially discriminatory practices in the housing and lending industries. Redlining as a racial rule is no longer explicitly practiced by government agencies and is technically illegal. However, non-rules—a lack of regulations—have enabled new forms of redlining widely practiced by private banking institutions. Despite policy efforts to instill fairness in lending—such as the 1975 Home Mortgage Disclosure Act, which required disclosure of bank lending practices, or the 1977 Community Reinvestment Act, a racially inclusive policy to discourage discrimination—there is compelling evidence that mortgage discrimination by banking institutions toward African Americans still occurs, both through exclusion from mortgage loans and through unfavorable inclusion—or reverse redlining—into a more costly, toxic loan market, such as subprime mortgages.³⁵

Mortgage Exclusion

In the 1980s, there were news reports in various cities of banks rejecting black mortgage applicants at higher rates than whites who had identical economic profiles. The magnitude of this trend wasn't fully

understood until 1992, when a groundbreaking study from the Boston Federal Reserve reported that black applicants were 80 percent more likely than whites to be rejected for a mortgage loan after controlling for the characteristics of applicants, properties, neighborhoods, and loans.^{viii}³⁶ Multiple subsequent studies have confirmed the presence of discrimination in high denial rates for black families.³⁷

Predatory Lending: Reverse Redlining

Our history of predatory lending in a range of credit markets dates back more than three decades.³⁸ The unfortunate irony of predatory lending, often called “reverse redlining,” is that it developed as efforts were made to increase access to capital for people of color and low-income communities.^{ix} The opening up of credit markets in the 1980s and 1990s to long-excluded communities of color coincided with a set of new rules and practices that led to securitized mortgages. These new financial instruments of securitization—including

viii Testing for discrimination in mortgage denial rates is difficult, and this study was subjected to an unprecedented amount of scrutiny and criticism. A meta-analysis and reanalysis of the data “establishes the presumption that in 1990 lenders in Boston engaged in either disparate treatment discrimination, disparate impact discrimination, or both.”

ix This arguably relates to the broader context of the deregulated financialization of our economy, which includes a Wall Street with very little transparency and oversight, where predatory tactics targeted at mainly poor people of color were easy to come by. (See Yinger and Ross, 1999).

credit default swaps and credit scoring, to name a few—expanded the pool of capital and credit available to borrowers and enabled lenders to determine the risks involved and drive up interest rates; by targeting previously excluded and thus untapped lending markets, they ultimately led to reverse redlining.

The most familiar of these lending practices is subprime lending. Subprime mortgages carry higher interest rates and fees, making loans more expensive over their lifetime. They are marketed to people who can least afford them and often to people who could qualify for conventional mortgages at lower rates.³⁹ Subprime mortgage lending increased dramatically in the build-up to the financial crisis, from \$20 billion in 1993 to \$625 billion in 2005.⁴⁰

Due to these lending practices, homeownership rates for blacks, other non-whites, and low-income borrowers increased between 1993 and 2005. Combined, at least 40 percent of borrowers in these groups obtained mortgages from subprime lenders.⁴¹ A study by economist Jim Campen found that while only 7 percent of white borrowers with annual incomes above \$165,000 received high-interest loans, 55 percent of African Americans and 49 percent of Latinos in the same income bracket did.⁴² Another study from the National Council on Negro Women found that upper- and middle-income black women were at least twice as likely to receive high-cost loans as upper- and middle-income white women in more than 84 percent of the metropolitan areas examined.⁴³

A number of reports have shown that the preponderance of subprime lending to communities of color was a result of bad rules, non-rules, and racial bias, not of the borrowers' creditworthiness. In her 2011 book, Anita Hill highlights a case brought against Wells Fargo by the city of Baltimore. In that case, former bank employees provided statements about "training they had received that helped them sell loans in poor, primarily African American neighborhoods throughout Maryland" and attested to "a consistent pattern of steering black loan applicants to subprime loans, even though they may have qualified for conventional loans at lower interest rates."⁴⁴ She also cites a lawsuit brought against Wells Fargo by the state of Illinois, in which employees reported a subprime loan-dominated culture that involved the bank setting quotas for the number of subprime or high-cost loans every area had to close and keeping score cards that recorded managers' subprime loan tallies.⁴⁵

Implicitly exclusionary practices—brought on partly by deregulation in the 1990s—enabled subprime lenders to use a number of troubling predatory practices that had a detrimental impact on the wealth of African Americans.

Lenders used geographic and demographic data to target predominantly black and Latino neighborhoods, and often women of color specifically, for subprime loans.⁴⁶ They over-valued home appraisals, which led to higher-value loans, and ultimately to mortgages going "underwater" with loan balances that were above the market value of properties, even before the housing crisis set in. Subprime lenders would also charge excessive fees for late payments and impose large penalties in case of prepayment. It was not uncommon for lenders to structure loan payments that borrowers could not afford and then cajole those borrowers to refinance their mortgages, sometimes by proposing debt consolidation. This would incur additional loan origination fees and points, which accrue to the lender as income. It is not difficult to see how non-rules as well as seemingly race-neutral financial rules led to the preponderance of subprime loans among African Americans, nor how those loans and other predatory lending practices have fueled a vicious and almost inescapable cycle of indebtedness and lack of wealth.

The web of racial bias, changing rules that led to the financialization of the economy and shifting financial institution norms, and lack of regulation contributed to the 2007 housing market collapse and levied a devastating toll on communities of color. And, as the Great Recession painfully taught us, these lending abuses had a detrimental impact not only on the economic well-being of individuals, families, and communities, but also on the economy as a whole. According to the Center for Responsible Lending, "the recession cost 8.4 million jobs, and the U.S. economy lost an estimated \$10 trillion in economic output."⁴⁷ Between 2005 and 2011, median home equity declined by more than a third for all racial and ethnic groups (36 percent for African Americans).⁴⁸ Given that home equity accounts for 92 percent of the personal net worth of African-American homeowners (compared to 58 percent for white homeowners), declines in housing values were especially devastating.^x ⁴⁹ The consequences are now well-known: massive black wealth loss and the persistence of racial residential segregation.

The Implicitly Racialized Tax Code

While homeownership—and predatory lending's impact on homeownership for black communities—has helped to shape the racial wealth gap, other rules have played a major part. Our current regressive tax code also profoundly affects racial wealth inequality. Tax benefits—varying tax rates, tax credits, deferrals, and deductions—often favor asset holdings over income earned. We have, for example, a preferential

^x For Latinos, home equity accounted for 67 percent and for Asian homeowners, 72 percent. Latino homeowners experienced the largest drop in net worth following the recession and have yet to recover.

treatment of capital gains and dividend income that disproportionately rewards a small number of mostly white wealth-holders with lower tax rates.⁵⁰ In 2013, the federal government invested \$384 billion in tax subsidies for retirement pensions and homeownership, of which over two-thirds was allocated to the top income quintile, with the bottom quintile receiving only 1 percent.⁵¹

Considering Darity and Hamilton's argument that inheritance is the core driver of the racial wealth gap, the IRS "step-up" rule is particularly troubling. It essentially allows wealth holders to pass along assets that have grown in value without paying any taxes on that additional value. When someone inherits, for example, a stock option, they are allowed to "step up" their basis, meaning readjust the value of the option to the time of the inheritance, thereby allowing the recipient to avoid paying any capital gains or estate tax on the difference between the current market value and the value at the time of purchase.⁵²

Impacts of Racial Wealth Gap

The individual and household economic effects of the racial wealth gap in the U.S. can be understood in two categories: a weakened ability to absorb crises and a weakened ability to access opportunity.

ABSORBING CRISES

A disproportionate number of black Americans suffer from economic insecurity and are therefore more susceptible to financial shocks.⁵³ Black families have many fewer assets to rely on to help them weather sudden employment gaps and hardships related to health care, housing payments, food security, utility and phone bills, or basic consumption needs.⁵⁴ Research shows that households with a minimum of \$2,000 in liquid assets are less likely to forgo doctor visits or miss electric bill payments compared to those with fewer or zero assets, which potentially has negative iterative effects.⁵⁵ For example, foregoing doctor visits could escalate a health condition that becomes even more costly later.

Beyond black individuals' and families' own lack of assets, the systematic exclusion of black communities from wealth-building means African Americans have limited access to assets within their social networks. Black households are 20 percent less likely than white households to be able to borrow \$3,000 from a friend or family member in an emergency.⁵⁶ At the same time, they are also more likely to experience pressure to share economic resources with parents or other family

members, further hampering wealth accumulation.⁵⁷

With limited assets to draw on in times of crisis, black Americans are more likely to get stuck in a cycle of high-cost debt instruments and non-traditional financial products. A 2015 investigation by Pro Publica found black Americans in three metropolitan areas—St. Louis, Chicago, and Newark—were disproportionately likely to be sued and have wages garnished by debt collectors, even when controlling for income. The investigators write, "These findings could suggest racial bias by lenders or collectors. But we found that there is another explanation: That generations of discrimination have left black families with grossly fewer resources to draw on when they come under financial pressure."⁵⁸

BARRIERS TO OPPORTUNITY

The racial wealth gap dramatically obstructs black families' ability to access opportunity. It makes it harder to start a business, finance a debt-free education, or purchase a home, all of which can generate further opportunities and wealth-building. Studies suggest that even when controlling for income, family wealth is correlated with post-secondary success and college completion.⁵⁹ William Elliot III's research shows that family assets are an essential resource for translating educational success into higher income and earnings, stable employment, and greater levels of wealth.⁶⁰

Combined, the web of racial rules—including historic racially exclusionary policies and practices, race-neutral deregulation of finance, and non-rules—has created contemporary and systemic racial wealth gaps.

Conclusion

The massive disparity in black and white wealth provides one of the clearest examples of how historical institutions shape economic opportunities today. The effects of both individual and community wealth continue to compound over generations, and in 21st century America, where a larger and larger share of the economic pie goes to capital holders as opposed to workers, and where privatization efforts reduce publicly available goods and services, the divide between asset-poor and asset-rich is only growing. Rule changes designed to increase opportunity or expand education are unlikely to close this yawning gap. Meanwhile, the role of family and community wealth in providing both a safety net and a springboard to success indicates a need for more direct redistribution in the form of investments in asset-poor communities and transfers to asset-poor individuals. This is not an argument for wholesale equality in wealth distribution, but rather an argument for a minimum level of security and opportunity for all Americans.

Education

In this section we focus on the rules that drive educational inequalities. Perhaps no other aspect of American racial inequality has been more studied than education and schooling, from the effects of explicit legal segregation under Jim Crow through the continuing black–white achievement gap. We detail some of the ways in which that inequality manifests below. Simply put: By no measure—racial integration, academic achievement, economic outcomes—is America’s education system serving black students acceptably.

Documenting the entirety of the education debate is well outside our scope. Here, we take a narrower view, focusing primarily on what we know about the long-term impacts of race-based educational inequality. We begin with the stark reality that our educational system is drastically unequal by race. And while we describe some of the explanations for the gap itself, especially in K–12 schooling, we do so with an eye toward understanding the economic impact of that gap, both for individuals and for the U.S. economy as a whole.

A number of different explanations account for the achievement gap between black and white students. A number of non-school-based factors are at play. Certainly family socioeconomic status—which, as we discuss elsewhere, is itself in part a product of racial rules—is an often-cited driver of inequality. Other factors often mentioned as important in school success are parental attitudes and expectations, other conditions at home, the quality of early childhood interventions, and how children spend their time outside of school.¹¹

But neither family socioeconomic status nor these other conditions, as important as they are, can fully explain the black–white achievement gap. A number of school-based, and school district–based, factors are very important to student achievement. In short, educational and economic outcomes depend on the ways in which we organize and govern our educational

¹¹ The Coleman Report, published in 1966 by the U.S. Department of Education, is one of the earliest and most prominent reports to cite family socioeconomic status as a major cause of differential achievement between black and white students.

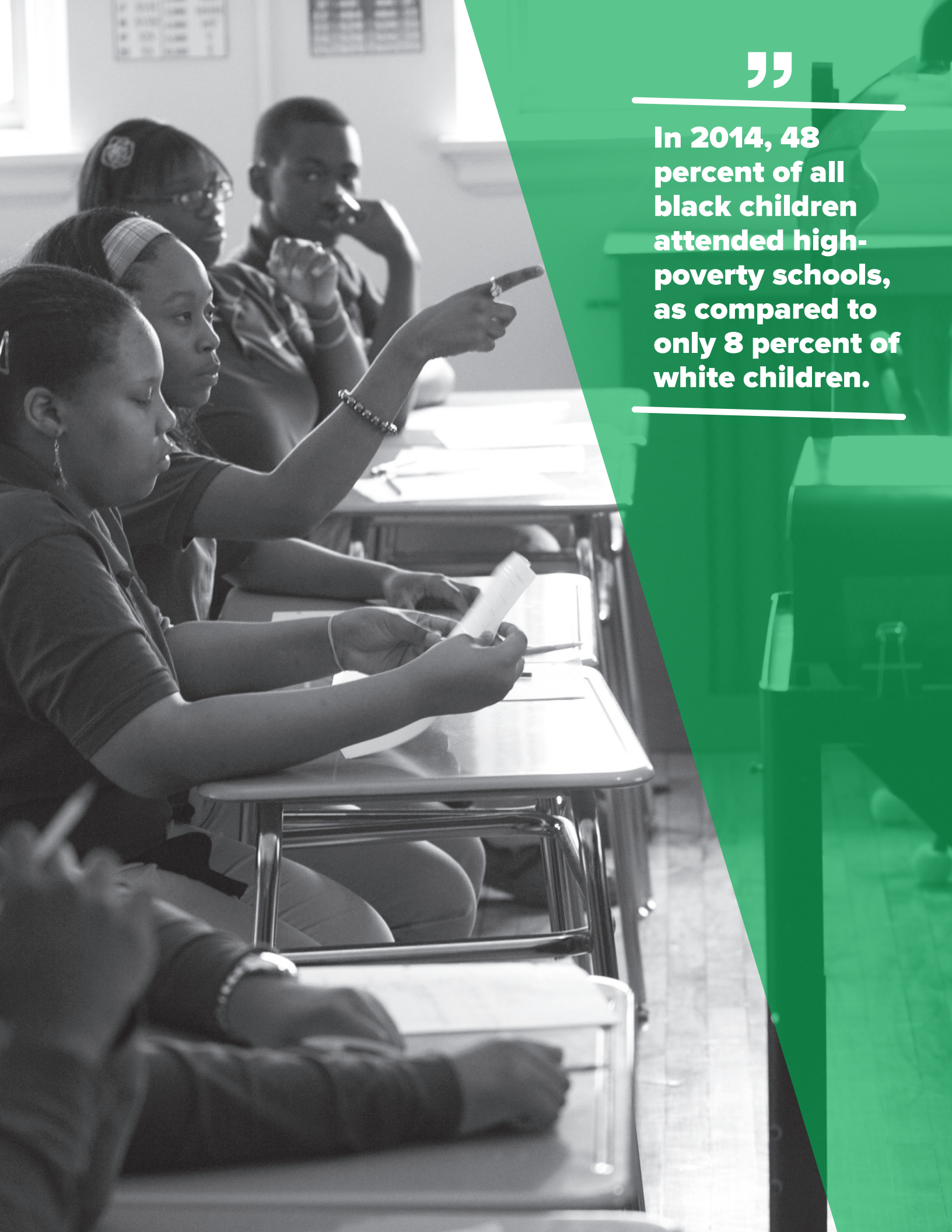
systems. We argue here that a number of school-based factors have made getting a high-quality education far more difficult for African American (and Latino) students than for whites and Asians. The most important include:

- » Racial composition of schools and districts, when this leads to highly concentrated poverty
- » The quality of teaching, which tends to be far worse in poor schools serving students of color
- » School financing and per-pupil spending
- » School discipline policies for children of color, both boys and girls

These elements are all related, and evidence suggests that one of the biggest reasons that racial composition matters is that it drives teacher quality, school financing, and other school quality measures. This suggests something that we know from history: If we are to reduce educational and economic disparities between black Americans and whites, we cannot continue to promote policies that ignore the racial composition of schools.

Today, the outlook seems grim. After several decades of progress in the mid-20th century, American schools today are re-segregating such that nearly 25 percent of students in some states now attend what Jonathan Kozol calls “apartheid schools,” meaning that 99 percent or more of their student bodies are students of color.²³ And the narrowing of the black–white achievement gap, a goal toward which there had been real progress after 1954 and *Brown v. Board of Ed*, has now stalled.

But we know from history that the extreme racial isolation and impoverishment and continuing



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In 2014, 48 percent of all black children attended high-poverty schools, as compared to only 8 percent of white children.

educational mediocrity in American schools is not predetermined. In the 1960s and '70s, we chose a different path. With new rules and hard-fought legal battles promoting integration, racial isolation declined and black students made increasing academic gains.

Today's evidence demands that our educational reform agenda once again focus on ensuring that all schools are racially integrated and well-funded. The most recent data suggests that important measures such as school financing and class size improve for black students as a result of desegregation. Desegregation also has a positive impact on individual outcome measures, including high school completion, college attendance, likelihood of incarceration, labor market participation and outcomes, and overall health. Moreover and very importantly, desegregation seems to have no negative outcomes for white students who have attended desegregated schools.ⁱⁱ⁴

This is a critical finding as we seek to improve schooling and economic outcomes for black Americans. The Movement for Black Lives and other racial justice groups have also prioritized addressing school discipline, ending the “school-to-prison pipeline,” and increasing community control of schools, all of which are very important issues. But we must not forget about the importance of achieving racial balance in schools, which must also be on the education reform agenda. Race-specific policies have historically been both politically and legally difficult to adopt and implement, and are even tougher in an environment perceived as zero-sum, in which a black student's gain—which can be as simple as a seat in a mixed-race or predominantly white school—is viewed as imposing costs elsewhere. We must push back against these perceptions and lift up the evidence that desegregation can bring with it stronger teaching, better financing, a more genuinely diverse group of student backgrounds and abilities, and therefore better outcomes for all students.⁵

Educational Disparities and Inequities

RACIAL ACHIEVEMENT GAPS

Educational achievement gaps persist by race on all

ⁱⁱ We have also seen many instances in which desegregation policies have not been effective because they are not fully carried out or lack the resources to fully implement desegregation.

educational levels, from pre-K through postsecondary schooling. These create a cumulative disadvantage and persistent inequality for black students and other students of color. Studies show that the black–white cognitive skills gap is significant at the start of schooling and continues to widen substantially as children move up through grade levels.⁶

Racial disparities in education access are observed at the earliest levels, including in early childhood education. At the pre-kindergarten level, racialized poverty reinforces achievement gaps and gaps in school readiness among young children, as African American and Hispanic children are more likely to be raised in poverty.⁷ One study notes that according to 2011 data, more than 50 percent of African American children and 63 percent of Hispanic children ages 3–4 do not attend preschool, likely due to lack of resources and access.⁸ This disparity is meaningful, as pre-K education has a significant impact not only on achievement at the K–12 level but also on lifetime earnings and outcomes.⁹

Educational inequalities persist and can be seen in achievement, graduation rates, and dropout rates as students move through high school. African-American high school dropout rates have narrowed in recent years, but as of 2012, black students still had the lowest graduation rate—68 percent—across groups, along with Native Americans, also at 68 percent. Graduation rates among Asians, whites, and Hispanics were 93 percent, 85 percent, and 76 percent, respectively.¹⁰ Achievement gaps and graduation rates are significantly impacted by the recent trend toward re-segregation of American schools.

While earnings for college-educated African Americans still remain lower than for their white counterparts with equivalent educational attainment, the earnings gap does begin to close among individuals with college educations, which tells us that college is one barrier to more equal earnings in the labor market. However, the black–white and Hispanic–white gaps in postsecondary educational attainment have been widening over the past decade despite gains in overall enrollment. The National Center for Educational Statistics reported that the bachelor's degree attainment gap grew from 1990 to 2014. During that time period, degree attainment among blacks increased from 13 to 22 percent and among whites from 25 to 41 percent.¹¹ As a result, the black–white degree attainment gap in this period increased from 13 to 18 percent.

RACIAL ISOLATION

Black and Latino students continue to be highly segregated and isolated by race, with the average black student attending a school that is that 49 percent black; Latino students attend schools that are 57 percent Latino; and the typical white student attends a school that is almost 75 percent white.^{iii 12} In 2014, 48 percent of all black children attended high-poverty schools, as compared to only 8 percent of white children.¹³ The most recent research suggests that this segregation and isolation, which has increased since the 1980s, has real consequences. Poverty and race are so highly correlated that if we want to lessen the achievement gap and thereby increase school attainment, income, and other long-term outcomes—including health and overall well-being—for African Americans, we must end this racial isolation.

The Racial Rules of Education

PRE-CIVIL RIGHTS: EXPLICIT EXCLUSION

The story of race and education in the 19th and 20th centuries has both driven and mirrored the story of American race relations writ large. Explicitly exclusionary rules were the backdrop and legacy of this era, with the most obvious being Jim Crow laws that required school and residential segregation, compounded by rules that made it exceedingly difficult for African Americans to break into upper-middle-class employment or amass real wealth. Attempting to rewrite those rules and replace them with newer rules that would promote black student achievement and ultimately better economic outcomes for African Americans has been the story of reform for a century.

