PUBLIC AFFAIRS QUARTERLY
Volume 21, Number 3, July 2007

HOUSING DISCRIMINATION AS A BASIS FOR BLACK REPARATIONS

Jonathan Kaplan and Andrew Valls

The renewed interest in the issue of black reparations, both in the public sphere and among scholars, is a welcome development because the racial injustices of the past continue to shape American society by disadvantaging African Americans in a variety of ways. Attention to the past and how it has shaped present-day inequality seems essential both to understanding our predicament and to justifying policies that would address and undermine racial inequality. Given this, any argument for policies designed to pursue racial justice must be, at least in part, backward-looking, justified partly as compensation for the effects of the wrongs of the past.

However, some arguments about black reparations, both pro and con, are focused too far in the past. An unspoken assumption of much of the debate about black reparations is that these would be reparations for slavery. This, we argue, is a mistake. Racial inequality in the United States today may, ultimately, be based on slavery, but it is also based on the failure of the country to take effective steps since slavery to undermine the structural racial inequality that slavery put in place. From the latter part of the nineteenth century through the first half of the twentieth century, the Jim Crow system continued to keep Blacks "in their place," and even during and after the civil rights era no policies were adopted to dismantle the racial hierarchy that already existed.

An important part of the story of racial inequality today is the history of housing and lending discrimination in the second half of the twentieth century (McCarthy 2002; 2004). Home equity, for many Americans, is a very important source of wealth, and the decades after World War II were ones of rapid home equity growth. They were the decades that saw the creation of a large, mostly suburban, middle class. But the middle class that was created was also mostly White, and this was due largely to government policies that (in many cases intentionally) excluded Blacks from the opportunities to get into the home market and benefit from home equity growth.

In this paper we argue that recent housing and lending discrimination constitutes an important basis for black reparations. Since housing discrimination is

an important part of the explanation for current racial inequality, it should play a central role in the normative argument for policies that would address and undermine racial inequality today. We begin by reviewing the recent debates about black reparations, and argue for a shift in focus from slavery to more recent injustices. We then briefly discuss and defend the emphasis on housing. We review and detail the policies and practices of the federal government and private actors that substantially disadvantaged African Americans in the housing market throughout the twentieth century. Through all of the changes in policy that took place, African Americans continued to be disadvantaged, and the accumulated effects of this disadvantage have never been directly addressed. As such, we argue in the final section, housing discrimination should form one of the central pillars in the argument for black reparations.

I. Reframing the Debate over Black Reparations

The issue of black reparations is often understood as being about reparations for slavery (see, for example, Winbush 2003; Conley 2003; Barkan 2000, chap. 12). On this interpretation of the issue, the question is whether African Americans are entitled to some form of compensation for the present-day effects of the history of racialized slavery in the United States. This way of understanding the issue of black reparations, then, places the focus on the human rights abuses that took place in this country until about 1865, and asks whether individuals now—in the twenty-first century—should be compensated for the effects of an institution that was dismantled nearly a century and a half ago.

This way of framing the issue of black reparations has obvious disadvantages, both philosophical and strategic. By placing the focus on the distant past, it makes arguments for black reparations vulnerable to the philosophical objection that the passage of time has eroded the plausibility of claims for compensation. Traditional models of compensation rely on the notion either of returning victims to a status quo ante or of placing them in a condition in which they would have been were it not for the wrongs committed. Arguing for black reparations on the basis of slavery seems to make such comparisons between actual circumstances and counterfactual ones very difficult. What is to be the counterfactual to which current conditions are compared? How are we to know what would have been the case were it not for slavery? How are we to quantify the debt, and who is entitled to what? As some commentators have pointed out, many of the individuals who exist today would not exist at all if slavery had not occurred; how, then, can these same individuals claim compensation for acts in the absence of which they would not exist? These objections are not necessarily fatal (see Valls 1999), but they do raise serious issues that, in the view of some commentators, undermine the case for black reparations.

Perhaps the best known recent version of this kind of argument against intergenerational compensation is Jeremy Waldron's "Superseding Historic Injustice"

(1992). With respect to any intergenerational claim to compensation, Waldron argues that with the passage of time it becomes impossible to know what would have happened in the absence of past injustices. Furthermore, the passage of time also creates new claims that often conflict with claims for compensation. For example, legitimate claims to particular parcels of land can develop when individuals mix their labor with it, cultivate it, or construct buildings on it, even if this land was initially obtained through the violations of others' rights. In such situations, it is often far from clear who, on balance, is entitled to what. In the case of black reparations in particular, Glenn Loury (2002, p. 124) has argued that an "epistemological fog" pervades any attempt to address the issue. We simply cannot know what we would need to know in order to carry out a reparations program—if, indeed, it were determined that such a program were justified. These are reasonable concerns, made all the more so by the focus on the more distant past involved in framing the issue as reparations for slavery.

Focusing on slavery also has strategic political disadvantages. Placing the emphasis on wrongs in the distant past probably undermines public support for the idea of black reparations. Slavery's remoteness in time makes the relation of past injustices to current racial inequality appear more tenuous, and probably makes it easier for the public to take a dismissive attitude toward the issue. Some commentators have argued that any talk of black reparations is counterproductive and divisive—that any progress toward racial equality will result only from a cross-racial coalition that focuses on class-based claims that members of different races can all support (see Swain 2002, p. 181). Insofar as this is the case with respect to any argument for black reparations, it is a particular problem for arguments for black reparations that focus on slavery. These strategic considerations are not necessarily decisive (see Valls forthcoming), but they do seem to bolster objections to black reparations.

