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The Nightmare on Main Street for African-Americans:
A Call for a New National Policy Focus on Homeownership

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INTRODUCTION

Discrimination against African Americans in housing has been a long-standing reminder of America’s racist history. It is therefore, no accident that the latest crisis in the housing market can be directly linked to racially discriminatory housing practices forged over the last decade. After a decade of record growth, the rampant predatory lending of sub-prime, high-interest loans, and the resulting surge in foreclosures across the country has dramatically

1. The authors would like to thank Dean Kurt L. Schmoke, Howard University School of Law, Associate Dean, Okainer Christian Dark, and Heather Dillingham, Research Assistant, Howard University School of Law Fair Housing Clinic. In addition, the authors would like to thank the Department of Housing and Urban Development for their generosity in establishing the Fair Housing Clinic at the Howard University School of Law.

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changed the housing industry. Beneath the media coverage explaining the market’s demise looms an insidious and historical aspect of the American housing market—racial discrimination.

African Americans are again caught in the middle of an American financial disaster. Yet, this time the crisis is not only causing serious damage to African Americans, it is potentially threatening world financial markets. This recent housing crisis actually reveals a historical issue that has never been effectively addressed: the significant gap in homeownership rates between whites and blacks. Less than half of all African Americans are homeowners, while three-quarters of white Americans own homes. With the current racial disparity in homeownership as a backdrop, this article examines the current housing market crisis in the United States and the interaction between African American homeownership and racial inequality. This article also urges the next President of the United States to implement concrete policies that address racial inequality in homeownership in light of this country’s racial history.

Part I will examine the creation of the homeownership gap, and how it has been used as a vehicle to perpetuate racial inequality. Part II introduces former President Bill Clinton’s effort to address homeownership during his time in office. Part III analyzes wealth as it relates to disparate homeownership rates for African Americans. Part IV focuses on the U.S. President’s general powers and duties, and how past presidents have wielded these powers to achieve racial and social progress. The final section of this article suggests policies for the next administration. On January 20, 2009, the 44th President of the United States will have the opportunity to resolve the challenges facing the housing market—both currently and historically.

I. PROLOGUE: THE QUEST FOR AFRICAN AMERICAN HOMEOWNERSHIP

To understand current racial disparities in the U.S. housing market, it is wise to examine former President Bill Clinton’s efforts to address the

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7. “Subprime loans usually go to customers who do not qualify for prime market rates because of weak credit histories.” It is considered an entirely different lending scheme with more expensive interest rates. Thomas Leggett, *Subprime Crunch Squeezes N.O. Real Estate Market Tighter*, NEW ORLEANS CITY BUS., Apr. 9, 2007.

8. The problems created consist of the following: “Higher loan costs discourage minority families from buying a home; and higher costs increase the risk of foreclosure for those who do buy homes, threatening working-class neighborhoods and the U.S. economy as a whole.” PR News Wire, May 31, 2006.


10. CTR. FOR RESP. LENDING, AFRICAN AMERICAN HOMES AT RISK: PREDATORY MORTGAGE LENDING 1 (2004), http://www.responsiblelending.org/pdfs/ib013-Black_Homes_at_Risk-1004.pdf (noting that “[f]ewer than half (48.4%) of black households owned their homes in 2003, compared with three-quarters (75.1%) of whites.”).
inequality in housing with targeted policies. In August 1995, Clinton requested that the United States Department of Housing and Urban Development ("HUD") issue Urban Policy Brief #2, which has served as a blueprint for the real estate market. Described generally as a “partnership to increase homeownership to a record high level over the next 6 years,” President Clinton’s blueprint also established specific goals to increase homeownership rates among “lower income households and other underserved populations.” Clinton’s goals were not surprising considering the legacies of chattel slavery and Jim Crow segregation, which have historically caused homeownership rates for African Americans to lag behind those of white Americans. This is a historical reality that can be traced back to the end of chattel slavery.

When chattel slavery ended officially at the conclusion of the Civil War in 1865, the rate of homeownership among African Americans increased rapidly from virtually zero in 1870 to 22% in 1900. Despite this accelerated advancement, homeownership rates stagnated between 1900 and 1940, largely

11. President Bill Clinton was born William Jefferson Blythe III on August 19, 1946. Clinton served as the 42nd President of the United States serving from 1993-2001.
13. Id.
14. Most historians agree that slavery in the United States officially began in 1619 when the first Africans were brought to the English settlement in Jamestown, Virginia. According to historian, Vincent Harding, this is “traditionally considered” the beginning of “black slavery” in the United States. VINCENT HARDING, THERE IS A RIVER: THE BLACK STRUGGLE FOR FREEDOM IN AMERICA, 26 (1983).
15. Joseph Heathcott, Black Archipelago: Politics and Civic Life in the Jim Crow City, 38 J. SOC. HIST. 705, 710 (2005) (describing St Louis, Missouri during the Jim Crow period, he writes that, “Black and white people could not marry or cohabitate, nor could they attend the same public schools. Sports and recreation facilities, playgrounds, hotels, and restaurants had long been segregated, either through internal divisions of space, or by alternating days of use, or through the provision of separate but supposedly equal facilities. Movie theaters, as Quincy Troupe recalls, humiliated their black patrons by only letting them in at certain times, and then sequestering them into special sections of the balconies. Downtown lunch counters were an especially galling instance of segregation; black people could purchase food and drink at the counters, but could not sit at them, no matter how empty the counters or how full the standing area for blacks. Many chose to go hungry rather than suffer the indignity of paying equal money for unequal service.”) (citation omitted).
16. Steve Bersgman, Closing the Gap, MORTGAGE BANKING, Feb.1, 2004 (reporting that the gap between the African American homeownership rate and all Americans was still 20% (48% compared to 68 % overall)).
17. ROBERT A. MARGO, NAT’L BUREAU OF ECON. RES. REP., HISTORICAL PERSPECTIVES ON RACIAL ECONOMIC DIFFERENCES: A SUMMARY OF RECENT RESEARCH 19 (Winter 2005), available at http://www.nber.org/reporter/winter05/winter05.pdf. It should be noted that there were likely some African Americans who did own real property and land. However, the small number of owners due to chattel slavery and the concentration of African Americans in slaveholding states, the percentage is likely to have been insignificant. In addition, following the end of the Civil War and slavery, the struggle by African Americans to obtain land was central to how the Union came to be reconfigured following the war. See generally VINCENT HARDING, THERE IS A RIVER: THE BLACK STRUGGLE FOR FREEDOM IN AMERICA (1983).
as a result of the Great Migration and the Great Depression, when many lost their homes. The Jim Crow laws further impeded their progress. Long-time attorney and author, Alexander Polikoff, provides insight into those dark days:

By 1900, the South’s black population was once again utterly powerless. Yet powerlessness was but one part of the picture. Blacks were also subjected to a loss of humanity second only to slavery itself. Virtually every aspect of black life in the South—schooling, housing, work, marriage, even walking down a public street—was governed by Jim Crow’s implacable and humiliating law of white supremacy and black subjection.

Although the world Polikoff described eventually improved, the case of Buchanan v. Warley exemplified the continuing and pervasive nature of racism in the early 1900s. Although the Supreme Court in Buchanan held that racially restrictive zoning laws were unconstitutional, it did not address racial discrimination in housing. Thus, the legal prohibition against racial zoning led to a proliferation of racial covenants, which the Supreme Court upheld as constitutional in 1924. Racial covenants prevented black Americans from purchasing homes in many neighborhoods, and they remained legal until 1948.

During that time, the Federal Housing Administration (“FHA”) implemented policies that significantly impacted housing regulations and homeownership rates—to the detriment of African Americans. Using the FHA, the federal government provided housing to white Americans while simultaneously excluding African Americans from such housing opportunities. Between 1934-1968, the FHA openly discriminated against

18. Id. The Great Migration began in approximately 1916 when large numbers of African Americans relocated from the rural South to the urban North. Id.; see also STEPHEN G. MEYER, AS LONG AS THEY DON’T MOVE NEXT DOOR 116 (2001) (noting that in a 13-year period, 1.5 million African Americans migrated from the South to the North).
19. MARGO, supra note 17 at 19.
20. Id.
22. 245 U.S. 60 (1917).
23. Buchanan, 245 U.S. 60 at 82.
24. A racially restrictive covenant on real property is “the placement of covenants, conditions, and restrictions within titles that prohibited the habitation, use, or ownership of real property by specific religious or racial groups.” Rajeev D. Majumdar, Racially Restrictive Covenants in the State of Washington, 30 SEATTLE U. L. REV. 1095, 1095 (2007).
27. MEYER, supra note 18 at 53-54 (noting that the FHA was established in 1934 to “coordinate the government’s housing programs and to insure mortgage loans.”).
African Americans in homeownership opportunities. Moreover, from 1945-1959, “less than 2%” of all federally insured loans were awarded to African Americans, and the FHA’s discriminatory practices during this period were “blatant.” A prime example of the FHA’s policies during this period was the development of a community called Levittown in Long Island, New York. With the assistance of the FHA’s discriminatory loan practices, Levittown housed 82,000 residents—none of whom were African American. This was an opportunity for the government to address the homeownership gap between the races; yet, the government’s primary agency that assisted homebuyers engaged in an open policy of racial discrimination.

Near the beginning of World War II, the African American homeownership rate remained at 20%, and the rate for white households was 42%. Following the war, conditions for both groups improved; the rates for blacks increased from 20% to 39%, while rates for whites increased from 42% to 66%. Although homeownership rates for African Americans had increased slightly, discriminatory real estate practices, such as redlining and predatory lending further exacerbated the racial disparity. Consequently, these practices resulted in black families either losing their homes or being denied the opportunity to invest in real property. In summary, explicit government policies perpetuated racial segregation and discrimination in housing for African Americans.

II. EXECUTIVE ACTION

Former President Bill Clinton attempted to address homeownership during his time in office through a homeownership policy initiative. At the time of drafting the initiative later labeled Urban Policy Brief #2, the homeownership rate for white Americans was approximately 70% while the rate for African Americans was 43%. By any measure, this was a significant gap between the...

31. Id.
32. Id.
33. MARGO, supra note 17 at 19.
34. Redlining is the policy by which lenders and other industries have traditionally and historically avoided investment, sales, or extending credit in predominantly African American neighborhoods. For further discussion see Brian Patrick Larkin, The Forty Year First Step: The Fair Housing Act as an Incomplete Tool for Suburban Integration, 107 COLUM. L. REV. 1617 (2007); see also U.S. DEPT. OF HOUS. AND URBAN DEV., UNEQUAL BURDEN: INCOME AND RACIAL DISPARITIES IN SUBPRIME LENDING IN AMERICA (2000), available at http://www.huduser.org/Publications/pdf/unequalfull.pdf.; see also William O’Rourke, Bush Keeps Crying Wolf on Social Security, CHI. SUN TIMES, Jan. 9, 2005.
35. See URBAN BRIEF #2, supra note 12.
races with respect to homeownership. It existed well after most of the nation's segregation laws had been repealed, which suggests that the difference in homeownership rates between whites and blacks was a complex issue that lacked an easy solution.\(^{37}\)

The Clinton initiative, while directed at all Americans, did have a positive effect on the homeownership rates of African Americans and Latinos. One study from the Brookings Institution shaped the homeownership landscape during the Clinton years, and provided evidence that homeownership rates among African Americans and Latinos were improving significantly:

Over the past decade, the gap between rates of homeownership has narrowed, due in part to an increasing number of mortgage loans to low-income, minority households. According to a recent report from the Brookings Institution, mortgage lending increased by 98 percent for African American homebuyers and by 125 percent for Hispanic homebuyers during the 1990s. Rising rates of homeownership among minorities represent a positive step toward closing the wealth gap between whites and other groups.\(^{38}\)

The Brookings Institution study indicates that the specific strategy in the Clinton initiative was being forged - underrepresented groups were gaining access to mortgage loan products.