In the early part of the 20th century, more than 80 percent of all African Americans lived in Jim Crow states, which mandated separate schooling for blacks. The curriculum offered little beyond basic literacy and numeracy, primarily preparing students for domestic or agricultural work. Per-pupil spending was very unequal, with disparities of up to 10-to-1 in some of the states in the Deep South. Similarly, the monthly salary of black teachers in 1930 was about 60 percent of white teachers’

iii Orfield and Frankenberg use measures of both “concentration” and “exposure” to define segregation.



African-American high school dropout rates have narrowed in recent years, but as of 2012, black students still had the lowest graduation rate—68 percent—across groups, along with Native Americans, also at 68 percent.

pay. Across the United States, one out of eight black adults had completed high school, as compared to four out of 10 whites.¹⁴

THE CIVIL RIGHTS ERA: LANDMARK LEGISLATION AND INCLUSIONARY RULES

Legal Victory, Pushback On The Ground, and Expanded Federal Role

In 1954, after decades of legal organizing, *Brown v. Board* ushered in an era of desegregation. The clear declaration by a unanimous Supreme Court that “separate is inherently unequal” was one of the watershed moments in American history. The implementation, of course, played out in fits and starts, but nonetheless *Brown* was a sea change in American politics.

After the ruling, the NAACP drove strategic litigation designed to make the Supreme Court’s ruling a reality. But carrying out the edict of *Brown*—desegregating schools “with all deliberate speed”—became harder as local districts asserted control and fought back. Thus the role of the federal government, which increased five-fold under President Lyndon Johnson’s landmark 1965 Elementary and Secondary Education Act (ESEA), loomed ever larger in the fight to improve education for children in poverty and children of color.^{iv 15} The combination of the ESEA and the Civil Rights Act, ^{iv} Under Johnson, federal funding to local schools went from several hundred million to close to one billion annually.

which outlawed the use of federal funds in schools segregated by race, dramatically increased federal leverage in the fight to integrate schools.¹⁶

And in fact, despite significant political opposition, and after much federal support, the push for desegregation actually worked to reduce racially concentrated schools. By the early 1970s, Southern schools, once the most racially separate, had become the most integrated in the country.¹⁷ Some of these gains persisted for a decade or more. In Southern states, the percentage of black children in traditionally white schools went from essentially zero to 44 percent in 1988.¹⁸

Desegregation Has Positive and Lasting Effects

Desegregation, as contentious and complex as it has been, had several positive effects in the decades immediately following Brown. New longitudinal evidence suggests that changing the racial composition of schools seems not only to have improved educational outcomes, but also to have improved economic and other long-range impacts for individuals.

The first point is that desegregation drives educational outcomes and is correlated with a shrinking of the racial achievement gap.^v¹⁹ A 2004 study showed that desegregation had an impact on decreasing dropout rates among African American high school students during the 1970s and 1980s.^{vi}²⁰ Earlier work suggests that movements toward desegregation and reductions in class size, as well as the advent of the Civil Rights-era “War on Poverty” policies, which included increases in per-pupil expenditures and early childhood programs such as Head Start, can largely be credited with closing black-white K–12 achievement gaps.²¹

More recent work also documents significant effects. Rucker Johnson’s 2015 study of 4,000 subjects born between 1950 and 1975 (including sibling pairs) noted the following outcomes:

- » **Educational Attainment.** For African Americans, a five-year increase in attending a desegregated school translates into a 14.5 percentage point increase in the likelihood of graduating from high

v Barton and Coley identify sixteen different correlates for achievement, and survey a wide range of literature in addition to looking at NAEP results, suggesting the complexity of the issue.

vi Jonathan Guryan used census data from 1970 and 1980 to measure changes in black and white high school dropout rates. The analysis focuses on a sample of large school districts, 86 percent of which implemented desegregation plans between 1961 and 1982. He compared changes in black and white dropout rates during the 1970s in districts that integrated during the decade to changes in the same outcomes in districts that integrated both earlier and later.

school and roughly a 0.6 percent increase in years of education for blacks. Overall, Johnson estimates that the desegregation effect on graduation rates is comparable to the impact of having college-educated parents.²²

- » **Health Effects.** The effect of five years of attendance at a desegregated school is the equivalent of being seven years younger.
- » **Criminal Justice and Safety Effects.** For black men, attending a desegregated school reduces the likelihood of incarceration by age 30 by almost 15 percent.
- » **Labor Market and Wage Effects.** Five years of exposure to a desegregated school led to about a 15 percent increase in wages and roughly 165 additional work hours per year, with a combined result of a 30 percent increase in annual earnings.

Johnson controlled for a number of different potential independent variables, including desegregation itself (e.g. exposure of black children to white peers).²³ His results suggest that the achievement gains are largely due to the fact that desegregation leads to improved school inputs for African Americans. Students who went to desegregated schools attended classes that were smaller by three to four students. Most strikingly, per-pupil spending increased by almost 23 percent annually for black students who went to desegregated schools throughout their K–12 career. As Johnson notes, “a political economy explanation for these results is

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New longitudinal evidence suggests that changing the racial composition of schools seems not only to have improved educational outcomes, but also to have improved economic and other long-range impacts for individuals.

that state legislatures were under pressure to ensure that the level of school resources available to whites would not be negatively affected by integration.”²⁴

Sean Reardon and colleagues at Stanford have also conducted a significant number of recent studies on segregation, finding that “the data clearly show an association between racial school segregation and achievement gaps, net of many socioeconomic differences between white and minority families.” They therefore argue overall that socioeconomic integration is insufficient. As Reardon argues:

The greater the difference in poverty rates in white and black students’ schools, the larger the achievement gap, on average. That is not to say, however, that having poor classmates impacts students’ achievement directly. Rather, exposure to poor classmates is perhaps best understood as a proxy for general school quality—quality of instruction and opportunities to learn. High-poverty schools may have fewer resources, a harder time attracting and retaining skilled teachers, more violence and disruption, and poorer facilities.²⁵

One important and related finding has to do with school funding. There is a debate about the degree to which school funding matters to student achievement.²⁶ But Johnson’s historical data suggests that integrated schools enjoy greater per-pupil funding, and that school funding matters. A 2014 paper by Johnson and colleagues shows that a 20 percent increase in per-pupil spending each year for 12 years of public schooling leads to almost one additional year of education completed, 25 percent greater earnings, and a 20 percent reduction in the annual incidence of adult poverty. The paper argues that “the magnitudes of these effects are sufficiently large to eliminate between two-thirds and all of the gaps in these adult outcomes between those raised in poor families and those raised in non-poor families.”²⁷

SCHOOL AND GEOGRAPHIC SEGREGATION

In the absence of explicit desegregation efforts, school segregation is largely driven by geographic segregation, which in turn is shaped by a series of racialized rules. We discuss private redlining and other drivers of residential segregation elsewhere in the wealth section of this report. Most school funding is based on local property taxes, endowing areas with higher housing prices (and higher property tax bases) with better school systems and creating school districts that are racially and economically homogenous. As Carey Hawkins Ash and Chaneé Anderson write, “Where one resides has become the ‘new’ proxy for race in distributing quality educational opportunities in this ‘colorblind’ American society.”³⁶ There is little debate that concentrated and racialized residential poverty has led to poor schools, as measured by spending, teacher quality, and educational outcomes, for children of color.^{vii 37}

vii Research shows that schools with 90 percent or more students of color spend \$733 less annually per student than schools with 90 percent or more white students. The Center for American Progress found that on average, the high-minority schools have 605 students. If an average high-minority school (with an average of 605 students) were to receive the same per-pupil funding as predominantly white schools, they would see an annual increase of \$443,000 in state and local spending—enough to fund the average salary for nine veteran teachers or 12 additional first-year teachers.

Other research has demonstrated that students who attend integrated schools do better psychologically and socially.²⁸ Erica Frankenberg argues that children who attend integrated schools are less likely to develop racial stereotypes and are better able to breach color lines to work with people from different backgrounds. There is also evidence that being exposed to different viewpoints in classrooms helps students develop more critical thinking skills.²⁹

Despite the virulent political pushback that desegregation generated in the decades after Brown, the evidence seems clear: Attending a racially balanced school has lasting positive effects on economic and social well-being for black and non-black students alike.³⁰

THE CURRENT RULES: IMPLICIT EXCLUSION (1980–PRESENT)

Re-Segregating Schools

The era of re-segregation began almost as soon as desegregation began. The first significant marker was the Supreme Court’s 1974 *Milliken v Bradley* ruling, which determined that de facto segregation was, in fact, lawful. In the early 1990s, a series of court

ECONOMIC INEQUALITY AND EDUCATIONAL INEQUALITY

There is a vigorous debate about the degree to which black–white economic inequality can be attributed to educational inequality. One prevailing argument is that education, as important as it is, is not a silver bullet. Much evidence now suggests that improving education alone would not eliminate the earnings and wealth gap between African Americans and whites. In fact, the typical white high school dropout holds more wealth than the typical black college graduate.⁴⁷ Eliminating disparities in college graduation rates would only increase black wealth by \$1,313 and close the racial wealth gap by 1 percent.⁴⁸

The numbers make clear a painful reality: Even with significant educational achievement, black Americans still face enormous discriminatory barriers—in job opportunities and earnings, in access to credit and other modes of wealth-building, in equal access to justice, health care, housing, and safe communities, and in so many other realms. It is the systemic and intersecting nature of these barriers, not educational attainment alone that prevents far too many individuals from pursuing and attaining the economic opportunity that Americans hold so sacred. As William Darity and Darrick Hamilton have written:

Education is not the great equalizer when it comes to race and wealth. ... Conventional wisdom proclaims a college education is the primary vehicle for economic mobility and the “great equalizer” when it comes to black–white disparity. In reality, a college degree does little to undo the massive difference in wealth across race.⁴⁹

This is a critical point. But despite the debate about the relationship between wealth and education, most would argue that lessening the black–white educational achievement gap would be a win-win: better for individuals and families and better for economic output and growth.

decisions reinforced the *Milliken* ruling by releasing school districts from court oversight.^{vii} In more than 200 medium and large districts, this reversal of legal requirements drove a significant increase in the racial segregation of schools.³¹

Unraveling the rules that drove and maintained racial balance in schools has had a significant cost. After significant progress in the 1960s and 1970s, almost half of all African-American children and a similar number of Latino children now attend schools that have racially concentrated poverty. Research from John Kuscera and Gary Orfield illustrates re-segregation in the New York City school system, the largest in the United States and also the most racially segregated. In 1968, 68 percent of black students were in majority-minority schools. By 1980, that number had climbed to 77 percent, and by 1989, 83 percent of black students attended schools that were majority-minority. More than half attended “intensely segregated schools,” defined as those with less than 10 percent white enrollment.³² It is clear that in the absence of a proactive and consistent push for desegregation via court orders, our schools will mirror our racially separate neighborhoods.

vii These rulings include: *Board of Education v Dowell*, *Freeman v Pitts*, and *Missouri v Jenkins*.

Racial Isolation

School re-segregation is not a problem limited to schooling, narrowly defined. Unsurprisingly, a significant amount of research has confirmed what common sense suggests: School re-segregation concentrates neighborhood social disadvantage and thus has profound impacts on both individuals and communities. At home, students who experience school re-segregation and the geographical concentration of disadvantage are less likely to have literate parents, adequate housing, or quiet places to study, and their families have fewer resources to dedicate to education. Re-segregated schools have difficulty retaining quality teachers and administrators, and teachers in such schools must focus more on remediation and less on excellent student achievement.³³ In neighborhoods and communities, re-segregation is associated with increased crime. Economic studies show that group segregation in neighborhoods, including segregation along racial and ethnic lines, can often lead to disparities in human capital investment at the neighborhood level.³⁴ All of these factors have important implications for broader inequality in the economy and individual economic outcomes for students, and increasingly we are seeing these dynamics

reproduced over generations.³⁵

The Rise of “Accountability” and High-Stakes Testing

In the midst of the legal changes that fueled re-segregation, a very different education reform movement—one focused on standards—was coming into being. In the 1980s and continuing through the 1990s and beyond, reformers stressed school accountability, clear goals, and clear standards for teaching and learning—standards applied to both students and teachers and measured primarily by testing. These were the themes of education reform from Ronald Reagan through George W. Bush. Reagan’s *A Nation At Risk* report was in many ways the clarion call and catalyst; it provided a new frame for education reform and emphasized the economic importance (as opposed to civic, moral, or any other rationale) of education and schooling and drove a focus on standards and back-to-basics. *A Nation At Risk* also placed an individual focus on schools as key to educational and economic improvement rather than looking at schools in the context of a larger society in which poverty and broader inequality existed.

The shift in focus set the foundation for Clinton’s *Goals 2000* and *Improving America’s Schools Acts*, the latter of which reauthorized ESEA, and later for Bush’s 2001 *No Child Left Behind Act* (NCLB), which ushered in an era of high-stakes testing. In 2000, in a speech to the NAACP, Bush laid the groundwork for NCLB:

There’s reason for optimism in this land. A great movement of education reform has begun in this country built on clear principles: to raise the bar of standards, expect every child can learn; to give schools the flexibility to meet those standards; to measure progress and insist upon results; to blow the whistle on failure; to provide parents with options to increase their option, like charters and choice; and also remember the role of education is to leave no child behind.³⁸

In his remarks, Bush also addressed race and poverty: “Some say it is unfair to hold disadvantaged children to rigorous standards. I say it is discrimination to require anything less—the soft bigotry of low expectations.” *Goals 2000* and NCLB focused on reducing achievement gaps, including both the gap between American schoolchildren and their international counterparts and the black–white achievement gap, and improving

teaching and learning by focusing on common high standards across all states, testing to achieve those goals, and improving teacher quality overall. Schools would face sanctions if they did not make “adequate yearly progress” on test scores and graduation rates, especially for low-achieving children, and did not make progress in closing the racial achievement gap.

The era of accountability lingers on with continued high-stakes testing, but the value of testing is increasingly questioned in school districts across the country. However, there is very little national conversation about revisiting race as central to the equation. As Gary Orfield and Erika Frankenberg note:

Educational policy since the 1980s has largely ignored issues of race and has focused attention on harsh accountability policies. These policies are premised on the assumptions that equal opportunity can be universally achieved in separate schools through the application of uniform standards and sanctions and that racial segregation can be ignored.³⁹

Whether this shift in rules has been good for students, and good for their long-term economic prospects, is the question to which we now turn.

Impacts of Education Gaps

Throughout almost three-quarters of a century of shifting in our educational politics and rule-making, the black–white achievement gap has, for the most part and with the exception of progress during the era of desegregation, persisted. Beyond re-segregation itself, it is important to ask whether the push for accountability has actually improved educational results or closed the racial achievement gap.

A wide range of studies suggests that the answer is, at best, mixed, and our efforts over the last several decades to improve test scores for children of color have been, at best, uneven. A recent study by Sean Reardon and colleagues found “no support for the hypothesis that *No Child Left Behind* has led, on average, to a narrowing of racial achievement gaps,” although there have been some variations across states. It is notable that the most segregated schools with the biggest gaps have



Our understanding of causal mechanisms is limited, though school financing as well as quality teaching and educational leadership seem to matter most.

seen the most improved scores, and it may be that real pressure on the most segregated schools does lead to improvements.^{viii 40} Similarly, a large-scale overview conducted by McKinsey and Company shows that the performance of schools—even within the overall standards and accountability framework—varies widely among states, among districts within states, among schools within districts, and among classrooms within schools.^{ix 41} McKinsey argues, and most evidence continues to suggest, that investments in teaching in particular, and in school site leadership—that is, in the role of school principals as educational leaders, and not just managers—is vital to high-performing schools. This echoes the work of Linda Darling-Hammond, who has conducted groundbreaking research on the effects of excellent teaching, as measured by preparation and certification.⁴² But overall, surveys of achievement gap results over the past several decades show very modest progress.

Our understanding of causal mechanisms is limited, though school financing as well as quality teaching and educational leadership seem to matter most. These are, of course, related; schools with more resources can attract more experienced teachers and administrators. Most strikingly, very little if any of the recent literature on the black–white achievement gap makes mention of

viii “In states facing more subgroup- specific accountability pressure, more between-school segregation, and larger gaps prior to the implementation of the policy, NCLB appears to have narrowed white-black and white-Hispanic achievement gaps; in states facing less pressure, less segregation, and smaller pre-existing gaps, NCLB appears to have led to a widening of white-black and white-Hispanic achievement gaps.”

ix As McKinsey reports, “Texas students are, on average, one to two years of learning ahead of California students of the same age, even though Texas has less income per capita and spends less per, New Jersey has higher NAEP scores and a smaller racial achievement gap despite having a lower income per capita level and a higher proportion of racial minorities than Connecticut.”

changing the racial distribution of students in schools.^{xi 43}

Additionally, the accountability movement has had many unintended consequences, including incentives to “push out” low-performing students from schools to improve overall scores.⁴⁴ This trend is especially prevalent in charter schools.⁴⁵ At the same time, a recent report from the Department of Education outlined stark disparities in punishment, ranging from suspension to referrals to law enforcement, faced by African-American and minority students in the public school system. At all age levels, black children are three times as likely as white children to face suspensions, and black children are disproportionately likely to be arrested or face law enforcement.^{xi 46} This increase, which is the result of both the rewards structure of the accountability movement as well as personal bias, has rightly been a central concern of the Movement for Black Lives. As we develop a complete education and economics policy agenda for African Americans, we must address zero-tolerance policies, school discipline, and the “school-to-prison pipeline.”

Over the last several decades, some have tried to ameliorate these inequalities with school privatization and supporting an increased number of charter schools. As Diane Ravitch points out, this movement is a natural consequence of NCLB, which called for privatization or charter schools where public schools have not made progress. But neither privatization nor charters are addressing the deeper issue. These schools have proven to be overly selective, often have high attrition rates, and overall are, at most, a patchwork solution to a much larger structural problem.⁵⁰ In short, these interventions, which have now been embraced by elite decision-makers in both political parties, are workarounds that do not actually change the rules that disadvantage students of color.

x McKinsey report does acknowledge that “school-level segregation may play a role in influencing outcomes.” State variations in the racial achievement gap cannot be explained by the proportion of blacks and Latinos in a state’s educational system, although school-level segregation may play a role in influencing outcomes. And a few cities, including Cambridge MA, have continued to advocate for “Controlled Choice,” wherein socioeconomic status has replaced race as a way to think about creating more integrated schools, but where race is clearly still important to many decision-makers.

xi At all age groups, black students are three times more likely to be suspended than white students. At the preschool levels, black students represent 18 percent of enrollment but 48 percent of suspensions. Roughly 82 percent of these children are suspended multiple times. Further, while boys receive the majority of suspensions, African American girls receive suspensions at a higher rate—approximately 12 percent—than girls of any other background. Even more concerning, black students are disproportionately arrested and referred to law enforcement in school. Black students represent about 16 percent of enrollment nationwide but 27 percent of students referred to law enforcement and roughly a third of those subjected to school-related arrests.

Together, the trends that we have seen over the last 30 years—re-segregation, the rise of the standards movement, and the charter movement—have, however unintentionally, led to a stalling out. Overall, we see more concentrated poverty by race and less educational progress for African-American children than we did a generation ago. This will very likely lead to worsened economic prospects, and therefore is not only bad for individuals and their ability to fully participate in the labor market but also bad for the American economy as a whole. This represents an enormous lost opportunity.

ECONOMIC IMPACTS

As detailed, school desegregation has positive long-term economic, labor market, and well-being effects for individuals. The McKinsey & Company, Social Sector Office has projected similar positive effects from closing the racial academic achievement gap, including increased earnings, increased high school and college graduation rates, improved health, and decreased rates of incarceration.

More speculatively, and perhaps most provocatively, McKinsey makes a number of macroeconomic projections about the effects of improving student achievement, including closing the black–white achievement gap:

If the gap between black and Latino student performance and white student performance had been ... narrowed, GDP in 2008 would

have been between \$310 billion and \$525 billion higher, or 2 to 4 percent of GDP. The magnitude of this impact will rise in the years ahead as demographic shifts result in blacks and Latinos becoming a larger proportion of the population and workforce.⁵¹

Conclusion

In the big picture, the arc of history is becoming clear. African Americans educated in desegregated schools experience much better economic outcomes as adults. In contrast, the standards and accountability movement has showed some lessening of the black–white achievement gap at certain grade levels but has had little to no educational or economic effect overall. Combined with the fact that more black and Latino children now attend schools with 90 percent or more children in poverty and with more densely segregated black and Latino populations than at any time since the 1980s, it seems clear that recent accountability measures, despite best intentions, have had at best no impact and in some cases negative impacts on students of color.

This points strongly to the need for a significantly different approach to improving schooling, and economic outcomes, for black Americans. It is time that we look again at what has worked in our past. We must rediscover and redouble our efforts to create schools that are racially balanced, and therefore well-financed, well-staffed, high-achieving—schools that prepare our children and our society for the economy ahead.

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At all age levels, black children are three times as likely as white children to face suspensions, and black children are disproportionately likely to be arrested or face law enforcement.

Criminal Justice

We have already explored how a wide range of racial rules have shaped opportunities and outcomes for black Americans. But as the Movement for Black Lives and other grassroots efforts have reminded us in response to unchecked violence against black men and women at the hands of the police, any conversation about the well-being of black Americans must address the overarching and inescapable influence of the criminal justice system on nearly every aspect of black life.