Focusing on the costs to African Americans resulting from discrimination and other wrongs that occurred in the post-slavery era may, then, have corresponding advantages in arguing for black reparations. The fact is that the systematic racial subordination that was perpetrated on African Americans during the Jim Crow era—dating from the end of Reconstruction in 1877 until the civil rights era in the 1950s and 1960s—constituted a distinct set of serious wrongs that may require reparations. These wrongs were committed within the memory of many adults currently living in the United States. Many living African Americans attended segregated schools with inferior resources; if they pursued higher education they had the choice between going to an all-black college or none at all; they faced discrimination in employment, had unequal access to public accommodations, and essentially had the status of a second-class citizen in their own country. Focusing on slavery tends to deflect attention from these more recent, but still government supported, wrongs. Considerations such as these have led advocates such as Boris Bittker to write, in his classic book on the issue, that the "preoccupation with

slavery... has stultified the discussion of black reparations by implying that the only issue is the correction of an ancient injustice" (Bittker 2003, p. 9). Focusing on the systematic wrongs to African Americans since slavery, then, reframes the issue in a way that may strengthen the case for black reparations.

II. Why Housing?

The argument in this paper is focused on the effects of housing discrimination in the post-World War II era, and there are good reasons for this even narrower focus. In light of all of the wrongs of Jim Crow, it is difficult to know where to begin in thinking about compensation to African Americans. Housing discrimination offers a focal point that has at least two advantages: it is recent (indeed, there is evidence of racially based housing discrimination up to the present day) and it is quantifiable. The recent and ongoing nature of housing discrimination means that no one can dismiss arguments for compensation based on it as purely academic, as focusing on the distant past, or anything of the sort. The fact that the effects of housing discrimination are quantifiable is another advantage: if reparations are to be paid, we would want to have an estimate of the amount, or at least the magnitude of the appropriate payment. Making inferences from readily available data on housing values allows us to do this.

Focusing on housing also places the spotlight on the "wealth gap" between Black and White Americans, which is an important continuing aspect of racial inequality in the United States. The wealth gap between White and Black Americans is substantially larger than the income gap. For example in 2001 the median net worth of White American families was roughly $121,000 whereas the median net worth of African American families was only $19,000 (the ratio for the mean is similar). The median family income of White American families was about $55,000 and of Black American families about $34,000 (again, the ratio of the mean is similar). That is, while Black Americans earn on average 60 percent of the income of White Americans, they have, on average, only 16 percent as much wealth. This wealth gap exists at every income level, and continues even when all standard demographic variables are controlled for. However, a substantial portion of the wealth gap at every income level is correlated with home-ownership and the value of homes owned; much of the relative lack of wealth by Black Americans is due to the lower rates of home ownership in Black communities and the lower value of homes owned (Krivo and Kaufman 2004; Charles and Hurst 2002; Collins and Margo 1999).

The causes of this wealth gap are still being debated, but it seems certain that the inability of Black Americans to secure credit to purchase homes on equal footing with White Americans, and the difficulty faced by everyone in securing credit to purchase homes or property in areas recognized by the lending community as predominantly Black or mixed-race neighborhoods, is at least partially responsible for Black Americans having been prevented from gaining wealth

through rising real-estate prices. Further, the practice of directing Black American potential home-buyers away from predominantly White neighborhoods, and the practice of directing White American potential home-buyers towards homes in predominately White neighborhoods (practices that until recently were legal, and are still widely practiced), combined with the inability of White Americans to secure loans for predominantly Black neighborhoods, artificially inflated the housing prices of homes in White neighborhoods (Rusk 2001).

This wealth gap has a profound impact on Black families. Aside from its effects on such obvious issues as the educational opportunities available, it has created a system whereby the wealth gap would be self-perpetuating even under conditions far more 'fair' than those that exist today (see e.g. López Turley 2003). Many first-time White American home buyers rely on their parents for help with the down-payment; their parents are largely able to help because of the rise in the price of the homes they themselves own. This is a source of inter-generational financial help that is unavailable to many young Black Americans whose parents were shut out of purchasing homes in those neighborhoods that historically experienced the highest rates of growth in real estate prices. Hence, even if there were no longer active discrimination against Black American home-buyers (and there surely is), the wealth-gap between Black and White Americans would continue to be recreated in each generation through the mechanism of financial exclusion from the 'best' housing markets.

Overall, then, home ownership is a very important source of wealth for many Americans, and black Americans have been substantially disadvantaged in access to this avenue of wealth formation. This has contributed greatly to the large black-white wealth gap that exists today. To understand how this occurred, we must examine the history of housing and lending practices and laws in the United States in the twentieth century.

III. Housing and Lending Discrimination in the Twentieth Century

When considering the history of housing discrimination against African Americans, we should distinguish among several forms of discrimination. We should distinguish first between discrimination in housing per se and discrimination in lending. Since the vast majority of Americans depend on financing to buy a home, the latter often leads to discrimination in access to housing, but as we will see it operates independently. Within both sales and financing, further distinctions must be made. Some forms of discrimination are overt, while others are more covert, but nevertheless very effective. Some involve the explicit use of racial categories, while others are, at the manifest level, racially neutral but nevertheless discriminatory in their effect (and are sometimes intended to be so). Some forms of discrimination are state-mandated, some are private but state-enforced, and

others are merely tolerated by the state. The history of housing discrimination in the United States in the twentieth century is largely a story of its evolution from the most explicit and overt forms, in which the state (meaning the federal as well as state and local governments) is deeply implicated, to less explicit and obvious forms of discrimination, which, even when officially outlawed, are difficult to prevent and to prosecute, and are in any event largely state-tolerated.