Yet, within the success of the real estate market loomed a problem that has recently caused a multitude of problems in the real estate market with respect to all consumers - the development and expansion of the "sub-prime" mortgage market.\(^{39}\) This market is the primary culprit in the recent rise of foreclosures in the United States among consumers and disproportionately among African American homeowners.\(^{40}\) While the sub-prime market is barely

\(^{37}\) In referring to the repeal of "segregation laws," the authors have the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968 in mind. These federal laws addressed the legality of racial discrimination in America. The laws, however, did not eliminate racial discrimination or racial segregation.


\(^{39}\) President Clinton's partnership led to the expansion of the housing market and mortgage loans. Individuals who ordinarily were not extended financing in order to purchase homes were able to obtain mortgage loans due to the expansion of credit and more liberal lending guidelines. However, these borrowers were extended mortgage loans in what became known as the "sub-prime market." The loans possessed higher, more costly interest rates and more fees, and also had higher default and foreclosure rates. In essence, while more individuals were extended mortgage loans and purchased homes, the net result proved disastrous as many of these individuals lost their homes as the market shifted. See Edmund L. Andrews, As Subprime Rot Set In, INT'L HERALD TRIB., Dec. 19, 2007.

\(^{40}\) See Allan N. Krinsman, Subprime Mortgage Meltdown: How Did it Happen and How will it End?, 13 J. STRUCTURED FIN. 1 (2007); see also JOHN F. LAIN & JOHN M. QUIGLEY,
mentioned or discussed in the immediate years following the implementation of the Clinton initiative, it is now the primary focus of all efforts to understand the problems currently occurring in the current real estate market.  

However, back in 1995, there was no indication from Clinton's remarks that his ambitious initiative would cause any significant difficulties. For example, he noted:

The desire for homeownership is deeply rooted in the American psyche. Owning a home embodies the promise of individual autonomy and of material and spiritual well-being that many people sought in coming to this country. In addition to its functional importance and economic value, homeownership has traditionally conveyed social status and political standing. It is even thought to promote thrift, stability, neighborliness, and other individual and civic virtues.

Clinton's remarks were a recitation of Urban Policy Brief #2. However, his statistical remarks were not as detailed as the statistics detailed in Urban Policy Brief #2.

Urban Policy Brief #2 noted that "the national homeownership rate fell from its historic high of 65.6 percent in 1980 to only 64.1 percent in 1991" and that "rates stagnated at approximately 43 percent for blacks, while homeownership among Hispanics fell from 43 percent in 1980 to 39 percent in 1991." This indicates that President Clinton was well aware of the historical gap in homeownership between racial groups.

The program was described as the National Homeownership Strategy. It consisted of the National Partners in Homeownership, a 66-member organization comprised of private stakeholders like banks and mortgage companies, community reinvestment groups, real estate companies, government representatives, and consumer advocates.

Clinton's effort was an attempt to forge a nationwide partnership that used "the resources and creativity of lenders, builders, real estate professionals" and also community-based nonprofit organizations and consumer groups. The initiative sought to "create ownership opportunities and reduce the barriers facing underserved populations and communities." The program set forth several plans of action: (1) "cutting housing production costs"; (2) "making financing more available, affordable and flexible"; (3) "targeting assistance to

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41. See Unequal Burden: Income and Racial Disparities in Subprime Lending in America, supra note 34.
42. Urban Brief #2, supra note 12.
43. Id.
44. Id.
45. Id.
46. Urban Brief #2, supra note 12.
underserved communities”; (4) “opening the home buying market to underserved communities”; (5) “raising awareness of homeownership opportunities”; and (6) “expanding homeownership and counseling.”  

The Clinton homeownership initiative provided for a very successful real estate market during the last ten years, and successfully accomplished the short-term homeownership goals set forth by the Clinton administration. Housing sales in the U.S. set records in the years immediately following implementation of the Clinton plan. The period is referred to now as a “bubble” where real estate became a favored investment for many Americans.  

However, the current sub-prime lending/foreclosure crisis is also a by-product of the plan because while it encouraged innovations in the housing industry, it also fostered abusive lending practices. More than anything, the crisis revealed the inherent flaws in the Clinton plan with respect to the achievement of long-term equalization in home ownership rates between African Americans and white Americans.

In September 2005, data revealed that “regardless of income levels, blacks were about three times as likely as whites to borrow through more expensive "subprime" mortgages last year.” The history of racial discrimination in housing towards African Americans was again exposed. For example, in Prince George’s County, Maryland, a majority African American jurisdiction, the problem of discriminatory treatment in the mortgage lending process was recently exposed. This revelation was especially disturbing considering that the African American population in Prince George’s County is known for possessing some of the highest income levels in the United States for African Americans:

47. Id.
49. Id.
52. See Press Release Newswire, Two Million Subprime-Mortgage Foreclosures Expected by 2009, PRWEB, Oct. 28, 2007, available at http://www.prweb.com/releases/2007/10/prweb564697.htm (reporting that “[a] Congressional report released this week states that 2 million subprime-mortgage foreclosures will likely take place by 2009 ... The Congressional report said that the anticipated foreclosures will occur if home prices should continue to decrease at the same spiraling rate. An estimated $71 billion in housing wealth will be destroyed, and states will lose $917 million in property tax revenue because of these foreclosures. There will, however, be more homes available to new buyers.”).
54. Id.
55. Kevin Chappell, America’s Wealthiest Black County, EBONY MAG., Nov. 2006.
About 43 percent of Prince George's County residents who refinanced their homes in 2005 received high-cost loans, compared with 24 percent of homeowners region wide, according to Federal Reserve data compiled for The Washington Post by the Consumer Federation of America. Similarly, 43 percent of people buying homes in the county in 2005 financed their purchases with high-cost loans, compared with 20 percent regionally.56

Essentially, some members (mortgage companies and/or mortgage brokers) of the mortgage lending industry intentionally steered African Americans to the sub-prime lending market (high-cost loans) even when an individual possessed a good credit score.57 African American customers were deliberately sold more expensive products (a sub-prime loan rather than a normal cost loan) because they were African American.