The radical scope and impact of the U.S. penal system is not an accident of history but rather a direct result of the increasingly harsh incarceration policies implemented over the last three decades. Those criminal justice and mass incarceration racial rules have predictably and effectively resulted in the permanent social and economic exclusion of black Americans, their families, and their communities.¹ As Todd Clear explains, “Imprisonment has grown to the point that it now produces the very social problems on which it feeds. It is the perfect storm.”² Our current and historic racial rules have thrust black Americans—more than any other racial or ethnic group—into the eye of that storm.

A number of scholars see our current criminal justice system as an outgrowth of the explicitly racially exclusionary policies that came before it. Sociologist Loïc Wacquant describes the U.S. criminal justice system as one of four “peculiar institutions” that “have operated to define, confine, and control” black Americans.³ While the successes of the civil rights movement dismantled many of Jim Crow’s explicitly discriminatory legal rules, the new set of penal rules that began to take shape in the 1980s provided the foundation for what Michelle Alexander has called a “new Jim Crow.”⁴ We do not aim to uncover the intent of the current rules, but rather to illustrate that those rules have evolved from an explicitly racist system and have shaped a new system that is rife with racial inequity.

As the ACLU wrote in its 2014 report on racism in the U.S. criminal justice system, “These racial disparities result from disparate treatment of Blacks at every stage

i The four institutions Wacquant describes are: chattel slavery; Jim Crow; the northern “ghetto” that corresponded with the Great Migration that ended in the 1960s; and the modern penal system.

of the criminal justice system, including stops and searches, arrests, prosecutions and plea negotiations, trials, and sentencing.”⁵ The recent high-profile Department of Justice (DOJ) report on the Ferguson, Missouri, police department in the wake of the shooting of Michael Brown is a clear illustration of this truth.ⁱⁱ After finding vast racial inequities at every level of the criminal justice system, the DOJ concluded:

Our investigation indicates that this disproportionate burden on African Americans cannot be explained by any difference in the rate at which people of different races violate the law. Rather, our investigation has revealed that these disparities occur, at least in part, because of unlawful bias against and stereotypes about African Americans. We have found substantial evidence of racial bias among police and court staff in Ferguson.⁶

In this section, we first highlight some of the vast racial disparities we see in the criminal justice system. We then identify the historical arc of this persistent racism, beginning with the explicitly exclusionary rules of slavery and Jim Crow and concluding with a range of current racial rules that shape the criminal justice system. We describe three main types of current rules:

- » Prima facie “race-neutral” penal changes that have been anything but race-neutral in application or effect. These include the War on Drugs, massive increases in prison expansion, mandatory minimum sentences, etc.
- » Financial incentives of the current system—such as the privatization of prisons and non-incarceration penalties—that have had a dispro-

ii The report found that black Americans—who represent fewer than 7 in 10 Ferguson residents—account for roughly 9 out of 10 vehicle stops, citations and arrests, statistics that are just the tip of the iceberg when it comes to law enforcement’s unequal treatment of black citizens.





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Imprisonment has grown to the point that it now produces the very social problems on which it feeds. It is the perfect storm.

- Todd Clear

portionate impact on black Americans.

- » Racial bias that leads to police brutality, racial profiling, and disparities in arrest rates, convictions, sentencing, and incarceration.

We illustrate the web of socioeconomic factors and outcomes that shape—and are shaped by—black Americans’ interactions with the criminal justice system: historical social and economic exclusion, impoverished neighborhoods, underfunded schools, constrained labor market opportunities, and many more. We again seek to demonstrate the deep and intersectional roots of systemic racism and the vast inequities it has brought forth, making the case that fixing our broken criminal justice and economic systems is not an either/or proposition. In fact, we must tackle both simultaneously if we are to correct the injustices foisted upon black Americans.

Disparities and Inequities

It is possible that nothing makes the United States more exceptional than the trends in incarceration that have characterized the last 30 years. With only 5 percent of the global population, we have 25 percent of the world’s prisoners.⁷ According to the Sentencing Project, the prison population has quintupled since 1980.⁸ Today 1.3 million individuals are being held in state prisons, 646,000 in local jails, and 211,000 in federal prisons; there are an additional 4.6 million individuals on probation or parole.⁹ In other words, one of every 35 adults is under some type of correctional control within our criminal justice system.¹⁰ Black Americans bear a disproportionate and undue burden from the rules that have driven these statistics.

The majority of people currently in prison—over 60 percent—are racial and ethnic minorities.¹¹ One in every 10 black males in their thirties are currently in prison, and over half of all black men without a high school diploma spend time in prison at some point in their lives.¹² Today, black men spend more time incarcerated over their lifetime than do Hispanic or white men: 3.09 years in prison or jail compared to 1.06 and 0.5 years for Hispanic and white men, respectively.¹³ On average, they can expect to spend nearly 62 times longer in prison or jail as compared to the group at lowest risk, white women.¹⁴ The incarceration rate for black women is also twice that of white women, and black women can expect to spend on average 0.23 years in incarceration, compared to 0.09 and 0.05 years for Hispanic and white women.¹⁵ Overall, one in 56 women face imprisonment during their lifetime, but the likelihood

of imprisonment for black women is one in 19, while for Hispanic and white women it is one in 45 and one in 118, respectively.^{iii 16}

The charges and sentences levied against black defendants also tend to be disproportionately severe. Black Americans comprise only 13 percent of the U.S. population but represent 42 percent of defendants facing a death sentence. One 2000 study found that 89 percent of defendants prosecuted for capital crimes were people of color.²⁴

Too often these stark racial disparities are blamed on a “culture of violence,” but as we will explain, this is simply not the case. In fact, while prison populations were rising in recent decades, both violent and property crime rates were falling and are now below earlier levels.²⁵ At every stage of the criminal justice system the rules are stacked against black Americans, making it more likely they will come in contact with law enforcement in the first place and essentially guaranteeing that when they do, they will be treated more harshly than whites.²⁶

The Racial Rules of the Criminal Justice System

PRE-CIVIL RIGHTS: A LONG ERA OF BRUTALITY AND EXPLICIT EXCLUSION²⁶

As detailed previously, the formal abolition of slavery was followed by the rise of what Douglas Blackmon calls a “neoslavery.”²⁷ As white southerners organized gangs and militias to monitor, punish, and terrorize freed blacks, Southern states enacted an “array of interlocking laws” meant to criminalize black life.^{iv28} These new rules made it nearly impossible for black Americans to remain free. Forced labor camps were set up across the South, run by state and local governments, large corporations, farmers, and entrepreneurs. In the late 1800s, a number of states began selling the rights to and leasing out their prisoners to employers looking for cheap labor. At the end of Reconstruction, every formerly Confederate

iii According to the Sentencing Project, as of 2010, black women were incarcerated at nearly 3 times the rate of white women (133 versus 47 per 100,000). Hispanic women were incarcerated at 1.6 times the rate of white women (77 versus 47 per 100,000). The rate of incarceration for black women decreased 47 percent from 2000 to 2014 (although it is still significantly higher than for other women), while the rate for Hispanic women increased 7 percent and for white women it increased 56 percent.

iv Blackmon uncovered evidence of thousands of arrests for “inconsequential charges or for violations of laws specifically written to intimidate blacks—changing employers without permission, vagrancy, riding freight cars without a ticket, engaging in sexual activity—or loud talk—with white women.

WOMEN: INVISIBLE VICTIMS OF MASS INCARCERATION

When we talk about mass incarceration in the United States, we primarily see and think of men, but the percentage of women in state and federal prisons has grown exponentially in recent decades. But as Meda Chesney-Lind explains, in many ways women were the unintended victims of the push to mass incarceration.¹⁷ Women represent only 7 percent of the population in state and federal prisons, but between 1980 and 2010, the number of women in prison increased by 646 percent from 15,118 to 112,797.¹⁸ As of 2012, there were more than 200,000 women incarcerated, including in local jails, with black women being far more likely to be incarcerated than white and Hispanic women. Approximately half of incarcerated women have never been convicted of a violent offense.¹⁹ Criminal justice professor Todd Clear notes that “much smaller levels of incarceration for women seem to produce the same destabilizing results as for men, with an equivalent pattern of increased crime.”²⁰

As Chesney-Lind explains, the increase in women’s imprisonment is not a reflection of the “seriousness of women’s crime” but is instead due to the racial rules of the penal system, and particularly the increasingly harsh penalties of the war on drugs.²¹ It is important to acknowledge how a mix of factors have made women vulnerable to the racial rules that drove mass incarceration and have subjected them to a system originally designed for male offenders with little thought given to how that system would affect women caught in the dragnet.^{v 1} Women’s unique experiences—sexual and physical trauma, domestic violence, low-paying and low-status jobs, changes in welfare policies, and a lack of social supports—increase the likelihood that they will come into contact with the system in the first place.^{vi 2}

Women face unique challenges in prison, particularly related to health care. Women are more likely than men to have chronic medical problems (59 percent compared to 43 percent) and nearly three out of every four women battle with mental health illnesses, compared to just over half of male prisoners.²² Additionally, many women enter the prison system while they are pregnant (one in 25 women in state prisons and one in 33 in federal prisons). A study by the Correctional Association of New York found that pregnant women often receive substandard reproductive health care and face serious delays accessing obstetric and gynecological services, and that women are “routinely denied basic reproductive health items, including contraception and sufficient sanitary supplies.” Pregnant women often face poor living conditions, including confinement, insufficient nutrients, and harmful childbirth experiences, such as shackling during labor.²³ In fact, in all but 13 states, women can be shackled during labor and delivery, and even in states where it is outlawed many women still experience such treatment.

v Chesney-Lind describes this phenomenon as “vengeful equity.”

vi Chesney-Lind reports that nearly 60 percent of women serving time in state prisons reported having been either sexually or physically abused at least once before spending time in prison, and for approximately one-third of all women in prison, that abuse began when they were young girls and continued throughout adulthood. Such victimization patterns are significant because research on girl’s and women’s crime often exposes significant links between these traumatic experiences and behavior that later involves them in the criminal justice system (p83).

state, with the exception of Virginia, had adopted the practice of convict leasing.²⁹ Under the lease arrangements prisoners became the property and responsibility of employers.³⁰

As convict leasing was phased out in the 1930s (thanks to public opposition to the violence and torture that characterized the system), a new form of forced labor—the chain gang—took over. Under this system, chains were shackled to the ankles of prisoners, binding together men as they slept, ate, and worked. The brutality of this system eventually attracted public outrage, and it was abolished nationwide by the mid-1900s, making way for the modern prison system.

AN ERA OF CIVIL RIGHTS AND INCLUSION

As a spirit of social reform began to take hold across the country in response to the vast racial injustices that characterized the Jim Crow era, a series of inclusive rules were written that had the potential to move the American criminal justice system closer to one of justice and fairness.³¹ As early as 1955, the National Council on Crime and Delinquency proposed that the civil rights of offenders should be restored upon completion of criminal sentence. In 1967, the President’s Crime Commission called for a reevaluation of the penalties associated with criminal

convictions, and the Bail Reform Act of 1967 reduced pretrial detention for low-income individuals.³² In the early 1970s, the Advisory Commission on Corrections recommended overturning voter disqualification statutes, arguing, “If corrections is to reintegrate an offender into free society, the offender must retain all attributes of citizenship.”³³ The reform spirit that moved these federal initiatives also spread to many of the states, and during the 1960s and ’70s the number of punitive state laws declined while the number of laws that required the restoration of civil rights to offenders increased.³⁴

In these decades, indeterminate sentencing allowed for greater variability in prison terms for offenders. In some ways this was more equitable than the harsh penalty guidelines that would follow, but it also resulted in disparate outcomes for people of color and drew the ire of civil rights advocates who were pushing for racial equity across a range of institutions, motivating them to call for “colorblind” policies that would be applied equitably. The flames of the “rehabilitative ideal” that were lit during the civil rights movement would be swiftly extinguished as more conservative social and economic ideologies took hold.³⁵ The era that would follow would give rise to “race-neutral” policies that were hardly race-neutral in practice.

POST-CIVIL RIGHTS: IMPLICIT EXCLUSION (1980-PRESENT)

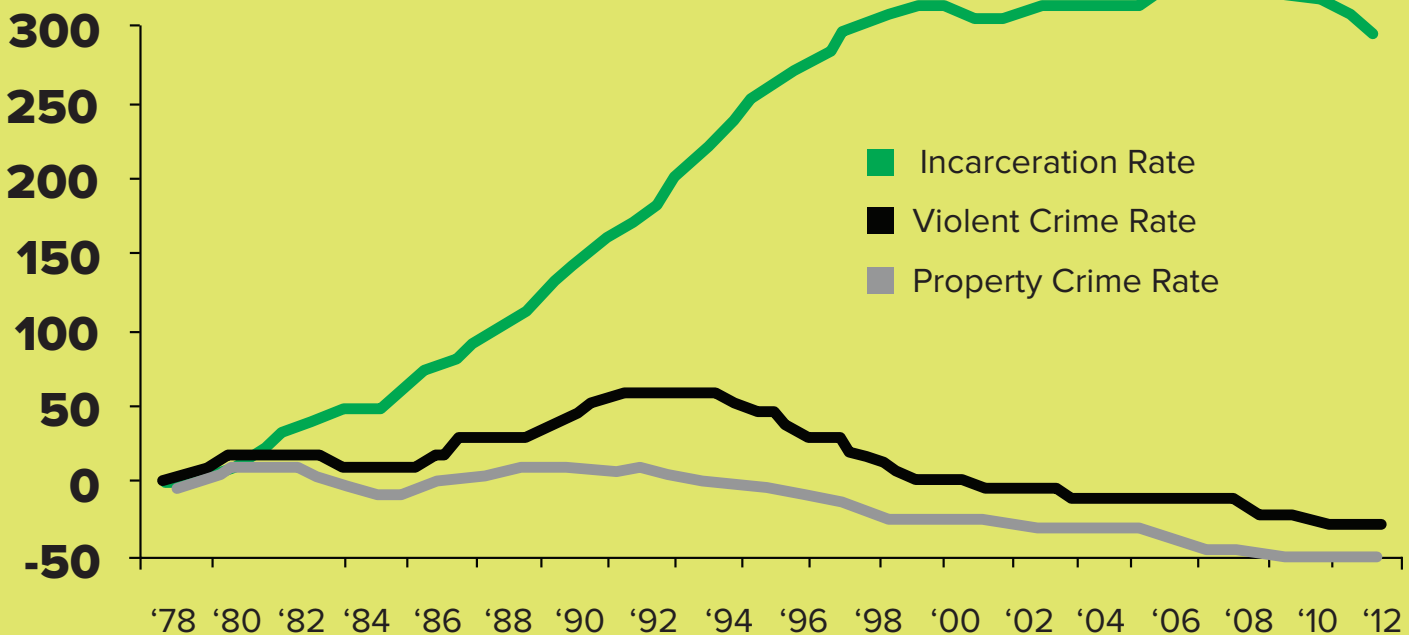
A series of shifts in socioeconomic circumstances, public opinion, and political discourse laid the

groundwork for the dramatic changes that still characterize our criminal justice system. During the 1960s and 1970s, unemployment among unskilled men rose as urban labor markets collapsed in the wake of industrial job losses. Poverty and “chronic joblessness” became commonplace in the Northeast and Midwest, leaving black neighborhoods increasingly under the scrutiny of police.³⁶ Black Americans, who had not been fully or meaningfully incorporated into Northern cities over the course of migration, were particularly vulnerable to the effects of these economic changes.³⁷ Yet even before the rise of urban deindustrialization, race and notions of “criminality” requiring over-policing and incarceration were already well established. As Khalil Gibran Muhammad argues, during the height of our industrial economy, blacks in northern cities were still overrepresented in terms of arrest rates and incarceration in both Northern and Southern prisons.³⁸

The 1960s and 1970s brought rising crime rates and increasing concern for both progressives and conservatives. This concern about increasing crime rates was—at least among conservatives—exacerbated by backlash against the inclusionary social movements of the time. As Marc Mauer of the Sentencing Project posits, social activism and disorder fueled the anxieties and resentments of working-class whites, driving them to conservative politicians who were increasingly promising tough-on-crime measures.^{vii} Todd Clear

vii Mauer explains, “Some contend, in fact, that the Republican Party has been pursuing a ‘Southern Strategy’ for wresting electoral control of Southern states previously represented by Democrats by appealing to voters’ fears of ‘social unrest’ and violent crime.”

Incarceration Rose Even After Crime Fell



Source: Mitchell, Michael. 2014. “The Causes and Costs of High Incarceration Rates,” Center on Budget and Policy Priorities.

explains further:

This concern about crime also served as a symbol for other, less easily voiced worries about civil-rights unrest, antiwar disturbances, and bubbling reaction to the underlying principles of the welfare state and Lyndon Johnson's Great Society. In the public mind, the social fabric of American society had broken down and disorder and disruption were rampant. A strong response—law and order—was required.³⁹

The War on Drugs: Harsher Treatment and Collateral Punishment

A strong response is precisely what followed, as new racial rules around crime and punishment were enacted with devastating consequences for black Americans. In 1971, responding to and reinforcing public perceptions about the crack epidemic, Nixon declared the “War on Drugs.” This laid the groundwork for a series of penal changes that would drive up incarceration rates for all Americans, but particularly for black Americans. These include:

- » Mandatory minimum sentences, essentially preset prison terms for certain violations, limit the discretion of judges in the sentencing process and are credited with keeping many offenders, even those of low-level crimes, in prison longer.⁴⁰
- » Truth in sentencing guidelines established at the federal level require states to imprison individuals for 85 percent of their sentences in order to receive certain funding streams.
- » Three-strikes laws levy automatic lengthy sentences—in many cases life sentences and sometimes life without parole (LWOP)—against individuals with two previous felonies. Black Americans make up 28.3 percent of all prisoners serving life sentences, but represent 56.4 percent of those serving LWOP and 56.1 percent of those sentenced to LWOP as juveniles. Black youth serve LWOP sentences at a rate 10 times higher than white youth.⁴¹

At the end of the 1970s, states began to turn away from parole release in favor of minimum required sentences, and by the end of the decade there was hardly a state that had not made major changes to its penal structure.⁴² New York's Rockefeller drug laws of the mid-'70s paved the way for the wave of federal sentencing changes for drug-related crimes during the Reagan and Bush eras. In the 1980s and '90s a number of vicious crimes committed by former prisoners fueled the push for harsher penalties as political leaders seized on public shock and fear and portrayed opponents as weak on crime.^{viii} In 1994, President Clinton oversaw

viii The 1988 Willie Horton ad from the George H.W. Bush campaign to

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Poverty and “chronic joblessness” became commonplace in the Northeast and Midwest, leaving black neighborhoods increasingly under the scrutiny of police.

the passage of the Violent Crime Control and Law Enforcement Act, which put more cops on the streets, expanded the death penalty, increased prison sentences, restricted educational opportunities for prisoners, and invested significantly in the expansion of the U.S. prison system.

As the legacy of President Clinton's 1994 crime bill comes into sharper focus during the 2016 presidential campaign, some have suggested that the bill was, at least in part, a response to the concerns of black communities about threats of violence in their neighborhoods. But as Elizabeth Hinton, Julilly Kohler-Hausman and Vesla Weaver explain, while black Americans were concerned about crime, violence, and drugs in their neighborhoods, they were not simply asking for tough-on-crime measures to address them: “Calls for tough sentencing and police protection were paired with calls for full employment, quality education and drug treatment, and criticism of police brutality.”⁴³ Policymakers ignored the calls for more holistic interventions and investments and selectively focused on stricter surveillance and harsher punishments. “When blacks ask for better policing, legislators tend to hear more instead.”⁴⁴

One of the hallmark rules of the War on Drugs was the sentencing disparity for crack cocaine offences compared to powder offenses (100:1), despite the fact that the substances were virtually identical in composition. As of 2004, two decades after the original mandatory minimum sentencing rules for crack cocaine were enacted, black Americans served nearly as much time in prison on average for nonviolent drug offences (58.7 months) as whites did on average for violent

defeat Michael Dukakis is a prime example of this. See Ian Haney Lopez, *Dog Whistle Politics*.

offenses (61.7 months).⁴⁵ In 2010, 30,000 people were sentenced for crack cocaine offenses under the harsher rules regime; 85 percent of them were black.⁴⁶ Research has shown that more than 80 percent of defendants sentenced for crack offenses are African American, despite the fact that more than 66 percent of crack users are white or Hispanic.⁴⁷ In 2010, Congress passed the Fair Sentencing Act, which reduced the sentencing disparities from 100:1 to 18:1—but disparities still persist, perpetuating “outdated and discredited assumptions about crack cocaine that gave rise to the unwarranted 100-to-1 disparity in the first place.”⁴⁸

The War on Drugs increased arrests among African Americans, but those arrests were not reflective of drug use in black communities. Research shows that African Americans comprise only 15 percent of the country’s drug users, yet they make up 37 percent of those arrested for drug violations, 59 percent of those convicted, and 74 percent of those sentenced to prison for a drug offense.⁴⁹ Black high school seniors report using drugs at a rate that is three-quarters that of white high school seniors, and white students have three times the number of emergency room visits for drug overdose.⁵⁰

Collateral Punishments

A series of new rules enacted in the mid-1980s and ’90s expanded punishment beyond prisons and paved the way for a wide range of “collateral punishments”: denying convicted felons the right to vote,^{ix} encouraging the termination of parental rights, restricting the right to hold public office, enacting occupational exclusions, and barring formerly incarcerated individuals from a wide range of public safety benefits.⁵¹ The federal government gave states financial incentives to abide by these measures.⁵²

Worse, the Personal Responsibility and Work Opportunity Reconciliation Act (also known as “welfare reform”) required states to permanently bar individuals with drug-related felony convictions from receiving assistance and food stamps. States were given the option to opt out of these bans but had to do so proactively, and many did not. The U.S. penal system quickly became one of “wholesale exclusion.”⁵³ Individuals who violated probation or parole temporarily lost access to food stamps, public housing benefits, Temporary Assistance for Needy Families (TANF), and Social Security insurance. The Higher Education Act of 1998 made drug offenders ineligible to receive publicly funded student loans for at least one year. As Jeremy Travis, President of John Jay College of Criminal Justice, explains, these developments “heightened the vulnerability of poor

^{ix} Felon disenfranchisement rules were already on the books, particularly in many Southern states as a relic of Jim Crow-era racial rules.