In the early years of the twentieth century, there were attempts by various state and local governments to reserve particular urban areas for particular races. This state-mandated racial residential segregation designated official black and white neighborhoods, and prohibited both blacks and whites from purchasing houses in areas designated for members of the other race. As such, proponents argued that the laws and ordinances were in fact even-handed, but even the generally accommodating Booker T. Washington saw these laws as a serious threat to the economic well-being of African Americans. In 1917 these laws were struck down by the federal courts as denying property rights without due process of law. As George Fredrickson has written with regard to this, "The toleration of segregation by federal courts was shown to have limits" (1995, p. 129; see generally pp. 127–129). Hence state-mandated residential segregation was attempted early in the Jim Crow era, but was short-lived.

Yet even after state-mandated segregation was struck down, private racial covenants continued to be enforceable contract provisions in the United States for another three decades. During this period restrictive covenants were often employed by neighborhood associations to prevent African Americans from purchasing or occupying homes within particular neighborhoods. These covenants were a means to protect property values which, it was feared, would decline if African Americans moved into the neighborhood. "After 1910, the use of restrictive covenants spread widely throughout the United States, and they were employed frequently and with considerable effectiveness to maintain the color line until 1948, when the U.S. Supreme Court declared them unenforceable" in the case, *Shelley v. Kraemer* (Massey and Denton 1993, p. 36). For roughly the first half of the twentieth century, then, private discrimination in sales (and renting) of housing was widely and openly practiced, and was enforceable and enforced by the courts. In addition, Black Americans also faced significant "extra-legal" barriers to entry into White neighborhoods (including intimidation and violence) during this time period (Lands 2004).

But the role of the Federal Government in lending was by far the most important factor in creating and solidifying racially segregated housing in the U.S. Until the creation of the temporary Home Owner's Loan Corporation (HOLC) in 1933, and, more importantly, the creation of the permanent Federal Housing Authority (FHA) in 1934, home mortgages were generally limited to less than 50 percent of the home's appraised value, the loans were generally limited to time periods of less than five years, and the loans generally ended with a large "balloon-pay-

ment" of the remaining principal (Gordon 2005; Weiss 1989). FHA-insured loans revolutionized the home mortgage industry, reducing required down payments to 20 percent (or less) of the home's appraised value, extending the loan periods to twenty or more years, and making the loans "self-amortizing" (both interest and principal are paid off over the loan period) (Gordon 2005). The VA loan program, started in 1944, reduced the requirements to borrow even further, often permitting returning WWII veterans to purchase homes with no down payment (Weiss 1989). The combination of low down payments, low monthly payments over an extended period of time, and long term fixed-rate interest made these loans attractive to home buyers, but seemed "risky" in the eyes of lending institutions; if house prices dropped, it would make sense for a homeowner to default on the mortgage once the value of the house was reduced to below the value of the outstanding loan, and the lending institution's money would be tied up in the loan for many years, preventing its more effective use if interest rates increased or other more lucrative lending opportunities arose. By insuring these loans against default, the FHA shifted much of the risk from the lending agencies to the Federal Government; risk to lenders was further reduced by the creation of the Federal National Mortgage Association ("Fannie Mae") in 1938, which, by providing a market for FHA and VA loans, increased the liquidity of lenders (Weiss 1989).

The result of these changes was the creation of a situation in which home ownership became a means of building wealth rather than merely another expensive durables purchase. Before the mid-1930s, most people who owned their homes were relatively old, since the required down-payments and large balloon payments were only available to those who had already had substantial time to save and build wealth. After the mid-1930s, however, younger families could afford to purchase homes and build equity in them over time. Indeed, almost all of the growth in home-ownership between 1920 (46 percent) and 1960 (62 percent) came from under-60 buyers (Gordon 2005, 204).

Gordon (2005) has argued that FHA-insured loans were only possible because the FHA successfully fought to exempt itself from various Federal and State laws regarding the maximum permissible "loan to value ratio" (LTVR). However, only loans insured by the FHA were so exempted; mortgages insured by private insurance firms still needed to meet stringent LTVR standards (generally 30+ percent) and stringent repayment schedules (generally less than ten years). Indeed, Gordon notes that it was not until the 1970s that anything close to equivalent lending rules were applied to non-FHA "conventional" and FHA-insured loans (Gordon 2005, p. 194ff.). For a substantial portion of the twentieth century, then, the FHA had a true monopoly on a particular kind of home loan, the only kind of home loan that most Americans could afford.[1]

But both explicit and implicit racial preferences built into the FHA loan system meant that the beneficiaries of FHA-insured loans were overwhelmingly White, and Black Americans had little opportunity to purchase homes on an equal foot-

ing with White Americans (Jackson 1985). These preferences included the FHA adopting the HOLC-developed risk criteria for issuing insured loans; these criteria gave predominantly White non-immigrant neighborhoods the highest ratings, and predominantly Black neighborhoods the lowest ratings. As the FHA (unlike the HOLC [see Jackson 1985, p. 202]) used this criteria to decide whether a loan could be insured, homes in "Black" or mixed neighborhoods were generally viewed as "uninsurable" by the FHA. In addition, the FHA rating system included wording, such as "relative economic stability" and "protection from adverse influences," that revealed thinly veiled preferences for segregated neighborhoods (Gordon 2005; Jackson 1985). Indeed, Jackson quotes an FHA Underwriting Manual as noting that if "a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes," and further notes that the FHA actively promoted the use of racial covenants to protect against transitions to mixed neighborhoods (Jackson 1985, pp. 207–208; see also Gordon 2005, pp. 207–208). To meet these requirements, FHA (and later, the VA) loans were primarily aimed at (new) suburban developments, and were generally not available in urban areas. By some estimates, over 80 percent of the suburbs developed in the late 1930s through late 1940s contained racial covenants preventing Black Americans (and other nonwhite groups) from purchasing homes inthose neighborhoods (LaCour-Little 1999, p. 17).[2] A strong FHA preference for financing "stand-alone" residential housing, as opposed to the mixed business/residential models favored in urban centers, further limited the availability of FHA loans within extant cities (Gordon 2005, pp. 208–209; Jackson 1985).