This development is especially troubling. If African Americans in Prince George's County have been targeted with risky loans prone to foreclosure, chances are that African Americans across the country are in possession of such loans. Using research compiled by the Consumer Federation of America, a recent Washington Post article points to similar racial disparities in sub-prime lending:

The pattern of high-cost lending holds even in the most affluent parts of Prince George's County, such as Lake Arbor. About 34 percent of homeowners who bought or refinanced homes in one Lake Arbor census tract received high-interest loans in 2005, compared with 4.5 percent of residents in a majority-white Northwest Washington neighborhood where residents earn about the same amount.58

Thus, patterns of discriminatory conduct are being uncovered, which can be linked back to the policies Clinton implemented in 1995. Although his strategy for homeownership in 1995 consisted of a public-private partnership, it was driven by the private sector. In addition, Clinton's plan did not recommend additional oversight of these transactions and efforts by the industry to reach new consumers. He specifically stated that the program would not cost taxpayers "one extra cent," would "not require legislation," and would not add any new federal programs to the "federal bureaucracy."59 However, considering that the policy encouraged lenders to create these new markets and opportunities, oversight of these expanded economic programs were very

57. Id.
58. Id; see generally ALLEN J. FISCHBEIN & PATRICK WOODALL, CONSUMER FEDERATION OF AMERICA, SUBPRIME LOCATIONS: PATTERNS OF GEOGRAPHIC DISPARITY IN SUBPRIME LENDING (2006), available at http://www.consumerfed.org/pdfs/SubprimeLocationsStudy090506.pdf, for further information on geographical and racial disparities in sub-prime lending.
59. URBAN BRIEF #2, supra note 12.
necessary and for very specific reasons—despite the cost to taxpayers.

First, Clinton’s Urban Policy Brief #2 specifically mentioned non-traditional customers of the mortgage industry: “Targeting Assistance To Underserved Communities” and “Opening the Home buying Market to Underserved Communities.” This was precisely the demographic group that was most vulnerable to these risky, high-cost sub-prime loans. Second, the Clinton administration’s goal to “revitaliz[e] distressed urban neighborhoods” has also proven to be problematic considering the results achieved by the policy. Although many neighborhoods were being revitalized, African Americans did not necessarily benefit from this achievement. On the contrary, another negative outcome of implementing the policies set forth in Urban Policy Brief #2 was the gentrification of many urban neighborhoods around the country.

In Washington, D.C., gentrification arrived in the city’s famous U Street corridor just as Clinton’s housing plans were fully implemented. The economically distressed, mostly African American community in Washington, D.C. began to be revitalized, but the revitalization was the result of whites who settled in the historic neighborhood. The new residents arrived with superior financial resources than African American residents who had lived there for decades. The history of the neighborhood appealed to the affluent young whites moving into the community:

Chocolate City is rapidly becoming Condo City...Legendary African American artists who once frequented U Street, such as Duke Ellington and Langston Hughes, today are memorialized in the names of new loft buildings that are filling up as fast as they are completed. The benches in a triangular park around the corner, where some older men used to sit, have been removed to create a dog-walking area. Some residents prefer that to the public drinking that sometimes happened there. But to [others], it’s just another loss.

Similar stories arrived from Atlanta, Georgia, another American city with a large African American population and deep historical roots in the community, but without the financial resources to control their community’s destiny. One such battle roared in 2004 in East Atlanta:

When the city noticed the extent to which outsiders were colonizing poor, black inner-city neighborhoods—whites doubled their numbers in Little Five Points between 1990 and 2000 alone—it convened a Gentrification Task Force. Chaired by Larry Keating, a professor of planning at Georgia Tech’s College of Architecture, the Task Force met in 2000 and 2001 and issued forty recommendations that it believed would protect existing

60. Id.
61. Id.
62. Debbi Wilgoren, U Street Bookstore’s Eviction Ordered; Owners Denounce Corridor’s Yuppification, WASH. POST, June 27, 2004 at C08.
homeowners and minimize the negative effects of gentrification.63

Other stories were being reported across the nation's cities, including Philadelphia.64

Another provision of the Urban Policy Brief #2 that is of interest in this discussion is Clinton's call to open the "home buying market to underserved communities." The provision outlined in great detail the goal of "promot[ing] fair housing and fair lending by removing barriers that deter many Americans from seeking buying, insuring, or maintaining a home in the neighborhood of their choice." The Clinton administration had little chance of obtaining this goal as well because during the Clinton era, the Republican Party controlled Congress.65 This rendered the task of enforcing civil rights laws in housing extremely difficult.

The National Housing Institute further described the dilemma faced by the Clinton Administration in 1994:

With a Republican Congress dedicated to budget cutting and the reduction of the federal role in regulating state and local government and the private sector, the power and influence of the banking and real estate lobbies are undoubtedly enhanced. The prospects are dim for further serious HUD initiatives in fair housing prior to the 1996 presidential elections. Once again, fair housing activists may have to concentrate their efforts more at the state and local levels, if leadership and support from the federal government are lacking.66

Nevertheless, the Clinton Administration did show signs of being proactive in the area of housing discrimination.67 It is not known if these efforts to address discriminatory housing practices were effective.

67. NAT'L FAIR HOUSING ALLIANCE, 2008 FAIR HOUSING TRENDS REPORT 14 (2008). Fair housing enforcement became a priority during the Clinton Administration, which saw significant increases in the filing of complaints increased funding for private fair housing initiatives; reaffirmed commitment to the use of disparate impact theory under the Fair Housing Act; and expansion of the fair housing testing program under the leadership of the Justice Department, which in turn helped trigger new pattern-or-practice filings. See HARVARD CIVIL RIGHTS PROJECT, HOUSING SEGREGATION: CAUSES, EFFECTS, POSSIBLE CURES 3 (2001), available at http://www.eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/19/ef/b7.pdf.
III. AFRICAN AMERICANS AND WEALTH

T. Thomas Fortune, an African American public intellectual whose contemporaries included W.E.B. DuBois and Booker T. Washington, analyzed the issue of wealth among Black Americans very astutely in the early Jim Crow period. Fortune’s masterwork, Black and White, provides an early understanding of a problem that could have been avoided and corrected generations ago.68 According to Fortune, U.S. policies have made the homeownership rate gap a structural crime against African Americans. He notes that the “[m]onopoly of land is the curse of the race in every modern government. Being the one great source which all wealth must and does spring, its concentration in the hands of a few men not only impoverishes the people, but seriously cripples the operation of government...”69

Fortune is referring to the fact that following chattel slavery, African Americans were free, but because they did not possess land, they did not possess any significant amount of wealth. To understand the concept of wealth, first you have to understand that wealth is not income. Income is what an individual earns, their paycheck; wealth, on the other hand, is defined by net worth. Wealth is determined by calculating assets minus liabilities. In today’s world, wealth can be obtained through the ownership of real property or housing.