The War on Drugs increased arrests among African Americans, but those arrests were not reflective of drug use in black communities.

people to the negative effects of invisible punishment.”⁵⁴ The state had erected barriers to the very systems and opportunities that would promote reintegration and prevent recidivism, instead ensuring permanent exclusion.

These penalties were theoretically race-neutral, but given the disproportionate representation of black Americans in the criminal justice system and the vast disparities in wealth, income, and education—just to name a few critical indicators—that made black Americans more likely to rely on these social programs, they were bound to be hardest hit by these collateral punishments.

Prosecutorial Discretion

The rules of public defense and prosecutorial discretion also allow for bias to be reinforced by institutions and result in elevated charges and longer sentences for black Americans. Angela Davis has documented how the proliferation and overlapping of drug war rules builds out the space for individual—often unconscious—bias to shape unequal prison sentences: “Race ... may affect the existence of a prior criminal record even in the absence of recidivist tendencies on the part of the suspect.”⁵⁵ Among the factors prosecutors are recommended to consider are previous convictions and likelihood of conviction—factors largely shaped by socioeconomic circumstances, and which reinforce and repeat institutionalized biases. As a 2014 report from National Academies Press indicates, black and Hispanic defendants are more likely than whites to be detained before trial, which increases the likelihood of a prison sentence, and that race and ethnicity affect charging and plea bargaining decisions. In other words, there is no strong evidence of racial bias at the sentencing stage per se, but bias that occurs earlier in the justice and trial process paves the way for unwarranted incarceration differences.⁵⁶

Further, the racial wealth and income gaps exacerbate disparate outcomes in the criminal justice system, as black Americans are less likely to have access to capital needed to pay for alternatives to incarceration. Indeed, poor individuals are often unable to post bail and must instead spend time in jail until their cases are resolved.⁵⁷

Non-Incarceration Penalties

The detrimental effects of our criminal justice system on people of color are not confined to prisons and incarceration. The non-custodial justice system—which encompasses fines, fees, and other economic penalties that can result in loss of property and sometimes liberty—affects far more individuals, families, and communities. The DOJ report explains the extent of these penalties in Ferguson: “Ferguson’s law enforcement practices are shaped by the City’s focus on revenue rather than by public safety needs,” resulting in “a pattern of unconstitutional policing” that “has also shaped its municipal court, leading to procedures that raise due process concerns and inflict unnecessary harm on members of the Ferguson community.”⁵⁸ Municipal courts issue municipal arrest warrants “as a routine response to missed court appearances and required fine payments.” In fact, in 2013, the court issued more than 9,000 warrants on cases related to minor offenses such as traffic tickets, parking infractions, or housing code violations.⁵⁹ These violations are not unique to Ferguson.^{x60}

The violations described above intersect with other rules that disadvantage black individuals at multiple points on the socioeconomic spectrum. Living in poverty increases the likelihood that one will fall prey to incarceration or one of the abovementioned civil violations, which adds to the cycle of poverty.^{xi 61} Violations that lead to arrests or license suspensions disrupt employment, schooling, health, and familial and community responsibilities, and they pull money out of communities that are already reeling from the state’s overinvestment in the criminal justice system and divestment from communities of color. In short, the current rules in our criminal justice system exacerbate historical disparities and reinforce the other deep racial, social, and economic inequities described in this paper.⁶²

x In California, where blacks are two to four times more likely to get pulled over for a traffic stop than whites, a host of policies turn minor citations into a poverty sentence for many black individuals. In San Francisco, over 70 percent of individuals seeking legal assistance for driver’s license suspensions were black, even though they comprised a mere six percent of the city’s population. Over four million individuals in California have suspended licenses for failure to appear or pay.

xi According to the Prison Policy Initiative, in 2014 the median annual income for incarcerated black men and women was \$17,625 and \$12,735 respectively, nearly half of the median annual income for non-incarcerated black men and women.

Impact of Incarceration

Much of the research on the collateral consequences of incarceration does not focus specifically on race, but given what we know about the disproportionate impact of the criminal justice system on black Americans, it is clear how the cascading costs of incarceration are particularly detrimental to black individuals, families, and communities. The effects of incarceration transcend an inmate’s time within the correctional system and have lifelong, even intergenerational impacts on economic security and mobility for families and communities. Like the Jim Crow laws, the prevalence of criminal records banishes African Americans to second-class status.⁶³ This in turn fuels a vicious cycle of racial inequities in income, wealth, health, education, and democratic access.

INDIVIDUALS

Incarceration has staggering economic and health impacts. Individuals who have been incarcerated find it harder to retain employment, earn less money over their lifetimes, are less likely to marry, and report an array of medical and psychological problems.⁶⁴

Several studies illustrate the dismal job market prospects for ex-prisoners.⁶⁵ An Urban Institute study of 740 males exiting prisons in Illinois, Ohio, and Texas found that only 45 percent were employed eight months after their release. Another 2000 study of ex-prisoners from Ohio found that 42.5 percent remained without work one year after their release.⁶⁶ It is estimated that the earnings loss associated with incarceration ranges from 10 to 30 percent.⁶⁷ There are a range of rules that make it more difficult for ex-prisoners to obtain employment, and the denial of access to important social safety nets like education and housing further impedes the ability of ex-prisoners to achieve economic security.^{xii 68}

Another factor is stigma against formerly incarcerated job applicants. In a series of studies, employers showed they would rather hire a high school dropout, a welfare recipient, or someone with little work experience than a former convict.⁶⁹ Pager’s research shows that having a prison record reduces the success rate of a black job applicant by one-half to two-thirds.⁷⁰ Given that employers have been shown to prefer white male applicants with a felony conviction over black men

xii For example, the American Bar Association uncovered 38,000 statutes with a collateral consequence for a conviction; 84 percent of these are related to employment, and 82 percent of them have no end date. The ABA notes, “a crime committed at age 18 can ostensibly deny a former offender the ability to be a licensed barber or stylist when he or she is 65 years old.”

INCARCERATION AND POVERTY

Despite strong economic growth, for the past few decades the U.S. has continued to experience high poverty rates while incarceration rates have grown by more than 300 percent. One study by Robert DeFina and Lance Hannon, measuring the impact of incarceration on three different poverty indices, examines a possible relationship between the increased incarceration of the past 30 years and impeded progress toward poverty reduction. The results suggest that growing incarceration has dramatically increased poverty, and that the official poverty rate would have fallen considerably during the past three decades had it not been for mass incarceration.⁹¹

without one, it is not hard to imagine how the double burden of race and incarceration status impedes the job prospects of black men.⁷¹

Research shows there are also significant health consequences for individuals who have been incarcerated. It is estimated that half of incarcerated individuals have drug and/or alcohol addiction before they enter prison, and more than half suffer from serious mental illness.⁷² The lack of rehabilitative or substantial mental health services causes health conditions to worsen, leaving individuals less equipped to successfully navigate personal, social, and economic challenges than they were before imprisonment.⁷³

FAMILY

As a recent report from the Annie E. Casey Foundation explains, incarceration is a sentence prisoners share with their entire family:

They feel it when their refrigerator is bare because their family has lost a source of income or child support. They feel it when they have to move, sometimes repeatedly, because their families can no longer afford the rent or mortgage. And they feel it when they hear the whispers in school, at church or in their neighborhood about where their mother or father has gone.⁷⁴

A number of studies have linked parental incarceration with a “cascade” of negative outcomes, from mental and behavioral health problems to early substance

use and abuse to poor educational outcomes and social exclusion more broadly.⁷⁵ As Wakefield and Wildeman explain, incarceration has the effect of “piling disadvantage on vulnerable families, delivering a ‘serious and sometimes lethal blow to an already weakened family structure.’”⁷⁶

Incarceration takes a toll on the economic security of families, many of whom were living in poverty long before incarceration touched their lives. In the years after a father’s incarceration, average family income is 22 percent lower than the year before incarceration, and in the year following the father’s release, family income is still 15 percent lower.⁷⁷ Nearly two-thirds of families with an incarcerated individual were unable to meet their family’s basic needs.⁷⁸

Women—already struggling with gendered wealth and income gaps—often shoulder the financial and emotional burden of their family member’s incarceration. The Ella Baker Center found that in 63 percent of cases, family members of the incarcerated were responsible for court-related costs associated with conviction, and 83 percent of those family members were women.⁷⁹ Women represent 87 percent of family members responsible for call and visitation costs, which are often prohibitive. In 2013 the Federal Communications Commission responded to pressure from prisoner advocacy groups and implemented an interstate rate cap on phone companies, reducing the cost of 15-minute calls to \$3.75, and banned additional fees for connecting calls. Before that, the cost of such a call was \$17.⁸⁰ It is not hard to see how the long-term costs of incarceration can amount to a year’s total household income and force a family into debt.

Children also bear a unique and heavy burden of incarceration. From 1980 to 2000, the number of children with a father in prison or jail rose by 500 percent, and today more than 5 million children have had a parent incarcerated at some point in their lives.⁸¹ Pew Trusts reports that one in nine African-American children (11.4 percent), one in 28 Hispanic children (3.5 percent), and one in 57 white children (1.8 percent) have a parent who is incarcerated.⁸² Sixty-two percent of women in state prison have children who are minors, and nearly 75 percent of incarcerated women are the primary—and sometimes only—caretakers of their children prior to arrest.⁸³ It is not unusual for a mother’s arrest to result in her children’s entry into the foster care system.⁸⁴ Research has shown that children with parents in prison are more likely to experience social and emotional problems, more likely to have trouble in school, more likely to have trauma-related stress, and more likely to have experienced homelessness than

children without incarcerated parents.⁸⁵ The impacts of incarceration even extend to the youngest among us; Wakefield and Wildeman have shown that recent parental incarceration is associated with a 49 percent increase in the odds of early infant mortality.^{xiii}

COMMUNITY

As scholars Robert DeFina and Lance Hannon point out, the communities where children live hardly go unscathed:

Many are mired in poverty and contend with crime, poor quality housing, low-performing schools and a dearth of resources that further prevent families from creating a safe and nurturing home environment. The effects of incarceration exacerbate the situation.” One study found that if incarceration rates hadn’t increased during a 24-year period, the U.S. poverty rate would have fallen by 20 percent, rather than remaining relatively steady.⁸⁶

Clear argues that high incarceration rates in poor communities destabilize social relationships and end up causing crime instead of preventing it.⁸⁷

A number of researchers have illustrated how mass incarceration disrupts a neighborhood’s informal mechanisms of social control and social support by breaking apart families, extracting purchasing power from the community, and building even greater barriers to economic security. “The detrimental effects of mass incarceration on a community’s collective efficacy may ultimately lead to a type of ‘durable inequality’ where residents cannot escape what might otherwise be only episodic poverty.”⁸⁸

As the recent Annie E. Casey report explains, in neighborhoods where a significant percentage of residents are incarcerated, the effect is cumulative: “The sheer number of absent people depletes available workers and providers, while constraining the entire community’s access to opportunity — including individuals who have never been incarcerated.”⁸⁹ Research has shown that living in a community with high rates of incarceration increases the likelihood that residents will experience depression and anxiety, and even for those who do not have personal experiences with the penal system, “heightened police vigilance can cast a shadow over their children, families and homes.”⁹⁰

xiii Wakefield and Wildeman show that this association is equally as strong as between maternal smoking and infant mortality and as important in shaping risk of infant mortality as is getting adequate prenatal care compared to inadequate care.



Research tells us that harsher criminal justice policies and increased incarceration rates do not, contrary to popular belief, make people safer. What does make communities safer are the very programs that are deprived of funding by investments in the criminal justice system.

Conclusion

In this section we have described the historic roots and current drivers of today’s criminal justice system. We have illustrated the vicious and cyclical nature of our current penal system: The racial rules contribute to racial, social, and economic inequities that disproportionately expose black Americans to the criminal justice system. Experience with that system—be it in the form of probation, incarceration, or other penalties—makes it even more difficult for individuals to escape from the vortex of inequities.

Research tells us that harsher criminal justice policies and increased incarceration rates do not, contrary to popular belief, make people safer. What does make communities safer are the very programs that are deprived of funding by investments in the criminal justice system. Those include: education programs for youth from pre-school age through high school; jobs programs and lower unemployment rates; an increase in real wages; access to quality, affordable mental health and substance abuse programs; and community-supported policing strategies.⁹² But as we have detailed, investments in these areas remain woefully inadequate while investments in the prison system have soared. Achieving equity and justice for black Americans will require dramatically reforming our current criminal justice system; it will also require reckoning with historic and current injustices and investing in all aspects of black communities.

Health

So far we have discussed how a complex web of racial rules impacts the social and economic well-being of black Americans, but we also know that these rules penetrate beyond the social and economic level and affect people physically, causing negative health outcomes.ⁱ Any analysis of racial inequities would be incomplete without an examination of the relationship between the racial rules and health outcomes; after all, health care access and good health are essential preconditions for well-being in all other areas of life, and as such are considered fundamental human rights.ⁱⁱ How can one maximize employment and educational opportunities if faced with health conditions that prevent one from doing so?

Economic status is known to be a strong predictor of health status. However, we also know that race itself is a factor, so much so that even black Americans at higher income and education levels experience negative health outcomes that closely resemble the outcomes of lower-income and less educated white Americans. Indeed, research shows that at all educational levels, black Americans face worse health outcomes than white Americans with similar educational backgrounds.¹

In this section we examine the historic and current racial rules that contribute to vast health disparities and inequities among black Americans. We note that there are many other factors that contribute to these disparate health conditions, but here focus on factors that are shaped by the racial rules, particularly those rules that have been addressed throughout this report.

ⁱ Bruce G. Link and Jo C. Phelan argue that individual risk factors must be contextualized by examining what puts people at risk, and that social factors such as socioeconomic status and social support are likely “fundamental causes” of disease. Many of the rules we address in this paper have become fundamental causes of negative health outcomes. They “embody access to important resources, affect multiple disease outcomes through multiple mechanisms, and consequently maintain an association with disease even when intervening mechanisms change.” (See Link, Bruce G. and Jo C. Phelan. 1995. “Social Conditions as Fundamental Causes of Disease.” *Journal of Health and Social Behavior* (Extra Issue):80-94.)

ⁱⁱ The World Health Organization’s constitution states: “The right to the highest attainable standard of health” requires a set of social criteria that is conducive to the health of all people, including the availability of health services, safe working conditions, adequate housing and nutritious foods. We support the notion that achieving the right to health is closely related to that of other human rights, including the right to food, housing, work, education, non-discrimination, access to information, and participation.

The rules we focus on in this section include:

- » Health coverage, which is closely related to economic status driven by income and wealth, which we have described as being largely shaped by a range of racial rules
- » Residential segregation, which is driven by the wealth, income, and education factors we have previously discussed
- » Educational outcomes, which are driven by a number of racial rules such as re-segregation and a lack of investments in majority minority schools and their surrounding neighborhoods
- » Racial bias in the medical profession, which results in referrals to lower-performing institutions and negative physician–patient interactions and contributes to an overall lack of trust between black Americans and the medical establishment
- » Toxic stress, which results from the impact of negative socioeconomic outcomes, and also from the collective toll—both at the individual and community levels—of racism itself

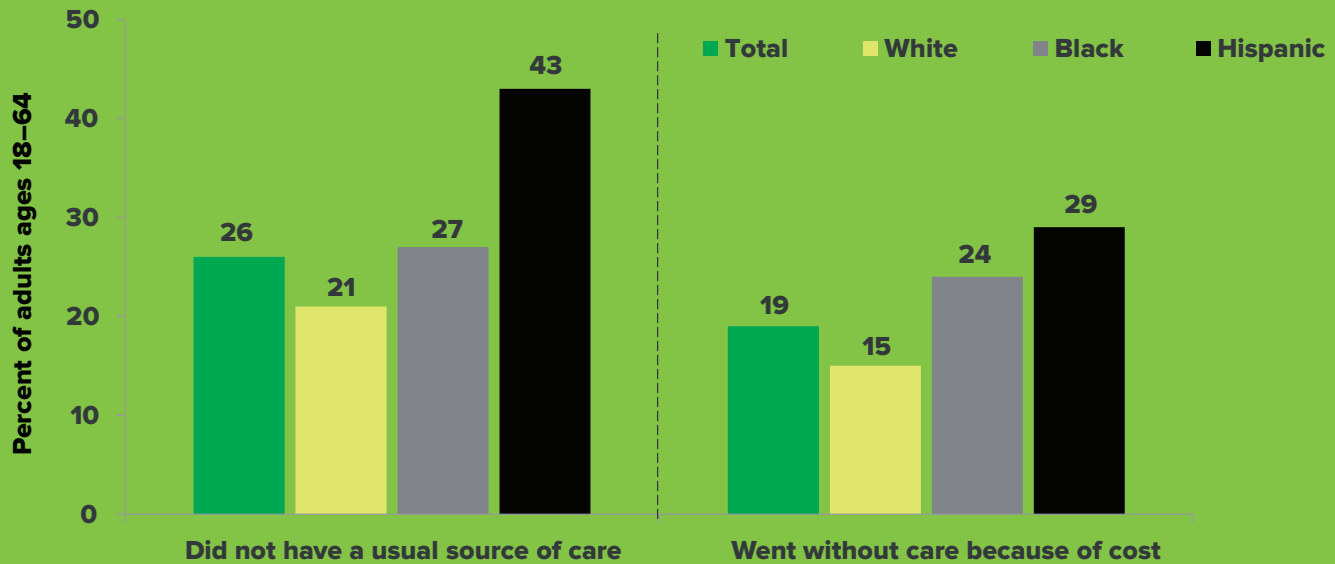
We illustrate the cyclical relationship between the racial rules and the health outcomes of black Americans: Racial rules lead to social and economic inequities that drive health disparities, which only further reinforce unequal socioeconomic outcomes. And we reinforce the need for bold and comprehensive reform that takes into account race and economics. Without such reform, efforts to improve life outcomes for current and future generations of black Americans will fall flat.



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Racial rules lead to social and economic inequities that drive health disparities, which only further reinforce unequal socioeconomic outcomes.

Blacks and Hispanics Are More Likely Than Whites to Lack a Usual Source of Care and Go Without Care Because of Cost (2012-13)



Notes: Black and white refer to black and white non-Hispanic populations. Hispanics may identify as any race.

Source: Hayes, Susan L., Pamela Riley, David C. Radley, and Douglas McCarthy. 2015. "Closing the Gap: Past Performance of Health Insurance in Reducing Racial and Ethnic Disparities in Access to Care Could Be an Indication of Future Results." The Commonwealth Fund.

Health Disparities and Inequities

By most measures, black Americans experience worse health outcomes than any other racial or ethnic group.² They are twice as likely to die from asthma and prostate cancer and have a higher prevalence of—and are 30 percent more likely to die from—heart disease than are white Americans.³ They are 40 percent more likely to be obese and 60 percent more likely to be diabetic, both health conditions that are often precursors to more serious health issues.⁴ Black Americans make up approximately 14 percent of the U.S. population but accounted for 40 percent of tuberculosis cases in U.S.-born persons and approximately 44 percent of all new HIV infections in 2014.⁵ The Centers for Disease Control and Prevention (CDC) reports that of the nearly 200,000 new HIV infections between 2008 and 2011, black Americans accounted for just under half of the total and represented 64 percent of diagnoses among women and 67 percent among children under 13. In 2010, the mortality rate for blacks with HIV was 25 per 100,000, compared with three per 100,000 for whites.⁶ The statistics related to other sexually transmitted infections, such as gonorrhea and chlamydia, are equally staggering.ⁱⁱⁱ

iii According to the CDC, in 2010, blacks represented 69 percent of all reported cases of gonorrhea with a rate of infection 18.7 times the rate among whites and the rate of chlamydia among black women was more than seven times the rate among white women (1,536.5 and 205.1 per 100,000 women, respectively). The rate among black men was close to 11 times the rate among white men (761.8 and 69.9 cases per 100,000 men, respectively).