The GI Bill, passed in the waning days of World War II, only served to reinforce the discriminatory tendencies of other policies. As Ira Katznelson has recently documented, though the GI Bill made no reference to race or racial categories, and was officially available to all returning veterans (many of whom were black), the bill was written with the intention of limiting the benefits that blacks could receive—and it was largely successful in this regard. The key provision that allowed for this was the one that required that the bill, though federally funded, to be implemented by states and localities. Hence African Americans had to approach white-controlled local boards to access benefits to which they were entitled under the act. This greatly discouraged blacks from applying, and those who did often faced discrimination (Katznelson 2005, pp. 121–129). Furthermore, like FHA regulations, the bill set out criteria for which homes and neighborhoods would qualify for loans, and these largely excluded existing homes in urban areas, and favored new homes in the suburbs. It also rated the credit worthiness of neighborhoods in a way that essentially excluded black neighborhoods as eligible for subsidized credit. These provisions, combined with other forms of widely practiced discrimination, effectively excluded most black veterans from benefitting from the access to home ownership in the boom years that followed World War II (Massey and Denton 1993, pp. 53–55).

The upshot of these policies was that Black Americans did not have access to the mortgage loan instruments that permitted increasing numbers of White Americans to purchase homes after the mid-1930s. Further, White Americans could not use such loan instruments to purchase homes in places other than segregated suburban neighborhoods. The assumption that "integrated" neighborhoods would have resulted in lower home values than segregated neighborhoods became something of a self-fulfilling prophecy, as neighborhoods that failed to be overwhelmingly "white" could not attract home buyers on equal footing with those that were racially mixed. Black Americans, therefore, were not only cut off from making use of FHA-insured loans by the FHA's segregationist requirements, but those who were already home-owners were cut off from taking advantage of the strength of the housing market created by the FHA and VA programs; homes where Black Americans already owned property could not, and did not, benefit from the FHA and VA programs.

For a generation after World War II, then, African Americans faced substantial barriers to home ownership, particularly home ownership in neighborhoods were home values were rising in such a way to create equity and wealth. These barriers included not only federal policies that discriminated against African Americans, but also widely practiced "private" discrimination by other actors in the housing market, such as brokers and real estate agents. Throughout the 1960s, civil rights activists and their supporters in government attempted to address this discrimination, but they faced a great deal of resistance. The first attempt to confront the problem was President Kennedy's 1962 Executive Order 11063, which directed federal agencies to prevent discrimination in both federal housing and in federally subsidized loans. This order, however, was "more symbolic than real" because federal agencies strongly resisted implementing it (Massey and Denton 1993, 190). Throughout much of the 1960s advocates of federal anti-discrimination housing policies were rebuffed. While Congress passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965, it refused to deal with housing. Indeed, it explicitly excluded housing from coverage of the Civil Rights Act's anti-discrimination provisions (Massey and Denton 1993, pp. 191–192). Finally, in 1968, Congress passed the Fair Housing Act—what many consider to be the last gasp of the civil rights era.

The force of the Fair Housing Act (technically, Title VIII of the Civil Rights Act of 1968) was diluted by several key compromises, especially with respect to the requirements necessary to show discrimination, and the available mechanisms of enforcement (Schill and Friedman 1999). The Department of Housing and Urban Development (HUD) could not itself pursue cases, and the possible awards arising out of private lawsuits pursued under Title VIII were severely limited; while the Department of Justice (DOJ) could prosecute "pattern or practice" cases, there was little incentive for it to do so and few such cases were ever pursued (Schill and Friedman 1999). While the Fair Housing Act prohibited many forms of housing discrimination, the lack of effective enforcement procedures meant that hous-

ing discrimination could continue more or less unchecked in the U.S.; whether discrimination was in fact substantially reduced by the Fair Housing Act remains debated, but it is at least clear that substantial housing discrimination continued after its passage (see Denton 1999). Indeed, mortgage discrimination remained common even after the passage of the trio of "equal lending" acts in the 1970s (the 1972 "Equal Credit Opportunity Act," the 1975 "Community Reinvestment Act" and the 1977 "Home Mortgage Disclosure Act") (Galster 1999).[3]

In response to the weaknesses of the enforcement provisions of the original Fair Housing Act, Congress finally passed, and President Reagan signed, the Fair Housing Amendments Act of 1988. This act greatly increased the federal government's commitment to enforcing non-discrimination in housing and lending, shifted much of the burden from individual plaintiffs to the Department of Housing and Urban Development and the Department of Justice, and increased the penalties to which violators of the law were liable (Massey and Denton 1993, pp. 210–211).

The effects of the 1988 amendments are unclear, however. National audits of housing discrimination in 1977 and 1989 showed widespread and varied forms of racial discrimination, but since no national study has been conducted after 1989 we lack hard national data on this issue. However, there are a number of smaller audit studies in particular urban areas that show continued racial discrimination (Yinger 1999). Schill and Friedman conclude their study of the first ten years after the passage of the amendments by stating that "By all accounts, discrimination in housing remains a major problem in the United States" (Schill and Friedman 1999, p. 75). (They add that one consequence of expanding the number of categories protected against discrimination in the amendments—adding family status and disabilities, primarily—was to draw resources and attention away from racial discrimination.) Hence the available empirical evidence supports the conclusion that despite the 1988 amendments, discrimination in housing continues to be practiced.