This relationship between wealth, homeownership, and African Americans was explained recently by the non-partisan watchdog organization United for a Fair Economy. The organization recently released a report that addressed the magnitude of the problem created by the discriminatory sub-prime lending market.70 According to the organization’s report, African Americans will “experience wealth losses of between $71 billion and $122 billion.”71 These losses, the result of racial bias in mortgage lending decisions, will account “for a 40% difference in losses between whites and people of color.”72

The importance of this development cannot be diminished. Homeownership is the big racial equalizer in America. According to the Center for Responsible Lending, “homeownership represents one of the best opportunities for African American households to build family wealth and

69. Id. at 137-38.
72. Id.
economic security.”73 If African Americans cannot maintain ownership of their real property, the homeownership gap has little chance of narrowing.74 Economist Thomas Shapiro explains this crucial concept of wealth better than anyone:

Wealth is different from income, and, most importantly, families use wealth in very different ways than they use income. Wealth is a storehouse of a family's financial resources and, when combined with income, frames the opportunity for families to secure the 'good life,' however they define it, typically by human capital development, business opportunities, home ownership, community location, health, travel, comfort, and security.75

According to Shapiro, there is a large disparity in wealth between the races specifically due to the home ownership gap; therefore, life trajectories for white Americans and Black Americans are vastly different. This is precisely why decades of discriminatory treatment of African Americans is so tragic and destructive. It also demonstrates why it is critical that the issue of African American homeownership be addressed aggressively in the near future.

Similarly, New York University Sociology Professor, Dalton Conley writes that the “one statistic that captures the persistence of racial inequality in the United States...is net worth.”76 Conley’s analysis of racial inequality revealed a situation that can only get worse without action:

This “equity inequity,” which has grown in the decades since the civil rights triumphs of the sixties, cannot be explained by income differences alone. That is, while African Americans do earn less than whites, asset gaps remain large even when we compare black and white families at the same income levels. For instance, at the lower end of the economic spectrum (incomes less than $15,000 per year), the median African American family has a net worth of zero, while the equivalent white family's net worth is $10,000. Likewise, among the often-heralded new black middle class, the typical white family earning $40,000 per year enjoys a nest egg of around $80,000; its African American counterpart has less than half that amount.77

73. AFRICAN AMERICAN HOMES AT RISK, supra note 10.
74. Chaka A. Uzondu, African Americans, Economic Well-Being, and Immigration, BLACK COMMENTATOR, Apr. 27, 2006, http://www.blackcommentator.com/181/181_african_americans_immigration_guest_uzondu.html (Uzondu, an Education Coordinator for the Racial Wealth Divide Project at United for a Fair Economy, observes that “[i]f you are African American, the enormous wealth gap that exists on average between you and your fellow white citizens, is reason enough to be concerned with your economic well-being. The racial wealth gap between whites and Blacks, measured by net worth, is about $116,000.”).
77. Id.
The importance of wealth is clear. Many African Americans, now earning a decent income still are denied certain opportunities in a market economy. In many instances, the lost opportunities can be linked to net worth and Conley’s “equity inequity.”

Unlike discussions that center upon the progress of African Americans in the post-"civil rights movement" era, a wealth perspective offers a fresh way to examine the “playing field.” Using this perspective is key to understanding the Clinton initiative’s adverse effects for African Americans in the housing market.

IV. EXECUTIVE POWER THROUGH HISTORY

Historically, the President of the United States has proven to be fertile territory for changing the course of racial history in the United States. The power that has been effectively used by several U.S. Presidents is inherent in the constitutional powers of the office. Presidents have also been very creative over the years in advancing their policy goals.

For example, historically, U.S. Presidents have used a tactic called “the bully pulpit.” The bully pulpit usually involves the President making speeches and engaging the press in an effort to advance government policy:

All presidents share the ability to use the rhetorical powers of their office to sway policy in their direction, perhaps by making public appeals to Congress or appealing over the heads of Congress to the population at large in the hope that people will rally to their side. This tactic would be particularly appealing to an opposition president who often does not enjoy institutional support in Congress, but the fact that the opposition president does not enjoy the power to define politics in his favor makes him even more constrained in the use of rhetoric. Open rhetorical attacks against the governing party result in harsh reaction as easily as intemperate use of other forms of prerogative power.

However, with respect to policy, the President can use his or her powers as delineated in Article II of the U.S. Constitution. Article II clearly states that the powers of the President include power over all of the “Executive Departments,” including Departments of Labor, State, Defense, and

78. Shapiro, supra note 75 at 53.
79. See Sebastian Mallaby, The Bullied Pulpit: A Weak Chief Executive Makes Worse Foreign Policy, FOREIGN AFF., Jan./Feb. 2000. The term “bully pulpit” can be traced to the Presidency of Theodore Roosevelt, and refers to the President’s power to set the political agenda and campaign for a certain issue through their speeches. See Michael Barone, A Big Stick: TR’s Sure Sense of American Sure Has a lot to Tell Us Today, U.S. NEWS & WORLD REP., Feb. 17, 2002.
81. U.S. CONST. art. II.
82. Id.
Education. The individuals who are appointed by the President to manage these agencies have significant political power. Clinton’s appointment of Henry Cisneros as Secretary of HUD was a very astute and effective choice with respect to housing policy. Cisneros was probably the most effective HUD Secretary in the history of the nation.