Black women and children experience a unique set of health disparities. When compared with white women, they are about twice as likely to die from cervical cancer, about 40 percent more likely to die from breast cancer, and are three to four times as likely to die from pregnancy-related causes.⁷ In some parts of the United States, maternal mortality rates among black women are higher than those in certain parts of sub-Saharan Africa.⁸ There have been significant declines in infant mortality for all groups over time, but racial disparities persist.⁹ Children born to black women are more than twice as likely to die in infancy, twice as likely to die of sudden unexpected deaths, and more than twice as likely to die from asthma as white children.¹⁰

These disparate health outcomes are shaped by a number of racial rules, many of which have deep historic roots.

The Rules of Racial Health Inequities

PRE-CIVIL RIGHTS: THE DEEP ROOTS OF HEALTH INEQUITIES

As with the many other topics we have examined in this paper, the explicit racial rules that once regulated black bodies may no longer be “on the books” as they were during slavery and Jim Crow. But the arc of those historic policies is long and has shaped the current

rules that impact the health and economic lives of black Americans.

In the earliest days of our nation's history, the medical establishment used "scientific racism" to justify the enslavement of blacks and the exploitation of the black body in countless other ways.¹¹ Scientific racism defined "blackness" in different and contradictory ways that suited the social and economic needs of whites at the time. Scientists argued that blacks had physical and mental defects that made them incapable of caring for themselves, and therefore in need of white supervision and control, but also argued that blacks' "primitive nervous systems" made them immune to emotional and physical pain, which justified the subjugation of black bodies for labor and economic gain, and also for medical experimentation.¹² The most notable of those experiments was the Tuskegee syphilis study, a study conducted between 1932 and 1972 in which 600 black men and their families were "deceived into participating in a research study that denied them treatment, so that [U.S. Public Health Service] scientists could trace the progress of the disease in blacks."¹³

Studies supporting these race theories were printed in and validated by the premier medical journals of the time, cementing the racist rules of medicine and health into the very foundation of our nation's medical system. As Harriet Washington writes, "The dearly held precepts of scientific racism sound nakedly racist, absurd, or both today, but in the eighteenth and nineteenth centuries scientific racism was simply science, and it was promulgated by the very best minds at the most prestigious institutions of the nation."¹⁴ Physicians routinely used slaves for medical experiments and the mistrust of doctors among slaves was so pervasive that it caused many to hide their—and their children's—illnesses and prevented them from seeking medical attention.¹⁵ These were the roots of the fear and distrust of the medical system that still exists in many black communities today.

Since the earliest days of slavery black women have fought for control over their own reproduction. Scientific racism fed the early tropes about the hypersexuality of black men and women, theories used to justify the rape and sexual assault of black women and girls, who were considered important assets because of their ability to bear children and produce more property—future labor—for their owners. Thomas Jefferson once said, "I consider a slave woman who breeds once every two years as profitable as the best worker on the farm."¹⁶ The reproduction of black women was later controlled by the state in another way: involuntary sterilization. By the early 1920s, a number

of states had involuntary sterilization laws on the books, and in 1927 the Supreme Court confirmed the states' right to sterilize "unfit" individuals in its *Buck v. Bell* decision.^{iv} Given the explicitly racist rules of the time, "unfit" often meant non-white. That Supreme Court decision unleashed a wave of sterilization efforts by the states, and the number of procedures increased tenfold in the two decades that followed. By 1961, more than 62,000 eugenic sterilizations had taken place in the United States, 61 percent of which involved women.^v A third of those sterilizations took place in California.

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In the earliest days of our nation's history, the medical establishment used "scientific racism" to justify the enslavement of blacks and the exploitation of the black body in countless other ways.

It is worth noting that North Carolina and Virginia recently decided to grant reparations to some sterilization victims.¹⁷ Unfortunately, the ugly history of forced sterilization is not only part of our distant past. Between 2006 and 2010, doctors contracted with the California Department of Corrections and Rehabilitation forcibly coerced nearly 150 female inmates to become sterilized, and it is believed that 100 more such sterilizations took place dating back to the late 1990s.^{vi 18}

In the years that followed slavery, racial segregation defined the health system in the same way it defined the majority of U.S. social and economic systems. This was especially true in the Jim Crow South (where in

iv (See Kluchin, 2011.)

v *Ibid.* As Kluchin points out, men were also sterilized as punishment for criminal behavior and to treat "aggression."

vi The Center for Investigative Reporting found that at least 148 women inmates received tubal ligations between 2006-2010—in direct violation of prison rules. From 1997 to 2010, the state paid doctors \$147,460 to perform the procedures.



A comprehensive policy overhaul is needed to effectively address economic inequality and structural racism and provide lasting social and economic opportunities for black communities in the United States.

1946 only 9.6 percent of black births took place in a hospital, compared to 69.3 percent of white births), but also in the North, where black physicians were denied admitting privileges to historically white hospitals. Even black individuals who had good health insurance were relegated to county hospitals and denied referral or admission to better facilities or those closer to their homes.¹⁹

THE CIVIL RIGHTS ERA: EXPLICIT INCLUSION (1955–1980)

Between the mid-1940s and 1960s, a series of inclusive rules began to address vast racial inequities in health access and outcomes.^{vii} President Truman’s executive orders that prohibited discrimination in the federal workforce and desegregated the armed forces were also applied to hospitals run by the Department of Veterans Affairs. Those orders initiated progress that grew when civil rights efforts pushed President Kennedy to make desegregation in medical schools and hospitals a prerequisite for federal grants and contracts. A series of legal decisions and continued pressure from the civil rights movement set the stage for the 1965 passage of Medicare, which prompted the largest sea change in the desegregation of the medical system. Medicaid was enacted at the same time, but the refusal of many physicians to see Medicaid patients perpetuated

vii Our current “race” categories also come from these decisions. OMB states that these categories were developed to monitor efforts to enforce civil rights laws. These are the very groups we use to claim biological differences. But it’s stated very clearly in black and white that the purpose was for administrative consistency across agencies.

the long history of discrimination against black Americans.^{viii 20}

Current black–white health disparities in access and outcomes emanate from this long history of racial rules. There are a number of pathways that link the racial rules to negative health outcomes, and providing an exhaustive list of those causal pathways is beyond the scope of this endeavor. Here we include a number of pathways that have a clear relationship with the racial rules we have described throughout this paper.

THE CURRENT RULES: PROGRESS STALLED AND ACHIEVED (1980–PRESENT)

Health Coverage

Research has long shown that having health insurance is associated with significant health benefits, and that lacking such coverage can have a detrimental impact on individual and community health.^{ix} Studies have also shown that when parents are insured their children are more likely to be insured and also to have more continuous preventive care and better health outcomes.²¹ The quality and status of one’s health coverage is largely dependent on their income and employment status, which—as we discussed at length previously—is affected by race. Given the disadvantages black Americans face in the labor market and their disproportionate representation in jobs that do not guarantee health coverage, it is only logical that they would be uninsured at higher rates and also experience greater health disparities.

In 2013, before the major coverage expansions of the Affordable Care Act (ACA) took effect, more than one-in-five black adults were uninsured, compared with one-in-seven whites.^{x22} Fewer than 50 percent of black nonelderly Americans have private insurance, compared to more than 70 percent of white Americans.²³ Adults with low incomes are more likely than other adults to be uninsured, and in 2013 nearly half of black Americans had incomes below 200 percent

viii After the *Brown v. Board* decision, the 1946 Hill-Burton legislation that allowed for racial exclusion in publically funded facilities was successfully challenged. This set the stage for the inclusion of Title VI in the 1964 Civil Rights Act, prohibiting “the provision of any federal funds to organizations or programs that engage in racial segregation or other forms of discrimination.” (Smith, David Barton.)

ix Adults without health insurance are more likely to die or suffer poor outcomes after an event like a stroke, heart attack, or severe injury or trauma. They are more likely to be diagnosed with cancer at advanced stages and less likely to be aware of hypertension and to have inadequate control of blood pressure (Institute of Medicine, 2009.)

x Health coverage and access is even worse for Hispanics. In 2013 one in three Hispanics were uninsured and 43 percent of Hispanics reported not having a usual source of care.

of the federal poverty level, compared to less than one-quarter of whites.²⁴ At that time, almost 30 percent of black adults reported not having a usual source of care, compared to just 21 percent of whites, and black adults reported forgoing care because of costs at a rate nearly double that of whites.²⁵

The ACA, which has expanded coverage to more than 16 million individuals and led to a precipitous drop in the uninsured rate among black Americans, has been one of the most inclusive pieces of legislation in recent decades.²⁶ It enabled 3.1 million young adults to gain coverage through their parents' insurance plans.²⁷ It also expanded access to care for low-income individuals by establishing tax credits and health subsidies for individuals with incomes up to 400 percent of the federal poverty level (FPL) to purchase private insurance on the exchanges.²⁸ And it raised Medicaid eligibility from 133 percent to 138 percent of FPL and expanded access to adults who were not pregnant, disabled, etc. (categories that previously excluded many adults).²⁹ In addition to expanding coverage, it also raised the floor of coverage for all individuals, especially women, by prohibiting discrimination based on gender and preexisting conditions, mandating no-cost contraceptive coverage, and requiring full coverage for a wide array of preventive services. It also provided for an investment of more than \$11 billion in community health centers.³⁰

These vast expansions were meant to provide a path to coverage for all individuals and promised to have an outsized impact on black Americans. But in 2012, the Supreme Court decided the federal government could not force states to expand Medicaid, essentially making that component of the law optional and leaving low-income families in 19 states without coverage. In states that have low Medicaid eligibility levels, the coverage gap is particularly large and has a disproportionate impact on people of color.^{xi} ³¹ By January 2015, 55 percent of black Americans resided in states that had refused the Medicaid expansion; today, nearly one-quarter of uninsured black adults fall into the coverage gap.³² In 2013, *The New York Times* reported that opposition to Medicaid expansion was likely to leave behind two-thirds of poor blacks and single mothers and more than half of uninsured low-wage workers.³³ The refusal to expand Medicaid is a significant barrier to addressing racial health inequities and is reminiscent of the racial rules of previous generations.

xi As the Kaiser Family Foundation explains, "Medicaid eligibility for adults in states not expanding their programs is quite limited: the median income limit for parents in 2016 is just 44% of poverty, or an annual income of \$8,840 a year for a family of three, and in nearly all states not expanding, childless adults remain ineligible" (Garfield and Damico).

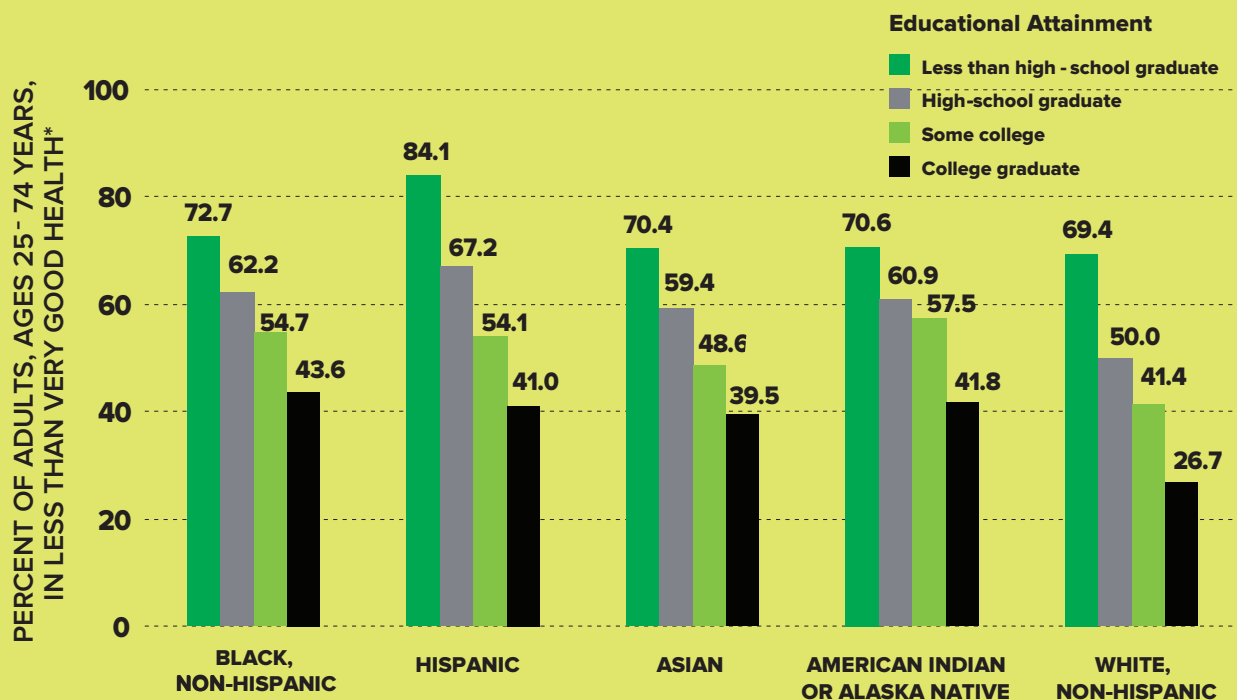
Black Americans make up just over 13 percent of the U.S. population but represent nearly one-in-five individuals covered by Medicaid (not surprising given the high poverty rates among black Americans, particularly in the South).³⁴ And while having coverage is certainly better than not having coverage, Medicaid is not a perfect system. Health access and outcomes for individuals with Medicaid varies across states. Many private providers will not see patients with Medicaid coverage, and patients with such coverage have complained about being treated poorly in medical settings.³⁵ Additionally, because of Medicaid's low reimbursement rates for doctors and hospitals, beneficiaries—who are predominantly poor and disproportionately minority—continue to be subjected to "separate, often segregated systems of hospital and neighborhood clinics."³⁶ And low-income women are barred from using their Medicaid coverage for abortion services in nearly all circumstances, which is particularly problematic in states where regulations are closing clinics and making abortion services increasingly difficult to access.³⁷

Residential Segregation

As we illustrated previously, black Americans are more likely than whites to live in racially and economically segregated neighborhoods, and this segregation has a cascading impact on the socioeconomic well-being of black Americans. In 2001, David R. Williams and Chiquita Collins argued, "Segregation is a fundamental cause of differences in health status between black Americans and whites because it shapes socioeconomic

In 2012, the Joint Center for Political and Economic Studies released a report on Cook County, Illinois, where communities are deeply segregated by race and class.⁴⁰ That report illustrates the devastating toll levied by racial and economic segregation. Areas with higher concentrations of communities of color had lower educational attainment and less food access, and residents in the quintiles with the least access to chain supermarkets and independent grocers had an average life expectancy roughly 11 years shorter than residents in the quintile with the best access to such food providers. In 2007, the premature death rate for black residents in Cook County was 445.9 per 100,000; for white residents, it was only 179.5. The report also found that areas with median annual income greater than \$53,000 had a life expectancy nearly 14 years longer than that of individuals residing in areas with an annual median income below \$25,000.

Less education is linked with worse health. Across racial or ethnic groups, adults with greater educational attainment are less likely to rate their health as less than very good.



Source: Robert Wood Johnson Foundation, 2009. "Education Matters for Health."

conditions for blacks not only at the individual and household levels but also at the neighborhood and community levels.”³⁸ One 2009 study by Margery Austin Turner and Karina Fortuny showed that more than 30 percent of black low-income working families lived in high-poverty neighborhoods, compared with only 3 percent of whites.^{xii 39} As the researchers explain:

Segregated housing patterns not only separate white and minority neighborhoods, but also help create and perpetuate the stubborn disparities in employment, education, income, and wealth. More specifically, residential segregation distances minority jobseekers (particularly blacks) from areas of employment growth.

Individuals who reside in segregated neighborhoods—particularly those with high levels of concentrated poverty—are less likely to have access to quality-of-life goods that are necessary for and conducive to positive health outcomes. They are also much more likely to be exposed to conditions that lead to negative health outcomes. For example, segregated neighborhoods often have fewer healthy food options and greater air pollutions, along with health conditions like cancer,

xii Massey and Denton's work on "place stratification" illustrates that even when there is a degree of economic segregation among blacks, blacks are often still unable to fully integrate with whites. This leaves blacks in racially and economically hyper-segregated communities where pockets of concentrated poverty are commonplace (Massey and Denton).

cardiovascular disease, sexually transmitted infections, obesity and low birth weight.⁴¹ A 2009 study by Hope Landrine and Irma Corral showed that segregated black neighborhoods had two to three times as many fast food outlets as white neighborhoods of comparable economic status, and they also had two to three times fewer supermarkets than comparable white neighborhoods. Such neighborhoods are often referred to as "food deserts," where unhealthy foods are much more affordable and accessible than healthy food options.⁴² In these neighborhoods, environmental exposure to toxins and air pollutants are five to 20 times higher than in white neighborhoods with comparable incomes thanks to the "deliberate placement" of toxic waste sites and polluting factories.⁴³ The lack of green space and public recreation areas in black neighborhoods further reduces quality of life and health.⁴⁴ To add insult to injury, black Americans then often seek health services from medical facilities located in their own communities, which tend to have less advanced technology and fewer specialists.⁴⁵

Educational Attainment

As we described in the previous section, America's schools are becoming increasingly re-segregated and educational disparities between black and white Americans remain vast. We know that educational attainment is correlated with health outcomes. Americans with less education face higher rates of illness, higher rates of disability, and shorter life expectancies. In the U.S., 25-year-olds without a high

school diploma can expect to die nine years sooner than college graduates.⁴⁶ However, research also shows that black Americans at all educational levels face worse health outcomes than white Americans with similar educational backgrounds, which many believe reflects not only unequal access to various life goods but also the physiological impact of racism.⁴⁷ Interestingly, the health gap between blacks and whites is largest for those with college degrees.⁴⁸

Numerous studies have shown that increased educational attainment does not translate into the same health benefits for all groups. One study by the CDC found disparate rates of preterm and low-birth-weight babies even among college-educated black women:

More startling, the data showed that the rates of low birthweight and preterm delivery for college-educated African American women were more closely aligned with outcomes for non-college educated, unemployed, uninsured white women than they were with college-educated, employed, and insured white women.⁴⁹

Racism in Health Care

Though racial discrimination in health care might not be as explicit as it once was, bias and stereotyping against black patients does persist and impacts quality of care, health outcomes, and individuals' relationships with the medical establishment. A seminal 2002 report from the Institute of Medicine (IOM) illustrated significant racial variations in the rates of medical procedures, even when controlling for income, age, health conditions, and insurance status.⁵⁰ The IOM report found that people of color receive a lower quality of care and are less likely to receive routine and also life-saving medical procedures, while they are more likely to receive less-desirable procedures.

A number of other studies have replicated similar findings.⁵¹ A 2014 study of black women in Massachusetts found links between the implicit biases in doctor-patient interactions and racial disparities in cervical cancer screenings. The women in the study cited unconscious bias as one of the causes for the disparities, and two of the cervical cancer survivors surveyed reported feeling that “their doctors did not want to touch them.”⁵² Numerous other studies have connected implicit bias to “subtle nuances in physician-patient interactions, trust, and patient cooperativeness.”⁵³

Black women have reported receiving inadequate prenatal care and being treated by physicians who



This bias and stereotyping compounds the structural factors that make it more difficult for blacks to receive timely, quality, and affordable care, and it serves as an additional source of stress that harms the well-being of black Americans.

don't offer a full range of reproductive health options, making it difficult for women to make informed health decisions.⁵⁴ These circumstances contribute to an environment in which black individuals seeking care have a mistrust of their providers or the care they will receive, which makes them less likely to seek needed services. This bias and stereotyping compounds the structural factors that make it more difficult for blacks to receive timely, quality, and affordable care, and it serves as an additional source of stress that harms the well-being of black Americans.

Toxic Stress

Throughout this section we have described a number of underlying drivers and mediating factors that help explain persistent—and in some cases, growing—health disparities between black and white Americans. As we attempt to fully understand and address the impact of the racial rules, and economic inequality more broadly, we must acknowledge not only how individual stressors—the criminalization of black bodies, a lack of health coverage, neighborhood segregation, and inadequate education, etc.—lead to negative health outcomes. We must also acknowledge the growing body of research that illustrates how racism and the collective sum of those experiences create trauma inside the body and alter life outcomes. We now know that exposure to toxic stressors—racism, poverty, family crises, social unrest, etc.—can create a chemical reaction that disrupts brain circuits essential for behavior, learning, memory, and solving problems. Essentially, toxic stress makes it harder for individuals to cope with general stress as well as the adverse situations

they are more likely to encounter because of their race and class status, which increases the overall burden of stress for racial minorities.⁵⁵ These toxic stressors then serve as underlying risk factors for disease and other health complications later in life while also reducing individuals' capacity to deal with future stress.⁵⁶ They can also cause individuals to adopt coping mechanisms that potentially lead to negative health outcomes.⁵⁷ As with unequal economic outcomes, too often black Americans are blamed for making poor individual choices—like having unhealthy diets or not seeking out medical care—when in fact they are responding to systemic constraints driven by the racial rules.