In addition, the 1968 Fair Housing Act, the fair lending acts of the 1970s, and the 1988 amendments to the Fair Housing Act did little to correct the disadvantages Blacks had already suffered in the previous decades. Indeed, the 1968 Fair Housing Act did not have even as one of its goals correcting such disadvantages; rather, the act was primarily focused (albeit ineffectually) on preventing further individual acts of discrimination (on the part of e.g. sellers, lenders, and insurers). The damage that, for example, the FHA loan programs had already done were in no way addressed. *Correcting* for the adverse effects of past practices was completely ignored (with the possible exception of the clearly inadequate 1977 Community Reinvestment Act). And the 1988 amendments, as Massey and Denton have suggested, "may have come too late" (1993, p. 211). By this time, racial residential segregation, and its accompanying conditions of black poverty, unemployment, and poor educational opportunities were so entrenched that anti-discrimination laws and policies with regard to housing and lending could do little to undo the accumulated damage to racial equality that had been done over the course of the twentieth century.

IV. Unjust Costs and Benefits of Housing Discrimination

There are several distinct types of costs associated with past and ongoing housing discrimination. These include at least 1) the current, and continuing, extra costs incurred by Black Americans searching for and acquiring housing because of contemporary discrimination; 2) the current and ongoing costs suffered by Black Americans because of recent historical and contemporary ongoing residential segregation; and 3) the legacy that the differential impact that the racist policies of the FHA and other government organizations had on Black Americans and White Americans through the 1950s. The latter two costs are the more or less direct results of policies and actions supported by the U.S. government, while the first of the costs is the direct result of actions by primarily non-government organizations and private individuals.

The largest cost borne by Black Americans is the result of the racist policies of the FHA and other government organizations from the 1930s through most of the 1960s. These policies made it much easier for White Americans to acquire and profit from residential real estate property, and simultaneously made it harder for Black Americans to acquire and profit from such property. The inability of Black Americans to purchase housing on the same terms as White Americans priced many Black Americans out of the market entirely; part of the ongoing inequality in home ownerships rates can be traced directly to such impacts. Further, in many places that Blacks might wish to live, FHA policies made it impossible for them to purchase homes, and created incentives for White property owners in the area to discourage racial integration—multiracial neighborhoods would not be rated as highly by the FHA and hence property values could very well drop as mortgage loans, based on the FHA ratings, became more expensive and/or harder to secure. While no doubt many White property owners during this time period were in fact racist in the traditional sense of the word, even if such owners were not adverse to living in the same neighborhood as Black Americans, the FHA policies pressured them to favor (and enforce) segregation.

Aside from the lower rates of home ownership by Black Americans, these policies resulted in the homes in predominantly Black neighborhoods not increasing in value nearly as much as those in predominantly White neighborhoods. Again, even if White Americans had wished to buy homes in racially "mixed" neighborhoods, they were unable to acquire mortgage loans guaranteed by the FHA in order to do so. This created a demand for new (de facto segregated) housing developments and no doubt increased the market price (by increasing demand) for housing in existing predominantly White neighborhoods, while simultaneously lowering the market price (by lowering demand) for housing in predominantly Black neighborhoods.

Perhaps the most lasting legacy of these FHA polices is the high degree of residential racial segregation, and the attendant differences in the opportunities afforded to Black and White Americans. Most obviously, these include access

to high quality educational opportunities, as well as access to local financial institutions, health care resources, and other tangible neighborhood assets (see e.g. Williams and Collins 2001; Yinger 1995, esp. chap. 8; Myers 2004; and DeRango 2001). But these opportunities also include the direct economic effects of the creation and maintenance of segregated neighborhoods. For example, in recent years, homes in predominantly Black neighborhoods have not increased in value nearly as much as those in predominantly White neighborhoods, even when other demographic factors are controlled for (see Flippen 2004). Part of the legacy of residential segregation is therefore that investment in residential property has differentially benefitted White and Black Americans. As access to the equity in homes is one of the main sources of funds available for, say, job related and medical emergencies, the failure of homes in predominantly Black neighborhoods to increase in value as rapidly as those in White neighborhoods not only effects the immediate wealth of Black families, but the stability of those families when faced with crises, as well.

Perhaps the smallest, but still non-trivial, category of costs are those associated with contemporary discriminatory practices. For example, even controlling for other factors, Black Americans remain less likely to be encouraged to apply to rent apartments (Carpusor and Loges 2006), and are less likely to be encouraged to apply for mortgages and more likely to be turned down when they do apply (Charles and Hurst 2002). This very likely results in Black Americans paying more than White Americans for similar housing; a reduced set of apartments to choose from and a greater difficulty in securing a mortgage likely result in higher rents and higher mortgage rates. Even before the housing is located, Black Americans pay extra costs; Yinger (1995, 1997) has estimated that searching for, and finding, housing costs Black Americans, on average, about $4000 more than White Americans looking for similar housing. Yinger claims that this is a "discrimination tax" paid every time a Black American family moves to new housing. These costs are the direct, ongoing costs of both discrimination and segregation, including both differential treatment and the differential adverse effect of, for example, Black Americans being over-represented in communities under-served by lending institutions.