Although the President cannot introduce legislation to Congress, as stated in Clause X of Article II, the President can “recommend to their Consideration such measures as he shall judge necessary and expedient.” This clause is extremely powerful in regards to Presidential power. Section 3 of Article II reads:

He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

The most relevant section to our research is the clause that reads: “he shall take Care that the Laws be faithfully executed.” The meaning of this phrase when referenced to Presidential power is interpreted in Youngstown Sheet & Tube Co. v. Sawyer.

The events leading to Youngstown Sheet began with President Harry Truman issuing Executive Order 10340. The order directed the Secretary of Commerce to operate and take possession of most of the Nation’s steel mills. Steel mill owners sued the government arguing “that the President’s order amounts to lawmaking, a legislative function which the Constitution has expressly confided to the Congress and not to the President.”

President Truman rebutted:

The Government’s position is that the order was made on findings of the President that his action was necessary to avert a national catastrophe

83. Id.
86. U.S. CONST. art. II.
87. Id.
88. 343 U.S. 579 (1952).
89. Id.
90. Id.
91. Id. at 582.
which would inevitably result from a stoppage of steel production, and that in meeting this grave emergency the President was acting within the aggregate of his constitutional powers as the Nation’s Chief Executive and the Commander in Chief of the Armed Forces of the United States.92

President Truman’s rebuttal demonstrates a President’s willingness to broadly interpret the scope within which one may exercise his power. While the U.S. Supreme Court restrained President Truman’s ability to act, the decision of the Court provides guidance for understanding the reach of executive power under the Constitution:

It is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution.93

However, the powers of the President as stipulated in the Constitution and in the clause “he shall take Care that the Laws be faithfully executed” cannot be taken lightly. Some of our past Presidents have been willing to provide leadership on racial matters by using executive power effectively and to its appropriate limits. A short review of the more notable efforts is very relevant to our discussion.

A. EXECUTIVE ORDER 8802

In 1941, President Franklin Roosevelt issued Executive Order 8802.94 Executive Order 8802 desegregated the defense contracting industry in the United States. It stated that it is the policy of the United States to “encourage full participation in the national defense program by all citizens of the United States, regardless of race, creed, color, or national origin... “ in the name of democracy.95

This order was an example of a President aggressively addressing an issue by using the powers of the Executive Branch. President Roosevelt’s order was powerful. It came at a time when African Americans were disenfranchised. Racial covenants in housing were still legal.96 Segregation laws existed across the nation and there was little movement towards the implementation of laws that promoted racial equality. Yet, President Roosevelt demonstrated the ability of the executive branch to provide leadership on an issue of great importance to some of the nation’s citizens. Since the President has complete control over the military according to the Constitution, Roosevelt’s action was within the scope

92. Id. at 582.
93. Id. at 587.
94. 3 C.F.R. 234 (1941 Supp.).
95. Id.
96. See Corrigan v. Buckley, 271 U.S. 323 (1926); see also Majumdar, supra note 24.
of his power.

B. Executive Order 9981

President Harry Truman also demonstrated great leadership in the area of race during his tenure as President. Truman exemplified this leadership in Executive Order 9981, in which he surpassed Franklin Roosevelt's effort by desegregating the military on July 26, 1948:

It is hereby declared to be the policy of the President that there shall be equality of treatment and opportunity for all persons in the armed services without regard to race, color, religion or national origin. This policy shall be put into effect as rapidly as possible, having due regard to the time required to effectuate any necessary changes without impairing efficiency or morale.

Again, in a one-page document, a President changed the course of history in the United States.

C. Executive Order 11063

In 1962, President John F. Kennedy executed Executive Order 11063 pursuant to the Housing Act of 1949. This order prohibited discrimination in housing by directing:

All departments and agencies in the executive branch of the Federal Government... to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin in the sale, leasing, rental, or other disposition of residential property and related facilities... or in the use or occupancy thereof... and in the lending practices with respect to residential property and related facilities... of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

President Kennedy’s order was a direct prohibition of federal funding of any residential development, lending or retail rental of property by any individual, company or organization that had discriminatory practices.

98. Id.
99. Id.
101. Id.
102. Id.
D. Executive Order 12892

In 1994, President Bill Clinton issued Executive Order 12892.\(^{103}\) This order sought to involve all executive level agencies in the area of fair housing. In fact, President Clinton’s order states that agencies “shall administer their programs and activities relating to housing and urban development...in a manner affirmatively to further the purposes of the [Fair Housing] Act...”\(^{104}\) The order also created a President’s Fair Housing Council which was responsible for reviewing “the design and delivery of federal programs and activities” in the area of fair housing. The council was charged with proposing programs activities and with developing pilot programs to achieve its goals.\(^ {105}\)

V. CONSIDERATIONS AND SUGGESTIONS

Before discussing our recommendations for the next President, there are two topics that merit attention. The first involves reparations for African Americans with respect to slavery. The second considers the results of Spain’s efforts to improve its homeownership rates over the past thirty-five-years.

A. Considerations: Reparations & Spain

1. Reparations

In The Debt Randall Robinson’s controversial book on the question of reparations for African Americans, Robinson places the issue of racial equality and economics in the following context:

No race, no ethnic or religious group, has suffered as much over so long a span as blacks have, and do still, in the hands of those who benefited, with the connivance of the United States government, from slavery and the century of legalized American racial hostility that followed it. It is a miracle that the victims – weary dark souls long shorn of a venerable and ancient identity – have survived at all, stymied as they are by the blocked roads to economic equality.\(^{106}\)

Robinson is referring to the issue of reparations for African Americans as compensation for over 250 years of slavery and the apartheid-like system (Jim Crow in the South) that greatly diminished their lives in America. Mere mention of reparations produces heated opposition from many Americans who defensively claim that they never owned slaves and they do not own slaves now.\(^{107}\) In the context of our reasonable hope to address the homeownership

\(^{104}\) Id.
\(^{105}\) Id.
\(^{107}\) Harbour Fraser Hodder, The Price of Slavery,
gap (we do not profess to solve it completely), reparations, in some form, would address the issue in the most aggressive and proactive manner and most quickly.