Toxic stress has a particularly detrimental impact on black women. Amani Nuru-Jeter's work has shown that black women are more likely than men to think deeply about experiences with racism and are also more vigilant about future experiences, two important hallmarks of post-traumatic stress disorder.⁵⁸ A 2006 study by Arline Geronimus showed that black women have a higher probability of allostatic load (the overexposure to stress hormones that can cause wear and tear on important body systems) compared to white men and women, and also compared to black men; these patterns persist after adjusting for socioeconomic factors.⁵⁹ In another study, Geronimus showed that black Americans may be biologically older than whites of the same chronological age as a result of cumulative and cellular impact of "repeated exposure to and high-effort coping with stressors."⁶⁰ She estimated that black women ages 49–55 are 7.5 years biologically older than white women, and that indicators of perceived stress and poverty account for 27 percent of this difference.^{xiii} This does not begin to account for the ways in which gender norms around caretaking intersect, such that black women not only personally experience the toxic stress of racism but then also take on the stress of community members who have experienced racism.⁶¹

Toxic stress is a critical factor that impacts the well-being of future generations and has been shown to impact babies in utero.⁶⁴ Numerous studies have shown that exposure to early life adversity—including during the pre-natal phase—creates biological stress reactivity and lays the foundation for adult diseases.⁶⁵ Others have shown that prenatal stress can increase the risk of coronary heart disease and type-2 diabetes.⁶⁶ We now know that when mothers experience chronic stress during pregnancy, that stress reactivity can be transmitted to the fetus via cord blood and the fetus can be born more reactive to stress.⁶⁷ And research has shown that the more adverse experiences (such as

xiii Geronimus and colleagues focused on telomere length, a biomeasure of aging that may be shortened by stressors. Telomeres are the stabilizing caps on chromosomes that can be impacted by stress.

emotional stress, household instability, or having an ill or incarcerated family member) children have, the worse their health outcomes are later in life.⁶⁸ A recent study from researchers at Mt. Sinai in New York, which found that trauma suffered by Holocaust survivors was passed onto the genes of their offspring, forces us to ask how the trauma of slavery and the injustices that have followed from that long arc of history impact the health of black Americans today.⁶⁹

Economic Status and Economic Inequality

We have illustrated the extent to which the racial rules shape the economic security—or lack thereof—of black Americans, and must also acknowledge how those rules extend well beyond the economics. Indeed, the link between income and negative health outcomes has been long established. Data has shown that individuals in the highest income bracket (400 percent FPL) live six years longer than those in the lowest bracket (100 percent FPL).⁷⁸ Poor adults are more than three times as likely as adults with family incomes at or above 400 percent FPL to have activity limitations as a result of chronic illness and are five times as likely to report being in poor or fair health.⁷⁹ Income is a particularly strong predictor for health outcomes that begin early in life. Infants



More startling, the data showed that the rates of low birthweight and preterm delivery for college-educated African American women were more closely aligned with outcomes for non-college educated, unemployed, uninsured white women than they were with college-educated, employed, and insured white women.

born to low-income mothers experience the highest rates of low birth weight, which has been linked to child development and chronic conditions throughout the lifecycle.⁸⁰ The Robert Wood Johnson Foundation (RWJF) has shown that children in low-income families are “about seven times as likely to be in poor or fair health” as children in families with incomes at or above 400 percent FPL. Low-income children also have higher rates of heart conditions, hearing problems, digestive disorders, asthma, and elevated blood lead levels.⁸¹

There has been less research on the links between wealth and health, but studies have shown that there is indeed a strong correlation. It is not surprising, of course, that one’s ability to pay for preventive care, seek medical attention when needed, and weather a health crisis—particularly if uninsured—depends on one’s ability to access funds that are not needed for other life necessities. A study by Hajat and colleagues showed that people with a negative net worth had a 62 percent increased risk of mortality compared with those with a net worth of more than \$500,000.⁸² That study also showed that the least wealthy had a 62 percent increased risk of poor or fair health and four excess deaths per 1,000 persons. Women with less wealth had between a 24 and 90 percent greater risk of death, and the least wealthy men had six excess deaths compared with the wealthiest quintile.⁸³ According to RWJF, individuals with less income and wealth are also more likely to report experiencing “traumatic life events and the health-damaging psychosocial effects of neighborhood violence or disorder, residential crowding, and struggles to meet daily challenges with inadequate resources.”⁸⁴

There is a growing body of research that argues not only poverty and economic status but also economic inequality itself are drivers of negative health outcomes. In other words, being poor is bad for your health, and living in a society with large chasms between the rich and everyone else is also bad. Work by Kate Pickett and Richard Wilkinson illustrates that countries with greater inequality also have higher rates of homicide, infant and maternal mortality, mental illness, and worse overall child well-being than countries that are more equal.⁸⁵ A recent University of Wisconsin study showed that even when average incomes were the same, individuals living in U.S. communities with higher levels of income inequality were more likely to die before the age of 75 than those in more equal communities. The researchers found that for each “one-point increase in the ratio between high and low earners in a county, there were about five years lost for every 1,000 people.” This is approximately the same impact they observed when community rates of obesity and smoking

IMPACT OF TOXIC STRESS ON BLACK WOMEN

Arline Geronimus argues that the effects of toxic stress may be felt particularly by black women because of the “double jeopardy” of gender and racial discrimination, what Fleda Jackson calls “gendered racism.”⁶² Geronimus also calls attention to the ways in which changing socioeconomic dynamics impact the stress load on black women. “Gendered aspects of public sentiment on race may have limited Black men’s role in providing social and economic security for their families, while raising expectations of Black women.” As less-educated black men experienced a long secular decline in employment rates in recent decades, black women have shouldered an increasing amount of responsibility for the social and economic survival of black families, kinship networks, and communities. As black women work to fulfill those responsibilities, they may be more likely to be exposed to stressors “that require sustained and high-effort coping, along with the wear and tear on biological systems such repeated adaptation implies.” She writes:

The findings suggest that progress in understanding and eliminating racial health inequality may require paying attention to the ways that American public sentiment on race, including its gendered aspects, exacts a physical price across multiple biological systems from Blacks who engage in and cope with the stressful life conditions presented to them.⁶³

increased by 3 and 4 percent, respectively.⁸⁶ The impacts of inequality are particularly harmful to communities of color. A study conducted by Nuru-Jeter showed that each unit increase in income inequality results in an additional 27 to 37 deaths among African Americans.⁸⁷

This research illustrates why tinkering around the edges of inequality and modifying individual policies is not sufficient. A comprehensive policy overhaul is needed to effectively address economic inequality and structural racism and provide lasting social and economic opportunities for black communities in the United States.

THE STILL-ELUSIVE QUEST FOR REPRODUCTIVE JUSTICE

Rebecca Kluchin writes, “Historically, women’s access to contraception has been determined by their race, ethnicity, and class status.”⁷⁰ Today, access to reproductive health care is no different, and black women live at the precarious intersection of these categories. In recent years, lawmakers have erected countless legal barriers to reproductive health care that have a disproportionate impact on low-income women and women of color.⁷¹ In states across the country, conservative lawmakers have passed medically unnecessary laws meant to eliminate abortion.^{1xiv} These laws—in addition to recent efforts to defund Planned Parenthood and other such clinics and eliminate Title X, the federal family program—have shuttered publicly funded clinics across the country and left women without access to abortion services as well as basic reproductive health services.⁷² The states that have been most aggressive in passing reproductive health restrictions have large uninsured populations of black women and high levels of teen and unintended pregnancy, sexually transmitted infections, and infant and maternal mortality.⁷³ Research from Texas—the state taking the lead in aggressively curtailing reproductive health access—has shown the direct impact of these measures: Restricting women’s access to basic health care, increasing unintended pregnancies, and driving up the number of self-abortions and later-term abortions.⁷⁴

Reproductive health inequities levy a significant toll not only on women’s physical and emotional well-being but also on their economic security. The recent Turnaway Study tracked women who sought out and either received or were “turned away” from abortion services. Two-thirds of participants had incomes below the poverty line, and for more than half the women who had an abortion, related travel and out-of-pocket costs totaled more than 30 percent of their monthly income. Forty percent of participants sought out abortion services because they believed they couldn’t afford to have children, and over half of the women who had an abortion reported that needing to raise money for the procedure prolonged them in obtaining care, which led to a costlier and more complex procedure. The study showed that women denied an abortion had three times greater odds of ending up in poverty than women who had the procedure (when adjusting for previous differences in income).⁷⁵

While access to family planning and abortion are critical elements of reproductive health care—and are central to the health and economic well-being of women and their families—they are inextricably linked to a much broader slate of health issues that concern black women: maternal mortality and morbidity, breast cancer, a lack of health coverage, and toxic stress, not to mention the countless other social and economic issues we have described in this report. As Loretta Ross writes:

Abortion isolated from other social justice/human rights issues neglects issues of economic justice, the environment, criminal justice, immigrants’ rights, militarism, discrimination based on race and sexual identity, and a host of other concerns directly affecting an individual woman’s decision-making process.⁷⁶

We must work to see abortion—and family planning—as part of a broader context of “empowering women, creating healthier families, and promoting sustainable communities.”⁷⁷ Achieving those goals will require not only ensuring equitable access to reproductive health care but also addressing the full breadth of racial rules we describe in this report.

xiv These laws—Targeted Regulations of Abortion Providers, or TRAP laws—require clinics that provide abortions to increase the width of their hallways, add janitors closets, and expand operating rooms.” See <http://www.reproductiverights.org/project/targeted-regulation-of-abortion-providers-trap>



We need an equitable health system that is affordable, accessible, reliable, and able to provide culturally competent care to all individuals.

The Cost of Health Disparities

We have illustrated how the racial rules shape health outcomes for black Americans, both directly through personally mediated racism and also indirectly through economic and social pathways. But we also know that those negative health outcomes also carry significant costs for both families and the economy more broadly. One study conducted by researchers at Johns Hopkins found that over a four-year period, the indirect costs of lower worker productivity due to illness and premature death among black men was \$317.6 billion.^{xv 88} A 2009 study by LaVeist and colleagues showed that between 2003 and 2006, eliminating health disparities for minorities would have reduced direct medical care expenditures by \$229.4 billion, and that the combined costs of U.S. premature deaths and health inequalities were \$1.24 trillion.⁸⁹

This is to say nothing of the economic costs to individuals, families, and black communities more broadly. What is the real toll of high rates of maternal mortality and morbidity among black women? How have black Americans benefitted—or continued to struggle—economically under the ACA? How do health disparities among children impact their economic well-being later in life? These questions just scrape the surface.

^{xv} In that same period the indirect costs for Hispanic men totaled \$115 billion and for Asian men \$3.6 billion.

Conclusion

This section has described how the racial rules—both historic and current—fuel a complex web of socioeconomic inequities and poor health outcomes. Breaking that vicious cycle will require a strategy as multifaceted as the web itself. While tackling the inequities we have outlined in this section may require complex solutions, the goal is clear. We need an equitable health system that is affordable, accessible, reliable, and able to provide culturally competent care to all individuals. And we need to create for all Americans the socioeconomic conditions that account for the historic experiences and current barriers they face. Those experiences and barriers look different in different communities and will require targeted solutions.

We have tried to show how the one-size-fits-all model has failed black communities; health care is no exception. As Monica Peek writes:

“We can no longer exclusively have a conversation about individuals ... but must begin to broaden the dialogue to include community infrastructure (e.g. safe housing, primary care facilities), resources (e.g. grocery stores, fitness centers), and the built environment (e.g. bike paths, local parks)” in order to “address community health and health disparities.”⁹⁰ So too must the rule-makers understand that health—the very foundation of our ability to care for our families, participate in our communities, engage in the labor market, and carry on our lives—is both a result and a cause of social and economic inequities. These inequities, in turn, are driven by the rules—rules that we can and must rewrite.

Democratic Participation

The right to vote is one of the central and most basic components of a democracy, and in the United States, the expansion of the franchise is one of the most consistent themes in political history. In fact, more than half of the constitutional amendments ratified after the Bill of Rights have dealt with the issue of voting rights.¹ The struggle for the franchise has been central to demands for full citizenship rights and recognition made by African Americans and women. Even after the 15th Amendment extended this right to blacks, it would not be until the civil rights movement and the subsequent Voting Rights Act of 1965 (VRA) that African Americans would come closest to realizing the promise of citizenship. As in other areas of life affecting black Americans, racial progress around the right to vote has been an “unsteady march,” with two steps forward followed by one step back.² And the racial rules around voting and political inclusion reinforce racially unequal outcomes in the economy and society writ large.

According to political scientist Rogers Smith, for more than 80 percent of American history, most people in the world were explicitly legally ineligible to become American citizens because of race, nationality, or gender.³ And for more than two-thirds of U.S. history, the majority of the domestic adult population was ineligible for full citizenship, also because of race, nationality, or gender.⁴ While we have made progress in rolling back pre-Civil War explicit exclusions, America’s battles over the rules of the electoral system continue to be tinged by race, particularly in the last decade.

In this section, we argue that black Americans continue to have unequal access to voting due to a set of electoral policies at both the state and federal levels that, while prima facie race-neutral, are implicitly exclusive. Today, black voting participation is circumscribed by three sets

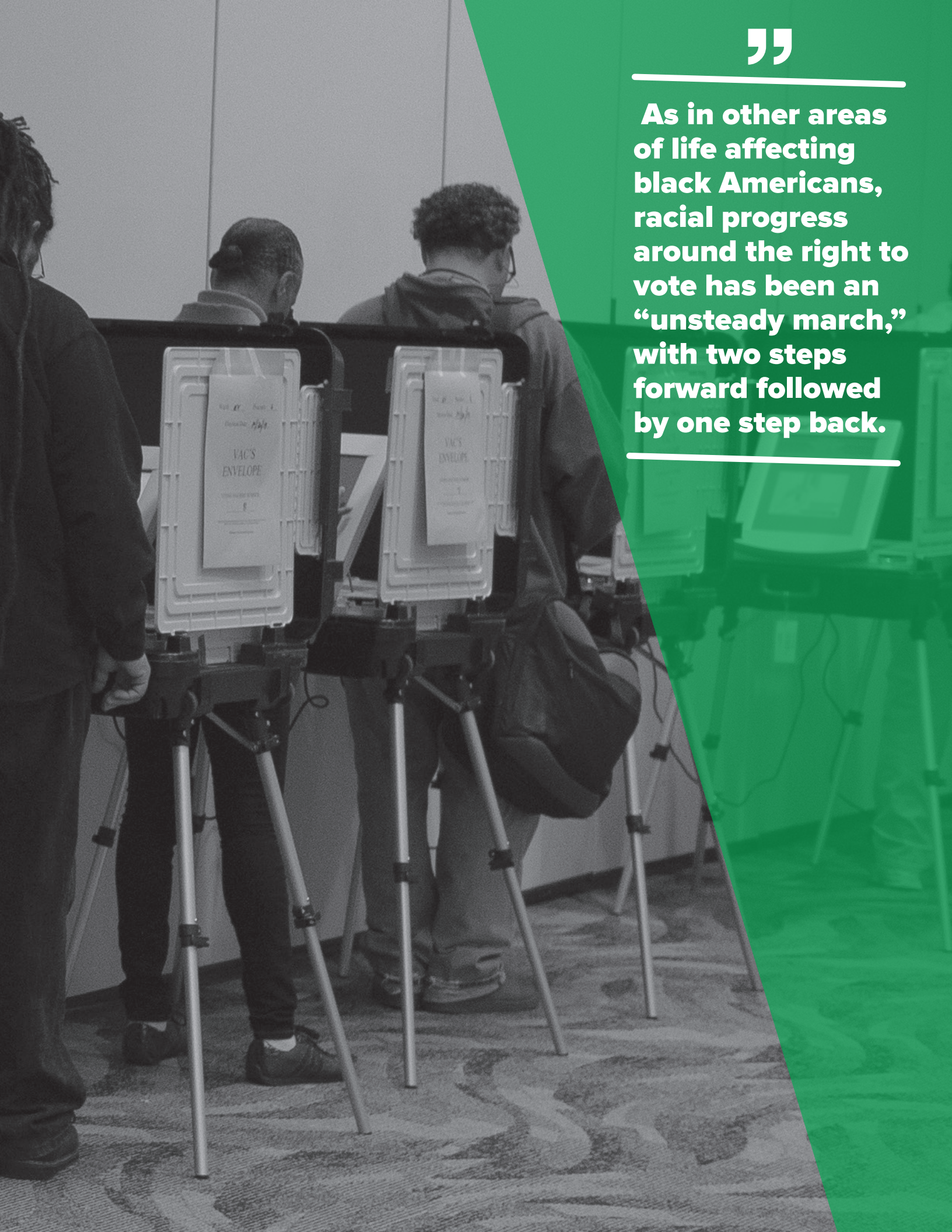
of racialized rules: the increased disenfranchisement of those with a criminal record, the recent rollback of the Voting Rights Act, and, since 2010, the passage of implicitly exclusionary “voter suppression” laws.

We argue that as social movements and political actors have sought to expand the electorate, we have often seen a corresponding backlash to fuller inclusion, including new mechanisms to suppress the vote. For instance, in response to the post-Civil War, Reconstruction-era 15th Amendment providing the right to vote to African-American men, exclusionary Jim Crow laws emerged all across the South in the late 19th and 20th centuries.⁵ The racial rules of elections embedded in “Black Codes” and Jim Crow laws included literacy tests, poll taxes, the “white primary,” felony disenfranchisement, and “grandfather clauses,” all with the intention of excluding African-American voters.

Our contemporary voter suppression laws, enacted with increasing frequency since 2010, are a response to the expansion of the electorate after the “Second Reconstruction”: the 1965 Voting Rights Act; the 24th Amendment, which ended the poll tax; and the 26th Amendment, which expanded the franchise to 18-year-olds. This is where 21st century racial rules of political exclusion emerge, replacing 18th, 19th, and 20th century mechanisms of electoral exclusion with newer, 21st century strategies of voter suppression.

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As in other areas of life affecting black Americans, racial progress around the right to vote has been an “unsteady march,” with two steps forward followed by one step back.



The Racial Rules of Democratic Participation

RACIAL EXCLUSION AND JIM CROW (1877–1954)

Following passage of the post–Civil War, Reconstruction-era 15th Amendment in 1870, black Americans experienced a brief period of sharply increased political participation and representation, gaining political representation from the local to national level for the first time ever, including 16 elected to Congress during the Reconstruction years.⁶ However, with “Southern Redemption” and “Restoration,” massive disenfranchisement and political exclusion were soon to follow.⁷ From the period of 1890 to 1910, most southern states, in order to circumvent the 15th Amendment, “creatively” enacted racially exclusionary laws that were race-neutral on their face but had the impact of disenfranchising the vast majority of Southern blacks.¹¹ Examples of such race-neutral laws included poll taxes, literacy tests, grandfather clauses, and criminal disenfranchisement provisions. Mississippi is one example: In 1890, the state replaced a provision of its constitution that disenfranchised citizens convicted of any crime with a more specific section excluding only those convicted of crimes that blacks were supposedly more likely than whites to commit.⁸

The effects of the Southern Redemption disenfranchisement campaign on newly freed blacks were devastating. By the turn of the 20th Century, virtually all black Americans in Southern states had lost the right to vote. The cumulative effect of all of these disenfranchisement methods was to exclude almost all blacks and, importantly, a significant number of poor whites from full citizenship. But the economic and social effects of disenfranchisement were equally as significant. According to economist Suresh Naidu, public goods provisions decreased, especially spending on education for schools in black communities, which would have decades-long effects on generations of Southern black children.⁹

RACIAL INCLUSION AND CIVIL RIGHTS (1955–1980)

The beginnings of a Second Reconstruction around racial justice and full political inclusion began 10

i The 15th Amendment only guaranteed that prohibitions against Black men from voting were unconstitutional, as women wouldn’t obtain that right until well into the 20th century (see Foner).

ii And the vast majority of all black Americans, insofar as they were disproportionately concentrated in the Deep South in this era.

years before the historic *Brown v. Board of Education* Supreme Court decision effectively reversed *Plessy v. Ferguson*. As a response to the brief period of black enfranchisement during the first Reconstruction, Southerners in the Democratic Party held “white primaries” in which Southern blacks were excluded from voting, and thus excluded them from voting at all in the one-party “Solid South.” The 1944 Supreme Court case *Smith v. Allwright* put one nail in the coffin of white primaries; other nails came from the civil rights movement, especially Fannie Lou Hamer and the Mississippi Freedom Democratic Party’s challenge to the Democratic Party at the 1964 convention. And we know the story of electoral realignment from there: Southern whites and Dixiecrats fled the Democratic Party for what hitherto had been the “party of Lincoln.”¹⁰

The 1965 Voting Rights Act, heralded by some as the most significant single piece of legislation of the civil rights movement, successfully eliminated most of the structural barriers to full citizenship for African Americans erected during the Jim Crow era, increasing their political empowerment for the next 30 years. And throughout the post–civil rights era, thousands of black elected officials took office at all levels—local, state, and national.¹¹ As mentioned earlier in this report, black communities in large metropolitan areas were even able to elect black mayors. Yet, as previously noted, the black working class and black poor populations benefited little from this triumph of black electoral power.¹²

Racial inclusion as a result of the Second Reconstruction and black political empowerment at the local, state, and national levels did create a new and expanded black middle class that still occupies an “ethnic niche” in public employment today, though a precarious one.¹³ Yet black political empowerment occurred simultaneously with deindustrialization, globalization, and increased class divisions within black communities. The result has been that economic and social distress in the post–civil rights era has been a “countervailing force” against political empowerment, weakening black civic capacity.¹⁴

NEW RACE-NEUTRAL EXCLUSIONARY RULES (1980–PRESENT)

Much like the massive disenfranchisement of blacks following Reconstruction, the voting rights of African Americans are again being targeted and are in jeopardy. Three sets of racial rules that continue to create structural barriers to civic participation have emerged over the last 30 years despite brief extensions of the Voting Rights Act and voter access provisions. These

are: the increased disenfranchisement of those with a criminal record; the Supreme Court's curtailment of the Voting Rights Act; and, since 2010, the passage of race-neutral but racially exclusionary voter suppression laws.