The fact that U.S. government policies benefitted White American homeowners (and potential homeowners) at the expense of Black American homeowners (and potential homeowners), and actively worked to create the high degree of residential segregation that currently exists, implies that much of the wealth that White Americans gained from increases in the value of their housing was not available to Black Americans, and that at least some of that grain was at the direct *expense* of Black Americans. Hence, a large part of the wealth disparity between Black and White Americans is the direct result of unjust government policies, and governmental programs to address these inequalities may be well-justified.

V. The Case for Reparations

The history of state-enforced, state-encouraged, and state-tolerated discrimination in the sales and financing of homes, combined with the present-day effects that these have created, create a strong prima facie case for reparations. There can be little doubt that the forms of discrimination discussed above, which took place in living memory, have had a strong and negative impact on the individual African Americans whose fortunes were directly affected by such policies. Their children and grandchildren were affected as well, and in several ways: they were disadvantaged while growing up in houses and neighborhoods with generally poorer services, poorer schools, etc.; their parents had less ability, on average, than Whites to help them when it came to buying their own houses, because the parents had far less equity and wealth upon which to draw; and the housing market that they entered had been structured by at least two generations of policies that created segregated housing and continues to be characterized by discriminatory practices such as "steering." As a result, Blacks are far less likely to own a home, and if they do, the home is worth less, and appreciates at a lower rate, than the average home owned by a White person (Flippen 2004).

Our analysis is supported by that of Thomas McCarthy (2002; 2004). McCarthy suggests that the lack of support for policies to undermine racial inequality may be due in part to a lack of understanding of the role of the federal government in maintaining racial inequality, and refers specifically to differences in home ownership rates as a primary sources of the black/white wealth gap (2002, pp. 640–641). More significantly, McCarthy traces the "causal connections" between government policies and the creation of the black urban ghetto and its accompanying black poverty and isolation (2004). As McCarthy emphasizes, these causal connections are very strong, and refute arguments that black poverty is simply due to self-destructive behavior on the part of African Americans. "Those who blame the victims of hypersegregation for the culture of hypersegregation are *getting the causal story backward*" (2004, p. 764).

We are now in a position to see more clearly why focusing on housing enables us to overcome some of the objections that have been raised to the idea of black reparations. By shifting the focus from slavery to discrimination in the twentieth century, we can address difficulties related to the 'ancient' nature of the wrongs for which compensation is called. We can address objections that hold that it is difficult or impossible to identify the individuals who have been harmed by the wrongs, since the vast majority of African Americans, both homeowners and non-homeowners, have been negatively affected by discrimination in housing and lending.

We can also overcome the objection that the individuals who are to be compensated would not exist in the absence of the wrongs, so they can hardly complain about those wrongs. Unlike slavery and the slave trade, which involved forced movements of people, resulting in the creation of individuals who would not otherwise have existed, housing discrimination in the twentieth century presum-

ably had no such systematic consequence: the identities of individuals produced through reproduction is a always a highly contingent matter, but we cannot say that present-day individual African Americans would not exist in the absence of housing and lending discrimination in the twentieth century. The "identity problem" for arguments for intergenerational compensation are often overstated, and can be overcome in a number of ways (see, for example, Wheeler 1997). By focusing on housing discrimination in the twentieth century, where many of the people affected are still alive, the problem is at the very least greatly diminished, if not entirely eliminated.

Finally, focusing on discrimination in housing allows us to quantify, at least in rough terms, the amount that is owed to African Americans: the differences in mean household wealth attributable to home ownership, multiplied by the number of African Americans, provides a reasonable estimate of the aggregate debt resulting from housing and lending discrimination.

However, determining the amount owed to individuals is a more tricky matter, as it is here that Loury's 'epistemological fog' becomes thickest. One could simply say that each African American is entitled to his or her equal share of the debt, but that would mean that very rich African Americans, those who have done well despite the disadvantage suffered by African Americans as a whole, would receive just as much as very poor African Americans, who presumably are in greater need and who have suffered more as a result of all of the forms of discrimination and their accumulated effects. This seems counterintuitive. On the other hand, one could argue that the better off Blacks are entitled to more compensation, if, for example, their parents were better off as well, and would have (in the absence of discrimination) been better off still. That is, one could argue that when calculating individual payments, we should control for actual income and wealth, because housing discrimination might have caused greater harm to those who have more to lose—that is, those with some home equity. But again, this seems counterintuitive. Presumably, any reparations program should provide greater help to those in greater need, because need is the best indicator of to what degree one has been negatively affected by housing (and other forms of) discrimination. African Americans who already own multi-million dollar homes free and clear have beaten the odds, and though they may have been better off still in the absence of discrimination, the presumption would surely be against transferring more wealth and other benefits to them.

All of this suggests that it may be a mistake to think of black reparations in terms of payments to individuals. In the case of housing discrimination, we have clear historical evidence and even some hard data that allows us to conclude that African Americans are worse off because of recent injustices, and that allows us to estimate, at an aggregate level, the magnitude of the harm. Yet when it comes down to individuals, we enter the epistemological fog that prevents us from knowing how, and how much, a particular person has been affected. We know that Blacks

have been harmed, but we do not know—and cannot know—exactly how much any individual Black American has been harmed. Some would conclude from this observation that no reparations should be paid, but this conclusion does not follow. Indeed, to embrace this conclusion in the face of the clear historical and statistical data presented here would be to leave in place a significant source of inequality in American society that is the direct result of state-sanctioned and state-tolerated racial discrimination throughout much of the twentieth century. This, we suggest, is prima facie unjust.