Referring to his mentor, the civil rights lawyer and law professor Derrick Bell, Robinson adds that if the “massive wrongs” inflicted upon African Americans are not addressed in an aggressive manner, such as a reparations program, “there is no chance that America can solve its racial problems.” Robinson describes the inequality between the races (including housing and net worth) as “ossified” and “structural.” It will thus take government policy, led primarily by the executive branch, to focus on narrowing the homeownership gap for African Americans because it was the government that participated in perpetuating racial discrimination and segregation in housing.

Despite the expected opposition, the obstacles facing African American homeownership deserve a concerted effort to address past inequities. Increasing the rate of homeownership amongst African Americans will not completely solve the problem of racial inequality. Yet, it will positively affect their ability to build wealth, directly impacting racial inequality. Perhaps this call for action resembles some of the solutions called for in the argument for reparations for chattel slavery. Due to the nature and the severity of the inequality, this is unavoidable.

2. Spain

If the next President or any future President decides to truly address this problem, some lessons can be learned from Spain’s experience with homeownership rates. Spain was a country of renters until 1960 when aggressive government policies turned it into a country of homeowners. The principle question this section seeks to answer is whether it is possible to replicate their policies to address a historical economic injustice. Spain emerged with high ownership rates and a dangerous level of mortgage debt, in part because of specific government policy. Some of the reasons for different ownership rates in Europe have to do with supply and demand.

On the supply side, the availability of housing is... important. If it is

108. ROBINSON, supra note 106.
109. Id.
111. Anna Cabré Pla & Juan Antonio Módenes, Homeownership and Social Inequality in Spain, in HOME OWNERSHIP AND SOCIAL INEQUALITY IN COMPARATIVE PERSPECTIVE (Karin Kurz & Hans-Peter Blossfield eds., 2004). The rate of homeownership in Spain is now between 78-82 percent after being less than 50 percent in 1965. Id. at 4-7.
113. Id. at 30.
limited, its cost increases... [which] can be affected by government policies on planning, construction standards and taxation incentives. On the demand side, price is probably the most important factor, with tenure dictated by relative affordability. The availability of housing finance is therefore an issue that can help to increase access to owner occupation. The efficiency of the systems, which affect the price, also has a further impact. And there is also the relative elasticity of demand which is affected by attitudes to different tenures.

But these supply and demand factors are affected by government policies too, in terms of planning, tax relief, policies on privatizations of housing stocks; policies on other social issues such as education that have an impact on the age that people enter the property markets.\(^{14}\)

Essentially, countries in Europe with high and rapidly increasing homeownership rates planned for that expansion. Policies were supported that made housing affordable, and tax policy was structured to influence the housing market. Education was also presented as a means of clearing the path for individuals to own homes at an earlier age.\(^{15}\) For purposes of this paper, the lesson from Spain’s homeownership phenomenon is simple: the next President should support policies that will increase homeownership amongst African Americans.

**B. Substantive Recommendations**

1. Deliver a Prime Time Message

During his term in office, President Lyndon B. Johnson appeared before Congress and on television to declare to the American people that civil rights for African Americans were necessary, and would be addressed during his time in office. His famous words, “and we shall overcome”\(^{16}\) set the tone for a nation divided on the issue. Similarly, the next President must tell the nation that racial equality in homeownership is a top priority for their administration. The overall problem can be explained by statistics that detail how the homeownership gap between the races was perpetuated throughout the nation’s history and how this is an opportunity to address racial issues through housing policy.

2. Executive Order & Urban Policy Brief #3

The next President should issue an Executive Order and a new Urban Policy Brief outlining goals that will increase homeownership for African Americans.

\(^{14}\) Id.

\(^{15}\) Id.

\(^{16}\) President Johnson delivered his famous speech to the U.S. Congress on March 15, 1965 after the beating of civil rights marchers in Selma, Alabama.
Americans. The policy brief should be clear with respect to its goals and also detail an active role that government agencies can play. Government entities that could play a role include, but are not limited to HUD, the Department of Education, the Federal Reserve, the Office of the Comptroller of the Currency, and the Department of Treasury.

Unlike President Clinton's Urban Policy Brief, it should not be a call for the business sector to invade the nation's housing market without a check by the government. It should be a true partnership with the private sector accepting a level of oversight so that certain goals can be achieved. These goals must be in the best interests of all parties and not just the realtors, banks, and lenders. Recently, the state of Maryland, in addressing the housing foreclosure crisis in that state, used a true partnership between the government, the private sector, public advocates, and the public provided an example of how the various stakeholders in the housing market can accomplish a specific goal.

The brief will set an agenda for the nation to work effectively with the private sector to effect new housing policies. A model for this effort are the many affirmative action policies implemented by private entities in the educational and employment sector, although they are not legally required to adhere to federal and state affirmative action programs. The President must make the case that it is imperative that racial equality become a goal of the nation with respect to wealth and homeownership. In order to justify an aggressive effort to assist African Americans, the policies implemented will also have to provide opportunities for many other Americans to also obtain homeowner status.

3. Increase the Community Development Financial Institutions Fund

A popular U.S. Treasury program under President Clinton addressing community development was the Community Development Financial Institutions Fund (CDFI Fund). The fund was used to "expand the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities in the United States." Under his successor, President George W. Bush, the fund was decimated. Funding was severely decreased upon President Bush's arrival in office. While there is a proposal to increase funding for 2009, this increase will not restore the fund to its pre-Bush levels. This fund should be utilized to not only fund homeownership for those who meet the qualifications; it should

117. See URBAN BRIEF #2, supra note 12.
118. Phillip Rucker, O'Malley Signs Foreclosure Relief Bills, WASH. POST, Apr. 3, 2008 at B05.
121. Id.
be specifically targeted to raise the homeownership rate among African Americans. The President can charge the Secretary of the Treasury with this responsibility. It is the advantageous solution, for it is specifically designed to address underserved populations.

The fund can serve as an initial effort to support the overall new direction of the government. To be most effective, the fund should be doubled in size from its 2001 level to facilitate aggressive community development in the African American community. At a minimum, an amount of approximately $200 million should be inserted into the fund. Certainly, discussions regarding the appropriate level of funding would be necessary, thus the primary goal of this recommendation is to ensure the availability of this funding for the agenda.