Disenfranchisement and Incarceration Interact

One of the major (arguably unintended) consequences of the punitive criminal justice and mass incarceration policies enacted over the past four decades is the disenfranchisement of convicted felons.¹⁵ In the last 20 years in particular, the number of felonies on the books has dramatically increased, especially for non-violent, drug-related crimes. Up from just 1.17 million in 1976, today 5.8 million Americans, including 2.2 million African Americans, are ineligible to vote due to a felony conviction.¹⁶ In other words, more than one-third of all of those disenfranchised are black even though blacks constitute only 14 percent of the population. One in 13 black Americans nationwide are unable to vote because of felony convictions, and one in five are disenfranchised in Virginia (20 percent), Kentucky (22 percent), and Florida (23 percent).¹⁷ According to Chris Uggen and Jeff Manza, the effects of felony disenfranchisement on potential black voters have significant political consequences, including being a decisive factor in the presidential election of 2000 and in at least seven Senate races since 1978.¹⁸

There is no national or constitutional right to vote in America; the 15th Amendment merely “prohibits” efforts to prevent protected groups from voting. Thus, states’ rights reign supreme when it comes to voting. And because state laws determine voting rights for all elections, there is great variation in voting eligibility. For instance, in 46 states, convicted felons lose the right to vote while incarcerated; 32 states prohibit felons on probation or parole the right to vote; and in 11 states, anyone convicted of a felony is disenfranchised for life. Thus, an 18-year-old convicted of a felony for writing a bad check is permanently disenfranchised even if she completes a two-year sentence.

The processes that are available in some states to regain the right to vote are just as varied and cumbersome as the disenfranchisement laws themselves. In Mississippi, ex-felons must either have a legislator introduce a bill on their behalf, which must be passed by a two-thirds vote, or secure an executive order from the governor. In at least 16 states, ex-felons convicted of federal offenses are ineligible to seek state procedures for restoring their voting rights and instead must



There is no national or constitutional right to vote in America; the 15th Amendment merely “prohibits” efforts to prevent protected groups from voting.

obtain a presidential pardon.

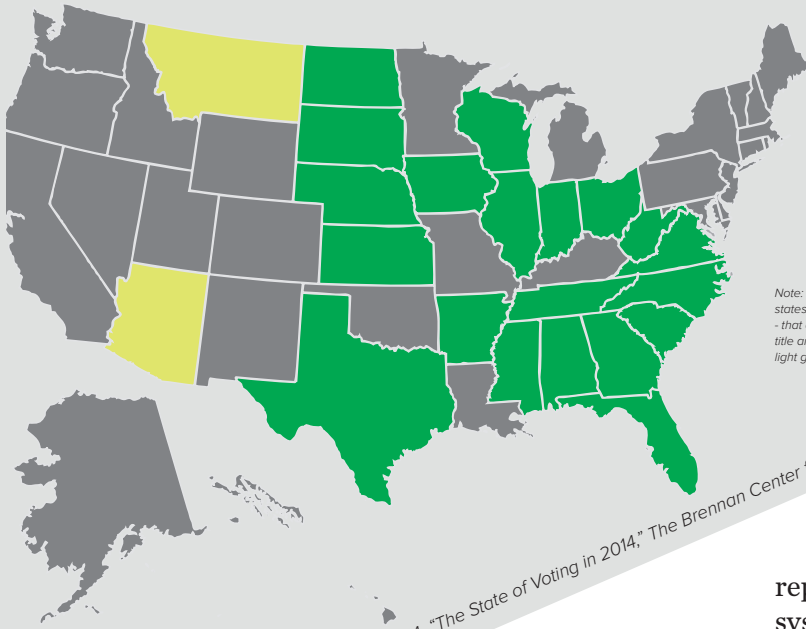
Several distinct racial rules disproportionately affect black Americans today. First, disenfranchisement laws on the books are vestiges of previous efforts at racial retrenchment, which were never completely repealed. Second, the rising incarceration of black Americans described in the previous chapter has interacted with these rules to further exclude millions of ex-felons, who are disproportionately black. Those laws have severe consequences for civic engagement and electoral results, and also on civic participation. According to research by political scientist Vesla Weaver, among eligible voters, those with no criminal justice contact turn out to vote at a rate of 60 percent, while turnout drops for those who have been stopped by the police (52 percent), been arrested (44 percent), been convicted (42 percent), or served

Voter participation rates decrease with severity of criminal justice contact.



Source: Weaver, Vesla, 2014.

States with New Voting Restrictions since 2010 Election



Note: This map includes two states - Montana and Arizona - that do not technically fit the title and are reflected in the light green.

Source: Weiser, Wendy R. and Erik Opsal. 2014. "The State of Voting in 2014." The Brennan Center for Justice.

a prison sentence (38 percent).¹⁹

The Curtailing of the Voting Rights Act

Civil rights and racial justice organizations made tremendous efforts to pass the 1982 extension of the VRA and get it signed into law by President Reagan, who was not sympathetic to the bill.²⁰ Over the last four decades, civil rights organizations have mobilized nationally in support of legislation extending and protecting the right to vote for African Americans and other politically excluded groups. This legislation has included the 1965 Voting Rights Act, the 1982 and 1992 extensions of the VRA, the 1991 Civil Rights Act, and the 1993 Motor Voter Act, in addition to numerous court challenges and advocacy on the local and state levels.

Despite the success of the VRA in ensuring full political inclusion for blacks long denied the right to vote and enabling thousands of African Americans to get elected to local, state, and national offices, the conservative majority on the Supreme Court has defanged some of the most important provisions of the act. Most recently, in the 2013 *Shelby County v. Holder* case, the Court invalidated a key provision (Section 4) that covered voting rules in states and localities with a history of racial discrimination in voting. The Court majority argued that a new formula is necessary for assessing which voting jurisdictions require "preclearance" from the Justice Department to approve new voting rules; this essentially invalidated Section 5 of the VRA, which was one of the most important in ending racial exclusion of blacks in voting. As a result, African-

American voters in many states, particularly Southern states, will enjoy fewer voter protections, and many states have subsequently enacted a range of new laws to restrict the right to vote.

Non-Racial Electoral Rules with Racial Consequences

There are non-racial electoral rules that have significant racial consequences in the way they structure how our democracy operates. For legislative offices, from

Congress down to state and city legislatures, most citizens must vote for their elected representatives in a geography-based "winner-take-all" system. In this system, only 51 percent of the electorate in a given district is necessary to choose a legislative representative. This assumes that voters share interests based on neighborhood or geographic community, not based on ideas, preferences, or other politically salient categories. This also means that up to 49 percent of voters in such a district are not represented based on their vote choice.²¹ And due to political gerrymandering, as many have noted, politicians choose their voters, not the other way around. This combination of electoral rules—winner-take-all geographic districts and political gerrymandering—along with the "racial gerrymandering" that occurred after the Voting Rights Act of 1965, have undercut the political voice of blacks and other racially marginalized groups.^{iii 22}

Between 2010 and 2014, 22 states planned to enact new voting restrictions. In all but four, the rules passed entirely through GOP-controlled bodies.²³ Seventeen of these states have enacted new restrictions since the 2012 presidential election.²⁴ The majority of these voter restriction efforts are voter ID laws, which make it more difficult to register and vote because of the limited types of identification allowed. Proponents argue that these laws are necessary to combat fraud, but there is no evidence of significant electoral fraud, and many of the conservative elected officials advancing these efforts have stated the real intention behind them: advancing their own partisan interests.^{iv 25} As several voting rights advocates have noted, it is now easier to register and obtain a gun than it is to vote in many states. Other voter restrictions include cutbacks or elimination of early and weekend voting and same-day registration.

iii "Racial gerrymandering" refers to drawing legislative districts in a race-conscious way to either advance black or latino representation in legislatures, or to strategically "pack" black voters into a few concentrated districts to expand the representation of white voters in surrounding districts (Guinier).

While the letter of these laws is racially neutral, the effect—if not the intent—of these efforts is to restrict the rights and participation of black Americans, other voters of color, students, and constituencies that lean Democratic.²⁶ Recent empirical studies show the disproportionate effect of these laws on black voters and other voters of color. Political scientist Zoltan

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As several voting rights advocates have noted, it is now easier to register and obtain a gun than it is to vote in many states.

Hajnal finds that “strict voter ID laws double or triple the gap in turnout between whites and nonwhites.”²⁷ Similarly, a report from the Government Accountability Office shows that voter ID laws have a disproportionate impact on black Americans, who are less likely to have the required identification.²⁸ In Texas, which has one of the nation’s strictest voter ID laws, it is estimated that 600,000 voters—disproportionately black and Latino—lack the required ID.²⁹ Another study illustrated that voter turnout rates among Latino and black voters were lower in states that had voter ID laws.³⁰

Implications for Racial Inequality

The fear of expansive electoral democracy felt by political and economic elites is directly related to the overall distribution of income and wealth. What has been called the “redistribution thesis” is the fear that if the majority of “eligible voters” in an electorate are poor, working class, or middle class, and everyone has an equal vote, then that majority will use the vote to demand downward redistribution by the state.³¹ As political theorist Ian Shapiro argues, “Democracy offers the possibility of downwardly redistributive politics, but there are no guarantees that it will happen, and many cards are stacked against it, particularly in the American system.”³² T.H. Marshall’s thesis about expanded

citizenship and inclusion of marginalized groups leading to more demands for redistribution and equality has been particularly influential.³³

Scholars and political actors alike have long believed that increased inclusion in, and democratization of, American institutions would challenge racial, economic, and gender inequalities. In other words, fairer rules for the political game would lead to fairer economic rules and more equitable outcomes. In practice, enhanced democratic participation (whether peaceful or disruptive) has sometimes led to enduring structural and institutional changes; in many counties in the Deep South, for instance, blacks did see increased redistribution through social welfare benefits as a result of becoming enfranchised by the 1965 VRA.³⁴ But the overall empirical reality of the post-civil rights era poses serious problems for this assumption, particularly as increased black and Latino inclusion in American society has coincided with increased economic inequality.

Conclusion

The above focuses specifically on the racialized rules that prevent black Americans from exercising their constitutional right to vote. Of course, voter participation is also linked to the range of socioeconomic factors described in previous chapters: income, wealth, education, health, and criminal justice. The unequal outcomes for black Americans in each of these areas compound with implicit exclusions to further curtail civic participation. This creates a vicious cycle in which limited political power and limited economic power feed upon each other. However, as the above argument shows, we can take concrete steps to rewrite the rules that implicitly exclude black Americans from full participation. In doing so, we can eliminate the legal strictures that serve as modern-day poll taxes preventing electoral outcomes that lead toward equity.

What Will It Take To Rewrite the Rules?

Throughout this report we have illustrated how the racial rules—from the explicitly racist and exclusionary rules of slavery and Jim Crow to the implicitly racist and exclusionary rules of our current economic, education, criminal justice, and electoral systems—have disadvantaged black Americans over the course of our nation’s history. We have also identified examples of inclusionary rules that have effectively reduced unequal opportunities and outcomes throughout our history. For example, we noted the success of school desegregation in reducing the education gap between whites and blacks and the success of inclusive public employment in reducing the employment gap.

We now argue that it is time to again write inclusionary rules that will redress the past and present rules and inequities that shape the lives of black Americans. Policymakers would be wise to remember what President Lyndon Johnson said in his 1965 Howard University Commencement Address about the historical legacy of racism:

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “you are free to compete with all the others,” and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates.¹

We agree. Based on the findings in this report, we believe that we must both reopen the gates of opportunity and ensure that everyone, particularly black Americans, is equipped to walk through those gates.

Critics of the agenda we propose will likely push two lines of argument: first, that in our “colorblind” society it is unnecessary, and second, that is unaffordable. We believe that the preceding pages have sufficiently addressed the first line of criticism. We will now address

the second strain of argument.

First, and foremost, the status quo deprives African Americans of their fundamental rights. It denies them not only justice but also the public goods that white Americans—particularly those who are economically secure—often take for granted. As Franklin Roosevelt recognized, economic rights are human rights, which are universal. It is not possible for black Americans to have the full measure of their rights as participating citizens of the United States given the abject levels of inequity and injustice we see today. This is unacceptable, and we argue that it is our moral duty to change the system. However, in this section we will also address the material costs associated with a true reform agenda.

We first reiterate our earlier point: Contrary to more traditional arguments, recent research shows no negative relationship between redistribution and economic performance.² In other words, if the main argument against enacting the kind of policy agenda we propose is a concern about long-term economic growth, an overwhelming body of evidence suggests there is no validity to that concern.

It may even be possible that rewriting policies to be more racially inclusive could have a positive influence on economic growth and our country’s prosperity. Intuitively, removing the barriers that people of color face—for example, higher interest rates on business loans or higher incarceration rates—would unleash economic potential that would be economically important not only for them and their families but for society and the broader economy as well.

While we do not yet fully understand how rewriting the

Guiding Principles

We believe that there are a series of goals and principles that are required to successfully rewrite the racial rules.

- 1. WE MUST RECKON WITH OUR HISTORY.** Our nation has not fully reckoned with its fraught racial history, whether by acknowledging the truth of our often horrific and undemocratic history of racial apartheid or by recognizing and celebrating the times that we have made progress. In all policymaking processes and political discourse, an acknowledgement of the complex reasons for our unequal starting places is important.
- 2. WE NEED TO ACKNOWLEDGE THAT RACE-NEUTRAL POLICIES ARE RARELY RACE-NEUTRAL.** As we have shown in each section of this report, race-neutral policies are rarely race-neutral. They have racial consequences. From New Deal policies to mandatory minimum sentencing, race-neutral or colorblind policies have most often led to racially unequal outcomes. On some occasions, such as the Affordable Care Act or minimum wage increases, they can be positive steps toward reducing racial disparities. But even so, it is rare that such policies address the root causes of racial disparities. To do so we usually argue for a more comprehensive approach.
- 3. TRICKLE-DOWN POLICIES HAVE DISPROPORTIONATELY HURT PEOPLE OF COLOR, BUT ALSO THE WHITE MIDDLE AND WORKING CLASSES.** The rise of trickle-down ideology has led to a rollback of policies designed to promote inclusive growth and rein in rent-seeking. Disinvestment from public goods, permissiveness among regulators, and the erosion of worker power have increased economic insecurity and life outcomes for people of color, but also for low- and middle-income white Americans. Recent reports about rising mortality rates among low-income white Americans are a stark example of how these individuals and communities have been affected by the intersection of racial rules and economic inequality. In short, the consequences of racism are literally killing low-income white Americans. As Ira Katznelson notes, the era in which government programs and investments built the white middle class was ended just as black Americans achieved equal access to these public goods. Neoliberal policies have destabilized the middle class.
- 4. WE MUST MOVE AWAY FROM UNIVERSAL POLICIES AND TOWARDS TARGETED UNIVERSAL POLICIES.** In this report we have shown that universal policies have, as Jon Powell argues, not only failed to address the needs of marginalized communities but disproportionately benefited whites and exacerbated the racial gaps.⁵ But these policies have not benefitted whites uniformly, and in fact over the past 30 years neoliberalism has also hurt the white middle class. As Ian Haney-López argues, dog whistle politics kept most working and middle-class whites from seeing the true culprit of their economic pains.⁶ Now is the time to adopt a strategy of targeted universalism—one that benefits all but is crafted to favor the most disadvantaged and therefore provides race-specific results.⁷
- 5. EXPLICITLY INCLUSIVE RULES WORK.** Explicitly inclusive racial rules are still needed to reverse the long legacy of explicitly exclusive racial rules. In the past, we have seen race-focused policies help to close the gap in outcomes between black and white. Further, we have seen the promotion of race-neutral policies stall and even roll back some of the progress furthered by racially explicit programs. A 21st century plan for inclusion must accept the reality of unequal starting points and opportunities.
- 6. WHO WRITES THE RULES MATTERS.** People make rules, and it is critical that people in power are in every way diverse: diverse in terms of economic, racial, and ethnic backgrounds, and diverse with respect to gender and age. We have shown in this report how black disenfranchisement and political exclusion throughout the majority of American history have resulted in a power imbalance in who gets to write the rules. In periods of greater racial political inclusion, representation, and power, we rewrote the racial rules to become more inclusive. Therefore, we should rewrite our electoral rules to ensure full political inclusion of marginalized communities—people of color and poor and working-class Americans of all races—who have been on the losing end of economic and racial rules written by a small, powerful elite over the last 40 years. Moreover, it is important that we build institutions—labor organizations, political parties, movement groups—that, as a practice, prioritize diversity and build countervailing power for those who historically have been shut out.

racial rules might move economic growth in a positive direction, some interesting preliminary evidence does exist. For example, the very first calculations of the economic drag of racial discrimination were presented in 1962 by John F. Kennedy—with the Council of Economic Advisors (CEA)—in his economic report to Congress.³ According to the late economist Andrew F. Brimmer, the CEA estimated the economic cost of racial discrimination at about \$17.8 billion or 3.2 percent of the gross national product. More recently, economists Chris Benner and Manuel Pastor looked at what could explain “growth spells” for a number of regions in the U.S. in the past two decades and found that the duration of these growth spells is strongly connected to income and race equality. “The punchline of this work is that regions that are more equal and more integrated – across income, race, and place – are better able to sustain growth over time.”⁴ We believe, based on both existing research evidence and common sense, that as the United States moves toward a majority minority population, continued barriers to building or utilizing human capital will impoverish not only black families and communities but our nation as a whole.

Finally, despite the overall economic gain that could come from true inclusion of people of color, we acknowledge that we cannot claim the below proposals will be an economic win for every American. As under any set of rules that shapes our economic system, some may benefit more than others. Just as the current corporate governance rules prioritize the claims of wealth-holders over the claims of workers; just as current trade policies favor exporters over local producers; just as current bankruptcy laws protect financial institutions ahead of graduates with student debt, so too will rewriting the racial rules reward some people more than others.

New Racial Rules

Just as it is beyond our scope to catalogue every racial rule, we are not able here to enumerate every rule that must be written or rewritten in order to create the conditions and opportunities that correct our past and present injustices. A true agenda to tackle racial inequality in America must go beyond superficial fixes to tackle the structures beneath the surface that shape unequal outcomes. The sample of policies we provide below is meant to identify pathways toward deeper structural change; however, we do not argue that these proposals are sufficient to achieve true equality. Indeed, volumes could be—and have been—written about the need for more inclusive transportation policy, a revolution in housing policy, a concentrated effort to desegregate neighborhoods, and the many other issues the proposals below leave out or only reference in passing.

Many have called for reparations—which some describe as investments (and reinvestments) in black communities to correct for historical exclusions and current wrongs, and others define more broadly as the “full acceptance of our collective biography and its consequences.”⁸ In many ways our analysis and recommendations are consistent with those conceptualizations.

The key policy point is that we have a choice. It is possible to rewrite the rules that shape unequal opportunities and produce unequal outcomes. The policies outlined below begin to answer the question of how.

These policies span a range of issue areas and goals. We begin with a call for a kind of “truth and reconciliation,” focusing on the importance of the United States officially acknowledging the cost of past wrongs in order to begin to set the stage for more trust and a different kind of politics. We then address access to opportunity in education and the labor market, as well as health and safety—very immediate concerns that are related to, but go beyond, the economic. And finally, we propose ways to advance both income and wealth equity very directly, and to restructure parts of the economy so they work better for people of color, and for all Americans more broadly.

POLITICS AND THE POLITICAL SYSTEM

Acknowledge the Cost of Federally Backed Discriminatory Policies: Congress should pass H.R. 40, which calls for a commission to study proposals for reparations, and which, since introduced by Representative John Conyers in 1989, has never even received a vote. The bill’s aim is simple:

To acknowledge the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865 and to establish a commission to examine the institution of slavery, subsequently de jure and de facto racial and economic discrimination against African-Americans, and the impact of these forces on living African-Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes.⁹

The failure of the U.S. government to even debate the merits of such a commission, much less actually support its findings, speaks to the lengths we have yet to travel as a nation before achieving true reconciliation. While it would not change the concrete structures shaping unequal outcomes in America, the passage of H.R. 40 would be both an acknowledgment of and a first step toward a serious debate about the continued influence

of racialized rules on the country.

Guarantee Democratic Inclusion and Expand Political Power: Today our democracy consists of 50 different and unequal sets of voting rules for American citizens, which has pernicious effects on African Americans. The current rules of our democracy result in the lowest rates of participation among wealthy democracies; this must end. Our Constitution must once and for all positively guarantee the right to vote for all Americans. We have expanded the franchise by amending our Constitution half a dozen times throughout our history, and now is the time to do so again. This would include a constitutional amendment guaranteeing the right to vote for all and implementing a fully national system of universal voter registration, which should no longer be left up to states. Such an amendment would also prohibit policies that place an undue burden on exercising the right to vote, including the racially insidious permanent disenfranchisement of those with a criminal record.