If there is a clear—and clearly unjust—structural inequality as a result of recent housing discrimination, but we cannot determine what is owned to whom in precise terms, it is perhaps best to think of reparations as being paid, at least in part, through policies whose overall effect will be to close the wealth gap, and particularly to close that the portion of the wealth gap that is based on home equity. For starters, the federal and state governments should devote greater resources to preventing and prosecuting the racial steering that we have good evidence to believe continues to take place. Furthermore, African Americans ought to be eligible for very favorable terms on mortgages, with very low interest rates and low or no down payment, subsidized by the government. Also, African Americans should be provided with opportunities that would lead to the creation of wealth through means beyond the housing market alone: access to good education, favorable terms for loans to start new businesses, etc. These measures, too, would help close the wealth gap that housing discrimination has done so much to create.

To make these policies more politically palatable, it might be necessary to provide some of these benefits and opportunities on a racially blind basis. Such race-blind policies would be compatible with the argument presented here, but it is important that the compensatory and racial dimension of the policy not be entirely lost. That is, it is important that the policies, among other things, compensate and be seen as compensating African Americans for the history of injustice. Still, race-blind policies that have the effect of closing the Black-White wealth gap might be perfectly acceptable, both in principle and as a political compromise. As Glenn Loury (2002, chap. 4) has argued, it is more important that the policies not be racially indifferent than that they not be racially blind. Race-blind policies that are designed, at least in part, to address racial inequality might be acceptable as part of a black reparations program. Race-blind and race-conscious policies should be seen as means to an end, namely, reducing racial inequality.[4]

VI. Conclusion

We have argued that housing and lending discrimination in the twentieth century constitutes a sound basis for considering the issue of black reparations. Because of a number of policies and practices, particularly those of the federal government, many African Americans were unable to take advantage of the opportunity to buy a home on the favorable terms that were available to many

White Americans, and even when they could, those homes were less valuable and appreciated at lower rates—again in large part due to policies and practices of both state and nonstate actors. All of this led to the creation of racial structural inequality in housing, which contributes mightily to the large gap in wealth held by Black and White households. At the same time, the inequality in wealth and in home value does a great deal to reinforce other aspects of racial inequality, such as access to good schools, municipal services, social networks, and other benefits (López Turley 2003).

In light of the recent nature of these violations of basic equality, it is a mistake to see racial inequality in the United States as being based only on slavery. Indeed, in retrospect, given the growth of the middle class and the economic boom that took place in the decades after World War II, we can see that an important opportunity was lost at mid-century. If the civil rights movement had occurred two decades earlier, and African Americans we included in the economic opportunities that were available after WWII, there might be substantially less racial inequality today. As it is, given that the policies of the federal government often had the intention was well as the effect of largely excluding Blacks from equal access to home ownership, and given that present-day Blacks continue to suffer the consequences of these policies, some form of compensation is called for. The current situation is the direct result of unjust government polices, and there is no reason to believe that the operations of the market alone will erode racial inequality.

The form that these reparations should take is a more difficult matter, and we have merely suggested some possibilities. Our suggestions focus on greater opportunities for African Americans to generate wealth—including, but not limited to, wealth created through home ownership. We have also suggested that some race-blind policies, with these opportunities available to all regardless of race, could be an important part of a reparations program. Regardless of the specific measures that are taken, the essential point should be clear: black reparations are called for, not just because of slavery but because of much more recent and very systematic injustices. Housing discrimination in the twentieth century forms an important part—though still only a part—of the case for black reparations.

Oregon State University

NOTES

1. It is worth noting just how unusual FHA-insured mortgage loans are, and just how different the possibility of gaining equity through rising home prices is from other investment opportunities. Home purchases are highly "leveraged" with loan-to-value ratios far in excess of what can be achieved by "ordinary" investors in most markets; the loan terms are very long compared to most other possible loans available, and the insured nature of

the loans creates relatively little down-side risk for the degree of leverage accepted. These points regarding the importance (and uniqueness) of housing as an investment have been recognized as important aspects of housing discrimination for more than three decades (see Kain and Quigley 1972).

2. LaCour-Little notes that "Not until 1948 did the U.S. Supreme Court rule, in *Shelly v. Kraemer*, that racially restrictive covenants in land titles could not be enforced in the federal courts" and that it was not until 1950 that the "FHA finally agreed not to insure properties with racially restrictive covenants" (1999, p. 17).

3. As Walter notes, strictly speaking neither the Home Mortgage Disclosure Act (HMDA) of 1975 nor the Community Reinvestment Act (CRA) of 1977 are fair housing or lending laws; rather, they are included in this list primarily because they make it easier to track potential discrimination (the HMDA) or make serving traditionally under-served communities one of the criteria for banking agencies to consider when evaluating the plans of banks to expand (the CRA) (Walter 1995, p. 61).

4. There is some irony, or perhaps poetic justice, in the use of race-blind but not race-indifferent policies to correct the results of racists policies that were themselves often written in race-blind but clearly not race-indifferent ways.

REFERENCES

Barkan, Elazar. 2000. *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (New York: W.W. Norton).

Bittker, Boris I. 2003. *The Case for Black Reparations* (Boston: Beacon).

Carpusor, Adrian G., and William E. Loges. 2006. "Rental Discrimination and Ethnicity in Names," *Journal of Applied Social Psychology*, vol. 36, pp. 934–952.

Charles, K. K., and E. Hurst. 2002. "The Transition to Home Ownership and the Black-White Wealth Gap," *Review of Economics and Statistics*, vol. 84, pp. 281–297.

Collins, William J., and Robert A. Margo. 1999. "Race and Home Ownership: 1900–1990." National Bureau Of Economic Research, Working Paper #7277. http://www.nber.org/papers/w7277.