4. Increase Financial Literacy of Young African Americans

In President Bush's signature piece of educational policy legislation, the No Child Left Behind Act, there is a call to lower the achievement gap between white and African American children as shown in educational test scores. In fact, it is described as a national priority. Similarly, narrowing an economic wealth gap between whites and African Americans should be such a priority.

The next President should make financial literacy a requirement for all students graduating from high school. Through the No Child Left Behind Act or another applicable federal law, it should be required that each public school graduate is financially literate.

Through such a program, students would receive instruction on wealth, savings, homeownership, equity, and other financial terms critical to developing a financial future. For this type of education to be successful, the federal government must require it, and offer the adequate tools, guidelines, and funding for schools to provide the education. If the next generation of African Americans understands these principles, they will be prepared to advocate for themselves in their financial dealings. For the purposes of this article, we recommend that the effort begin in school districts with large African American populations as pilot efforts and be expanded under the Act.

5. Predatory Lending Legislation

The President must support legislation in Congress supporting...
comprehensive mortgage lending reform. One such bill, The Mortgage Reform and Anti-Predatory Lending Act of 2007,\textsuperscript{125} contains many of the ideas which need to be implemented to provide more oversight on the industry. While advocates contend, and we agree that the bill is not perfect, it represents a timely effort by the federal government to pressure the housing industry to reform its lending practices. There is opposition to the bill but this is no reason for the next President and his administration to forego progressive action in this area.\textsuperscript{126} The next President can propose a stronger solution if it is feasible.

Predatory lending is one of the major reasons why President Clinton’s effort to increase homeownership did not succeed over the long haul; it lacked serious regulatory oversight by the federal government.\textsuperscript{127} We therefore support all serious efforts to reign in the practice of targeting African Americans and any other minority group with predatory, high interest loans.

6. Increasing HUD’s Enforcement of Fair Housing Laws

In order for the nation’s attitude towards equal housing to change, there must be leadership from the executive branch. With respect to HUD and its efforts in the area of fair housing (enforcing the nation’s housing discrimination laws), it is extremely important in the promotion of home ownership. As for specific policy choices, fair housing and fair lending enforcement should receive higher funding levels in the future. The new President’s funding request to Congress, therefore, must be higher if enforcement of the existing fair housing laws are to improve.

Shanna Smith, President of the National Fair Housing Alliance, urged for a dramatic increase in fair housing funding in 2006 to address housing discrimination “in a serious and organized way.”\textsuperscript{128} Ms. Smith’s call for additional funding accurately acknowledges this country’s racial history.

7. Public-Private Partnerships

The next President should partner with, and support the ongoing efforts of foundations by providing matching funds to those that provide loans to African Americans. One model for this proposal is Self Help,\textsuperscript{129} a non-profit

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\textsuperscript{127} \textit{See Nat’l Fair Housing Alliance, supra note 73 at 51-56.}


organization out of North Carolina. Using $50 million from the Ford Foundation, the organization underwrote $2 billion in loans to underserved communities. The loans were solid, not the predatory loans behind the current housing crisis. Similar efforts by other organizations that put the consumers' interests at the forefront of the transaction should be identified and encouraged by the next President, accompanied by significant and substantial economic support. Efforts to identify African Americans who would benefit from these efforts are also consistent with this recommendation.

8. Involve the Federal Housing Administration ("FHA")

Historically, the FHA was instrumental in maintaining government-sponsored racially segregated housing across the nation, and perpetuating the homeownership gap and between the races. Tragically, the federal government and the FHA have never atoned for, or corrected the impact of their blatant discriminatory housing practices against African Americans. Indeed, the homeownership gap could be much narrower had the FHA promoted fair housing practices since the inception of the agency and through the various periods of housing growth in America.

The time to be fair has arrived. The next President should create within FHA an entity (perhaps, a sub-agency within FHA) that is devoted specifically to assisting African Americans in becoming homeowners and maintaining that ownership. If the FHA could create segregated areas within the country, it can create integrated, diverse areas in America where African Americans are able to purchase property and begin to build wealth. Considering history, the next President should mandate that the FHA have an active role in decreasing the gap in homeownership rates.

CONCLUSION

T. Thomas Fortune's words stated above ring truer today than ever before: African Americans are not equal in society today. This can specifically be tied to the disparity in the ownership of real property between whites and blacks. It is a difficult dilemma to solve because in many ways it necessitates a recreation of our political and social history. However, in a recent interview,

Credit Union and Self-Help Ventures Fund provide financing, technical support and advocacy for those left out of the economic mainstream. Since its founding in 1980, Self-Help has reached out to female, rural and minority borrowers across North Carolina, in Washington, D.C., California, and many other states."


131. Id.
current Secretary of State Condoleezza Rice described the racial problems in the United States as a “birth defect.” Secretary Rice was referring to the fact that white Americans had a head start in America because African Americans were first transported here as property. This is the historical problem that all Americans confront each day.

Notwithstanding past transgressions, African Americans must be treated as full citizens. Our proposals are modest at best and do not call for a major disruption of government policy. The time has come, however, for the President to address the specific economic injustices experienced by African Americans. The challenge is to promote policies acknowledging that: (1) slavery and segregation has left an indelible effect upon the entire nation; (2) for African Americans today, this translates to economic inequality, or more accurately, a wealth disparity between the races; (3) the wealth disparity is not indelible, and can be cured by addressing the gap in homeownership rates between blacks and whites; and that (4) he or she has the opportunity to learn from the mistakes of the Clinton administration.

The next President can accomplish these policy goals by accounting for this country’s racial history, and by specifically and aggressively applying the positive aspects of the Clinton initiative to African Americans. No one, not even our next President, can reverse decades of racism, but an individual can take steps toward diminishing its ill effects on our housing market. Finally, although the homeownership gap will not be corrected in a few years, progress is possible if our nation’s leaders implement policies that promote progress in this regard.

132. Quotation of the Day, N.Y. TIMES, July 7, 2003 at A8 (“Africa is part of America’s history. Europeans and Africans came to this country together, Africans in chains. And slavery was, of course, America’s birth defect. And we’ve been trying to deal with the consequences of it ever since.”).

133. Id.