At the same time, Congress should also pass the Voting Rights Advancement Act, introduced in the House of Representatives in June 2015, which updates the Voting Rights Act of 1965.¹⁰ The bill has a number of provisions that would expand access to voting, including: ensuring last-minute voting changes won't negatively impact voters; preventing voting changes that are most likely to disproportionately impact people of color and "language minorities"; and expanding the Federal Observer Program, which enables the attorney general to dispatch federal observers to any location where there is deemed to be a substantial risk of racial discrimination.¹¹

Mandatory or universal voting (often called the "Australian ballot") is another rule of democracy we should advance. Americans are required to pay taxes, and registered voters are required to participate in jury duty. We should extend this logic to voting, like other democracies have done.ⁱ Requiring all citizens to vote on a national Election Day holiday would ensure greater participation in our democracy and promote fuller inclusion.

Another important rule of democracy is how we apportion representation in our state and national legislatures. As Lani Guinier has long argued, our current system of winner-take-all geographic representation not only disadvantages black Americans but also silences the political voices of almost half the country. A system of proportional representation in our legislatures would guarantee fuller representation of minorities of all types, particularly racial, ethnic, and

ⁱ In most mandatory voting systems, the penalty for not showing up to vote is equivalent to a fine, much like a ticket for a driving violation.



The current rules of our democracy result in the lowest rates of participation among wealthy democracies; this must end.

ideological minorities. Proportional representation systems eliminate partisan gerrymandering, which disempowers too many citizens, enable more robust political ideas and interests to have a voice in our democracy, and result in better gender representation in elected offices in democracies around the world.ⁱⁱ

OPPORTUNITY AND JUSTICE

Divestment from the Criminal Justice System and Reinvestment in Communities: Policymakers must divest from the tangle of supposedly race-neutral policies and institutions that have disproportionately affected black Americans and guaranteed that no level of income or wealth can purchase their safety and justice. A key lever for reform is removing the money that fuels a corrupt justice system. Policies from the War on Drugs coupled with the recent militarization of police forces after 9/11 have perpetuated and sustained massive investments in policing. Non-custodial forms of policing—such as fines, fees, and other economic penalties—affect more individuals and their families than physical confinement and are often used as revenue-generators for cities and counties. Measures such as the No Money Bail Act currently before Congress would help do away with cash bail, which has largely resulted in the incarceration of individuals simply because of their low-income status.¹² As funds are divested from the penal system, it is important that a portion be reinvested in repairing the damage wrought by the rules we have described throughout this paper.

The profit of policing extends even further through its privatization, which incentivizes states and localities to incarcerate people for longer periods of time under such things as "bed guarantee provisions." These provisions, often embedded in contractual agreements between

ⁱⁱ Several states in the U.S. also have had versions of proportional representation electoral systems for legislative seats. Until 1980, Illinois used a "cumulative voting" system of proportional representation that enabled more women and people of color to get elected compared to geography-based, winner-take-all systems.

a private entity and a municipality, typically express the need to satisfy a quota whereby 80 to 100 percent of prison beds are to remain filled. Private profits from this scheme are fueled by the roughly \$80 billion the U.S. spends annually to lock up more than 2.4 million individuals. These are expenses that could, instead, be invested in communities—particularly in communities of color that are disproportionately affected by criminal justice practices and policies.

Police budgets should be reduced and for-profit prison systems must be done away with. As Black Youth Project 100 (BYP100) notes, “The profit motive in the penal system is a corrupting force that motivates police and judges to unnecessarily incarcerate and criminalize in order to maintain profitability of powerful monied interests.”¹³ States and localities should replace fines for minor crimes and misdemeanors as well as administrative fees for probationers and parolees with debt collection practices that account for one’s ability to pay.¹⁴ Furthermore, the government should divest from for-profit prison systems and invest in such things as public education, higher education, and community policing. “Establishing participatory municipal and state budgets,” says BYP100 in a recent report, “is an avenue that would allow the public to democratically decide how to allocate funds toward services and institutions critical to our survival and success.”¹⁵

Finally, we must make a concentrated effort to reduce our prison population, at least in part by decriminalizing drugs and also by bringing U.S. sentencing practices more in line with other nations. We must also recognize the critical role that prosecutors play in driving mass incarceration. The choices they make in how aggressively they file felony charges are the link between arrests and sentences.¹⁶

As this report has illustrated, more prisons and more police have not made our communities safer. Research has shown that the other investments we, and many others, are calling for would significantly improve the safety of our communities.¹⁷

Massive Public Investment in Asset-Poor Communities: In this paper we have outlined the range of rules that have led to continued unequal access to public goods in black communities, from infrastructure and education to green space and safe streets. The reasons include historic appropriation of black wealth and de jure segregation, continued underinvestment in black communities due to “trickle-down” cuts in public spending and the devastating employment effects of de-industrialization, and continued implicit discrimination on both the institutional and individual levels. In response, we echo the Center for Community Change’s (CCC) proposal for a domestic Marshall Plan in which the



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federal government would invest at least \$200 billion a year over 10 years in areas with the highest levels of concentrated poverty.¹⁸ It is critically important that this plan focus on infrastructure-building for long-term economic growth as well as direct job creation—from creating more high-speed rail to building retrofitting. Additionally, infrastructure that provides greater transportation access to low-income people, who tend to live far from job centers, would increase access to the labor market. Investment in affordable municipal broadband is another critical way to increase access to jobs and income.¹⁹

CCC’s proposal builds on a long history of demands for public investment in black communities. In 1966, Civil Rights leader A. Philip Randolph advocated for a “Freedom Budget” that would invest \$10 billion a year for 10 years in urban “ghettos.” He argued that a federal policy of employing workers for a good wage in activities beneficial to the community would end, once and for all, the debate around individual deficits.²⁰ Our proposed community investment program would adhere to the principles of targeted universalism, and bring much-needed resources to large portions of America.²¹ Fully 11.2 percent of U.S. counties are persistently poor, meaning that for the past 30 years at least 20 percent of the population has been living in poverty. By 2013, 13.8 million Americans were living in high-poverty neighborhoods in which 40 percent or more of residents live below the poverty line, according to the most recent data.²² In fact, the fastest-growing population living in concentrated poverty is white Americans. Nonetheless, the proposed public investment would disproportionately benefit black Americans, more than 25 percent of whom live in high-poverty neighborhoods.²³

These investments should be targeted to sectors that will continue to produce jobs of the future, including the “care infrastructure” (child care, day care, home care, and elder care jobs), green jobs, jobs to rebuild our crumbling physical infrastructure, and public service jobs that promote the common good.²⁴ According

to CCC's analysis, a proposed \$200 billion annual investment in infrastructure and a jobs program that addresses high unemployment in high poverty communities would create 2 million jobs directly and stimulate growth.²⁵

Labor Standards and Bargaining Rights: As described in previous chapters, black workers have tended to make strides in closing the income gap when backed by the power of the government or a labor union. Among other factors, when hiring and promotions are more rules-based, as in unionized and public sectors, rather than subject to personal discretion, legal protections can blunt the role of institutional or individual racial and gender bias. Unsurprisingly, the neoliberal attack on collective bargaining, public employment, and labor standards has been particularly destabilizing for the black middle class. Of course, the destruction of middle-class work and the associated ladders to opportunity have decimated the white middle class as well, resulting in rising white mortality, white out-of-wedlock births, and white drug addiction, all outcomes that might have once been written off as stereotypical “black pathology.” As described in “Rewriting the Rules,” this decline in labor standards and bargaining rights has not been an inevitable outcome of globalization and technology, but rather a choice. The 10 percent unionization rate in the U.S. is well below the OECD average of 17 percent and significantly lower than comparable economies like Canada (26.4 percent) and the U.K. (25.4 percent).^{iii 26}

Clearly there is no silver bullet for building middle class jobs in the new economy, but a strong start would include protecting existing bargaining rights and promoting new rules that support work power in the fissured workplace.²⁷ Elected officials can move toward these goals by moving beyond the traditional NLR definitions of “bargaining unit,” “employer,” and “secondary action” to increase scope for bargaining in the new economy. Elected officials can set the standard for fair pay and benefits for fair labor practices through government employment and government contracts. Further, leaders should increase funding for enforcement and penalties for violation of existing labor law.

Health Care Expansion: A number of efforts will be required to achieve racial health equity. We must improve upon the Affordable Care Act and fully expand Medicaid while working toward a system that better promises universal, quality, and affordable coverage. Such efforts should continue—indeed, increase—investments in community health centers, particularly in under-resourced and underserved areas, along

iii The OECD estimate of the U.S. unionization rate is higher than the Bureau of Labor Statistics figure, which accounts only for the private sector.

with strengthening the current capacity of providers to guarantee culturally competent care and services. To ensure the health of women and families before, during, and after pregnancy, we must guarantee high-quality pre-conception, pre-natal, and postpartum care. Congress should strengthen the family planning safety net, and also pass federal reproductive health protections, such as the EACH Woman Act, which would overturn the Hyde Amendment and ensure abortion access regardless of a woman's income.^{iv 28} Additionally, lawmakers at the state and federal level should make every effort to overturn—or prevent the passage of—Targeted Regulation of Abortion Provider (TRAP) laws, that make it more difficult for low-income women to access reproductive health services.²⁹ In addition to these measures, we must also consider the health impacts of disparities in wealth, income, and education, as we have discussed throughout this report, and acknowledge that striving for equity in each of those areas is necessary to achieve both social and economic well-being and actual physical health.

ASSETS AND WEALTH

Child Trust Accounts or “Baby Bonds”:³⁰ Just as history, geography, and policy perpetuate unequal community wealth between black and white Americans, so too do these factors perpetuate the massive race gap in individual and community wealth. As described in this paper, the unequal distribution of income pales in comparison to the unequal distribution of wealth. Overall, individual actions—in terms of education, jobs, or savings—have little power to close this gap. Further, individual wealth serves as a key driver in education, health, income, and other outcomes.

The kind of universal yet targeted “baby bond” proposed by William Darity and Darrick Hamilton would provide every American at birth with a wealth grant to be accessed at age 18. The size of the grant would vary depending on the wealth of the child's family, and such a program would have a pronounced benefit for the 77 percent of black American families with less than the national median household wealth.^{v 31} Darity and Hamilton propose a graduated wealth grant of up to \$60,000 for children born to families with less than the median wealth. The numbers average out to approximately \$20,000 per child, for an annual cost of about \$60 billion annually, not accounting for potential increased births or reduced government spending on other safety net programs. In comparison, individual tax expenditures total approximately \$335 billion a year, with at least a third benefiting households earning more

iv Title X, the national family planning program, remains underfunded and in recent years has faced threats of elimination.

v In 2013, median family wealth stood at \$81,456 with 41 percent of white families, 49 percent of Asian, 75 percent of Hispanic and 77 percent of black families below the median (Federal Reserve Bank of St. Louis. 2015).

than \$1 million annually.³²

Financial and Corporate Reform: In tandem with the undermining of worker rights and standards, trickle-down policies have promoted the ascendancy of corporate and financial power to the detriment of middle- and low-income Americans disproportionately represented by people of color. As detailed in *Rewriting the Rules* and in *Untamed: How to Check Corporate, Financial, and Monopoly Power*, the deregulation agenda of the last 35 years has really been an effort to “re-regulate” the economy in favor of the powerful and privileged. The policies associated with increasing the wealth of the richest Americans at the expense of average Americans have been refracted through the web of racialized rules to particularly disadvantage people of color. A quick survey of examples makes the clear point that privatization of public resources like the water infrastructure in Flint, Michigan, the free rein of financial institutions to target communities of color with predatory loans, and a shift in monetary policy away from full-employment to protect wealth-holders from inflation has disproportionately impacted black Americans.³³

It will not be easy to reform the structures that have contributed to the current high-inequality, low-growth economy, which prioritizes the claims of wealth-holders over the claims of workers. However, we must take key steps toward those goals. Specifically, we can promote policies aimed at fostering full employment. Beyond monetary policy, this includes boosting public investment by ensuring corporations pay their fair share of taxes and boosting private investment by reining in short-termism on Wall Street.

Further, we can strive for policies that promote financial services that benefit, rather than prey upon, communities of color. A public option for banking run through the postal service can reach communities, both urban and rural, from which banks have withdrawn. It can also use its scale to provide baseline services to the 33.3 percent of Americans who are unbanked or underbanked.³⁴

NEIGHBORHOODS AND SCHOOLS: REDUCING RACIAL ISOLATION

Racially Explicit Rules: Many of the policies recommended here aim to address problems of racial exclusion by using economic status as a proxy for race. Wealth-building programs and public investments targeted to the least wealthy Americans will overwhelmingly benefit black Americans. These are important. But while economic and class-based policies will provide significant support for

black and other minority communities, overcoming structural racial inequities will necessarily require policies that explicitly target black individuals and black communities as beneficiaries—particularly in contexts like school desegregation, a renewed effort at affirmative action, and a broader focus on promoting not just de jure but de facto racial equality.

The evidence shows that reducing racial isolation is very important educationally, economically, and as a driver of overall well-being. We argue strongly for a renewed look at affirmative action, or directly targeted efforts to build the pool of qualified educational and job applicants, in order to continue to ensure the reality of equal opportunity. We argue strongly for policies that incentivize and allow school districts to achieve better racial balance among and within schools, with the goal of ending the extreme race- and class-based isolation of black and also Latino children we see today. These include everything from more support for “voluntary transfers” and stronger district school assignment policies to more equitable housing policy.³⁵

A Shift in Constitutional Doctrine: To make racially explicit rules a possibility, we need a significant shift in the current state of constitutional jurisprudence on issues of racial inequality, discrimination, and affirmative action. Racially explicit rules, even when geared toward remedying past structural discrimination, are, under current Supreme Court precedent, subject to a standard of “strict scrutiny” in judicial review. This means that such policies will only be upheld if they meet a “compelling government interest” and are “narrowly tailored” to that end. This, in itself, is not fatal to such proposals: as suggested in this paper, achieving racial equity and inclusion and overcoming the deep legacy of racial segregation and inequality should be understood as a compelling governmental interest that justifies targeted policies of the kind proposed here.

Even so, current Supreme Court practice poses a problem, as it is focused predominantly on race neutrality.^{vi} Current constitutional doctrine thus makes impossible the kind of racially targeted policies that, as this report has suggested, are essential for undoing structural racial inequities. To rewrite the racial rules, we need to shift our constitutional understanding of the Equal Protection Clause and the governmental

vi In cases like *Parents Involved* (2007) the Supreme Court held that racially-targeted policies such as school desegregation can be oriented towards goals of diversity, and remedying explicit, de jure, prior segregation of the sort in the Jim Crow South, but that racial balance alone is not considered a sufficiently compelling interest. In *Fisher I* (2013) the Court suggested that *Brown v. Board* and the Fourteenth Amendment’s guarantee of Equal Protection require a “color-blind” reading of the Constitution, such that policies must be facially race-neutral—and more strongly, that if schools and other institutions have race-neutral alternatives present, those alternatives must be preferred.

interest in remedying past discrimination using racially targeted policies. As some justices on the Court (including Stevens, Breyer, Sotomayor, and Ginsburg) have suggested, neither the 14th Amendment nor *Brown v. Board* requires the kind of colorblind, race-neutral approach that excludes such remedial actions. Remedying racial inequality—including both the inequalities that arise from our history of de jure segregation and today’s de facto racial disparities—should be understood as a compelling government interest under the Equal Protection Clause. This compelling interest should in turn be understood to justify the kinds of racially targeted policies described in this report.

Racial Equity Impact Assessments: To reduce the adverse consequences of “race-neutral” policies on communities of color, all policies and programs should be evaluated with racial impact assessments. Our research makes clear that policies are almost never race-neutral, even when their intent may be. Further, race-neutral policies do, at times, hide discriminatory intent, as in the case of mandatory minimums associated with different types of illicit drugs. Just as environmental impact studies assess whether proposed policies might cause environmental harm, racial impact assessments analyze proposed policies to better understand and clarify the consequences of policies, practices, programs, plans, and budgetary decisions.³⁶ Such assessments allow us to evaluate proposals not simply by their intent, veiled or otherwise, but also by their likely outcomes. As Race Forward explains, racial equity impact assessments “can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities.” Both Connecticut and Iowa now require minority impact statements in advance of passing new sentencing laws.³⁷ The city of Seattle requires such analysis on a range of policy and budgetary decisions, and the city of St. Paul is considering a similar proposal. We must consider ways to implement these assessments at all levels of government.

AREAS FOR FUTURE RESEARCH

This report marks the Roosevelt Institute’s first significant effort to identify, understand, and suggest corrections to the structures perpetuating unequal racial outcomes in the American economy. We know that our own work remains incomplete.

There are a number of areas for future research, including a deeper dive on gendered rules, a better understanding of how racial and economic inequity operates within race categories (for example, for black immigrants, LGBT black Americans, etc.), and more work on the economic effects of immigration rules. We



The key policy point is that we have a choice. It is possible to rewrite the rules that shape unequal opportunities and produce unequal outcomes.

look forward to advancing these efforts in the future.

Most importantly, the policy proposals outlined in this report would benefit from a more rigorous analysis of macroeconomic, and also social, effects. Note that some of our proposals—including voting rights, labor standards, and financial reform, as well as our support for H.R. 40 and our call for racial impact assessments—are not massive new public spending programs, and would therefore have modest costs and outsized market benefits. But we also propose some programs, including major job creation and infrastructure investment in low-income communities and community wealth grants (or “baby bonds”), that do require major expenditures.

Improving our understanding of these macroeconomic costs and benefits, including long-term growth effects, will help us further prioritize and also argue effectively for our comprehensive approach to rewriting the racial rules. Given the inefficiency in today’s economy, we strongly believe that the multiplier effects of the spending we propose will bring outsized gains. But a better understanding of potential economic gains and distributional effects is an essential next step in this line of research.

While we acknowledge the need for future research and a sustained national conversation about our racial past and racial future, none of this will be possible without the activists and ordinary people willing to mobilize and take collective action. We are living through a “movement moment.” Sparked by the continued police and vigilante violence inflicted on black Americans, the Movement for Black Lives and others have forced a national conversation about racial injustice in America, much like an earlier generation in the 1960s. We applaud their efforts to raise these painful and unresolved issues, but more importantly, to lead campaigns around the country to change the racial rules of our economy and society and advance racial and economic justice.

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We hope that, by working together, we can all bring about an America that is closer to the one that we want and deserve.





Conclusion

This report has shown that the vast and persistent inequities experienced by black Americans are the result of a complex and intersecting set of racial rules that have been strongly shaped by our nation's long history of systemic exclusion and racism. We have shown that this history has a lingering impact today and that policies that attempt to ignore this legacy too often serve to compound inequality. Further, we have emphasized that while race in America is too often correlated with economic inequality, income disparities, and poverty, economic exclusion alone does not explain our historic or current racial inequities. In order to address these injustices, we must explicitly consider race in any new rule-writing.

We have told a story of American history that in many ways is one of racial disparities and isolation. Through one news headline after another, we are continuously reminded that we have not closed the book on this story: Hurricane Katrina; the subprime mortgage crisis and the loss of wealth in wake of Great Recession; the utter neglect and resulting tragedies of the Flint, Michigan, lead crisis; the high rates of maternal and infant mortality among black Americans; the deaths of Trayvon Martin, Sandra Bland, Tamir Rice, Michael Brown, Freddie Gray, Eric Garner, and too many others to name; the fact that between 30 and 50 percent of black and brown children in cities like New York, Chicago, and Los Angeles attend schools that are so racially segregated that many of the worst have been labeled “apartheid schools.”ⁱ These facts—and the countless other examples that never gain national attention—must not be tolerated in 21st century America.

Without a doubt, we make this case for reasons of morality and basic fairness, but also because an economy with this much inequality is not living up to its full potential. We believe that none of us want to live in an America this unequal and this divided. Allowing this degree of geographic, socioeconomic, racial, and ethnic disparity to persist is a betrayal of our American Dream.

In many ways, racial inequality is the most intractable problem for our politics and our society. The vast web of racial rules that shape unequal outcomes cannot be untangled easily. So perhaps it is somewhat brazen to end this report on a hopeful note. But racial inequality is—and has always been—a choice. And that means we can rewrite our racial rules for better outcomes.

As this report has shown, despite a history of rules borne from a desire to maintain a stratified racial order, we have also made real—though incomplete—progress at times. During Reconstruction, we wrote rules to bring newly freed slaves into the real economy and the labor market. During the civil rights movement, we integrated schools, increased voting rates, and ultimately saw incomes rise for many African Americans. It is now time again to write a bold set of inclusionary rules, and to write them in such a way that the retrenchments that followed the previous two periods of progress will not be repeated.

We do not accept inequality as inevitable. We believe we are at an inflection point, and thanks to the organizing, advocacy, bravery, and protest of those who will not accept the status quo, there is hope for a “third reconstruction.” We understand that, as a think tank publication, this report is addressed to the same class of the privileged and powerful that presided over previous retrenchments. Yet even as we urge our nation's leaders to choose differently, there is a growing movement of millions of Americans who demand it. We are honored to stand behind those who refuse to be cowed by continued injustice. We hope that, by working together, we can all bring about an America that is closer to the one that we want and deserve.

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INTRODUCTION

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