Conley, Dalton. 2003. "Calculating Slavery Reparations: Theory, Numbers, and Implications," in *Politics and the Past: On Repairing Historical Injustices*, ed. John Torpey (Lanham, Md.: Rowman and Littlefield), pp. 117–125.

Denton, N. A. 1999. "Half Empty or Half Full: Segregation and Segregated Neighborhoods 30 Years After the Fair Housing Act," *Cityscape: A Journal of Policy Development and Research*, vol. 4, pp. 107–122.

DeRango, Kelly. 2001. "Discrimination and Segregation in Housing." Employment Research Newsletter 8(3). http://www.upjohninst.org/publications/empres.html.

Flippen, C. 2004. "Unequal Returns to Housing Investments? A Study of Real Housing Appreciation among Black, White, and Hispanic Households," *Social Forces*, vol. 82, pp. 1523–1551.

Fredrickson, George M. 1995. *Black Liberation: A Comparative History of Black Ideologies in the United States and South Africa* (Oxford: Oxford University Press).

Galster, George C. 1999. "The Evolving Challenges of Fair Housing Since 1968: Open Housing, Integration, and the Reduction of Ghettoization," *Cityscape: A Journal of Policy Development and Research*, vol. 4, pp. 123–138.

Gordon, Adam 2005. "The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks," *The Yale Law Journal*, vol. 115, pp. 186–226.

Jackson, Kenneth T. 1985. *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press).

Kain, John F., and John M. Quigley. 1972. "Housing Market Discrimination, Home-Ownership, and Savings Behavior," *The American Economic Review*, vol. 62. no. 3, pp. 263–277.

Katznelson, Ira. 2005. *When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth Century America* (New York: W. W. Norton).

Krivo, Lauren J., and Robert L. Kaufman. 2004. "Housing and Wealth Inequality: Racial-Ethnic Differences in Home Equity in the United States," *Demography*, vol. 41, no. 3, pp. 585–605.

LaCour-Little, Michael. 1999. "Discrimination in Mortgage Lending: A Critical Review of the Literature," *Journal of Real Estate Literature*, vol. 7, pp. 15–49.

Lands, LeeAnn Bishop. 2004. "A Reprehensible and Unfriendly Act: Homeowners, Renters, and the Bid for Residential Segregation in Atlanta, 1900–1917," *Journal of Planning History*, vol. 3, no. 2 (May), pp. 83–115.

López Turley, Ruth, N. 2003. "When Do Neighborhoods Matter? The Role of Race and Neighborhood Peers," *Social Science Research*, vol. 32, pp. 61–79.

Loury, Glenn C. 2002. *The Anatomy of Racial Inequality* (Cambridge, Mass.: Harvard University Press).

Massey, Douglas S., and Nancy A. Denton. 1993. *American Apartheid: Segregation and the Making of the Underclass* (Cambridge, Mass.: Harvard University Press).

McCarthy, Thomas. 2002. "Vergangenheitsbewältigung in the USA: On the Politics of the Memory of Slavery," *Political Theory*, vol. 30, pp. 623–648.

McCarthy, Thomas. 2004. "Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery," *Political Theory*, vol. 32: 750–772.

Myers, Caitlin Knowles. 2004. "Discrimination and Neighborhood Effects: Understanding Racial Differentials in U.S. Housing Prices," *Journal of Urban Economics*, vol. 56, pp. 279–302.

Rusk, David. 2001. *The "Segregation Tax": The Cost of Racial Segregation to Black Homeowners*. Washington, D.C.: Brookings Institution Center on Urban and Metropolitan Policy.

Schill, Michael H., and Samantha Friedman. 1999. "The Fair Housing Amendments Act of 1988: The First Decade," *Cityscape: A Journal of Policy Development and Research*, vol. 4, pp. 57–78.

Swain, Carol. 2002. *The New White Nationalism in America: Its Challenge to Integration* (Cambridge: Cambridge University Press).

Valls, Andrew. 1999. "The Libertarian Case for Affirmative Action," *Social Theory and Practice*, vol. 25, pp. 299–323.

Valls, Andrew. Forthcoming. "Reconsidering the Case for Black Reparations," in *Reparations: Interdisciplinary Inquiries*, ed. Jon Miller and Rahul Kumar (Oxford: Oxford University Press).

Waldron, Jeremy. 1992. "Superseding Historic Injustice," *Ethics*, vol. 103, pp. 4–28.

Walter, John R. 1995. "The Fair Lending Laws and Their Enforcement," *Federal Reserve Bank of Richmond Economic Quarterly*, vol. 81, pp. 61–77.

Weiss, Marc A. 1989. "Marketing and Financing Home Ownership: Mortgage Lending and Public Policy in the United States 1918–1989," *Business and Economic History*, vol. 18, pp. 109–118.

Wheeler, Samuel C. 1997. "Reparations Reconstructed," *American Philosophical Quarterly*, vol. 34, pp. 301–318.

Williams, D. R., and C. Collins. 2001. "Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health," *Public Health Reports*, vol. 116, pp. 404–416.

Winbush, Raymond A., ed. 2003. *Should America Pay? Slavery and the Raging Debate on Reparations* (New York: Amistad).

Yinger, John. 1995. *Closed Doors, Opportunities Lost: The Continuing Costs of Housing Discrimination* (New York: Russell Sage Foundation).

Yinger, John. 1997. "Cash in Your Face: The Cost of Racial and Ethnic Discrimination in Housing," *Journal of Urban Economics*, vol. 42, pp. 339–365.

Yinger, John. 1999. "Sustaining the Fair Housing Act," *Cityscape: A Journal of Policy Development and Research*, vol. 4, pp. 93–106.