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Racial Wealth Divide through the Eyes of the Younger Family: Undoing America's Legacy of Wealth Inequality in Search of the Elusive American Dream Utilizing a Sankofa Model of Transitional Justice, The

Alice M. Thomas

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Alice M. Thomas***

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* Sankofa is a word in the language of the Akan people of Ghana, West Africa. Translated, it means that you must look back to go forward. A bird flying forward with an egg in its mouth while looking backwards symbolizes the word. The egg represents the future while the act of looking backwards represents the influence the past has on shaping the future. This descriptor is appropriate in the context of this Article because the concept of Transitional Justice embodies this same ideal. See W. BRUCE WILLIS, THE ADINKRA DICTIONARY: A VISUAL PRIMER ON THE LANGUAGE OF ADINKRA 12 (1998).

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We [(young black intellectuals/revolutionaries of the 60s)] thought her play 'middle class' in that its focus seemed to be on 'moving into white folks' neighborhoods,' when most blacks were just trying to pay their rent in ghetto shacks. We missed the essence of the work—that Hansberry had created a family on the cutting edge of the same class and ideological struggles as existed in the movement itself and among the people.... The Younger family is part of the black majority, and the concerns [we] once dismissed as 'middle class’ buying a home and moving into 'white folks’ neighborhoods’ are actually reflective of the essence of black people's striving and the will to defeat segregation, discrimination, and national oppression. There is no such thing as a 'white folks’ neighborhood’ except to racists and to those submitting to racism.¹

I. Introduction

Racial inequality is a part of the lived experience of America.² Many Americans struggle daily to defeat de jure and de facto segrega-


² See, e.g., A National Report Card of Race in America: The Role of Testing (Michael Fix & Margery Turner eds., 1998) (stating that, “[d]espite the fact that minorities have made substantial economic and social progress over the past 30 years, significant disadvantages based on race persist within the United States and serve as markers of continuing policy failures” ); see also Race & Ethnicity in America: Turning A Blind Eye to Injustice 1 (ACLU, 2007), http://www.aclu.org/files/pdfs/humanrights/cerd_full_report.pdf (stating that, “[r]acial and ethnic discrimination and inequality remain ongoing and
tion and discrimination, and national policies of oppression, in search of the American Dream. Observers hailed the election of the first African American president, President Barack Obama, as the beginning of a post-racial America. Coalitions of white, black, brown, red, and yellow joined to elect him. With his election, many thought America had transformed from a race-conscious society to a non-race-conscious society. His election was the evidence. Yet, these coalitions (and his election) did not end the racialized structural policies that continue to

3. James Truslow Adams is credited with coining the phrase, “American Dream.” Library of Congress, American Memory Project, What is the American Dream? A Background Essay, http://memory.loc.gov/learn/lessons/97/dream/thedream.html (last visited November 1, 2009). It is reported that, in his book, The Epic of America, he wrote, “[t]he American Dream is that dream of a land in which life should be better and richer and fuller for everyone, with opportunity for each according to ability or achievement. . . . It is not a dream of motor cars and high wages merely, but a dream of social order in which each man and each woman shall be able to attain to the fullest stature of which they are innately capable, and be recognized by others for what they are, regardless of the fortuitous circumstances of birth or position.” Id. (quoting JAMES ADAMS, THE EPIC OF AMERICA (1931)); see also JIM CULLEN, THE AMERICAN DREAM - A SHORT HISTORY OF AN IDEA THAT SHAPED A NATION (2003) (providing a detailed review of the origins and history of the idea, American Dream, tracing various versions of the ideal through the Pilgrims, Abraham Lincoln, Martin Luther King, Jr., and influx of recent immigrant communities).

Additionally, the idea is rooted in the Declaration of Independence. The Declaration provides that “[w]e hold these truths to be self-evident, that all men [and women] are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776), available at http://www.archives.gov/exhibits/charters/declaration.html.

This Article embraces the above meanings of the phrase. Wealth deprivation inhibits the capability of individuals, families and communities to fully express the American Dream – an idea beyond material well-being and inclusive of self-worth, the opportunity rising above one’s birthright and position, and the capability to attain happiness based on what the individual’s own innate abilities. See INCLUSION IN THE AMERICAN DREAM ASSETS, POVERTY, AND PUBLIC POLICY (Michael Sherraden ed., Oxford University Press 2005) (discussing asset ownership as a pathway to the American Dream).


7. Id.
shape a stratified America. Americans of color, including President Obama, continue, in the wake of his election, to experience racial hatred, intolerance and discrimination (officially and unofficially). In spite of the racial inequality, Americans of color wishfully continue to pursue the American Dream—a dream of capabilities and possibilities. Yet, historic structural patterns of racial inequality are pervasive, stripping wealth from large segments of America.


9. As used in this Article, this phrase “Americans of color” encompasses all non-white racial groups, such as, African, Indian, Latino and Asian Americans. The phrase is used to simplify the discussion of the racial wealth divide that affects all racial sub-groups. It is also used to convey status. Being “American” is like having a rights and entitlement property interest in the status of being, “American.” Cf. Cheryl I. Harris, Whiteness as Property, 106 HAR. L. REV. 1709 (1993) (providing an extensive discussion of the concept of “whiteness as property,” how whites are privileged by it, and how whiteness is a status protected (and benefitted) by American law). As Americans, racial groups have an uncontestable and inalienable right to be fully protected under the U.S. Constitution and all federal laws, and an entitlement to fully participate in, and benefit from, federal largess in whatever form distributed (i.e., land grants, tax breaks, low interest rates on home loans, and access to an affordable education). The Article’s use of phrases like “people of color” and “communities of color” to simplify the conversation would strip away and dilute the status, rights and entitlement of being American. That interest is retained in phrases, like African or black American, Latino Americans, American Indians and Asian Americans, but would be cumbersome to repeat as needed throughout the Article. See also Harry Belafonte, Scandalize My Name: Stories from the Blacklist (Alexander Isles, 2000) (transcribed by author from video recording, on file) (stating that, “I came out of the service with great expectations that we had just defeated fascism, we had just defeated totalitarianism, we had just defeated the philosophy of white supremacy.” Further, stating, “I had expected that America would be open and generous and rewarding to its black citizens who had served in that war [WWII] and had served with great honor.”).

10. See T.S. Aschenge, Death Threats Against Obama, (Associated Press Jan. 31, 2009), http://www.associatedcontent.com/article/1435400/death_threats_against_obama_pg2.html (stating that, “[w]hat we have learned is that over 200 death threats were actually reported against the life of the new President, and just within the early hours and days directly following his election racist atrocities spiked dramatically all over the country.”).

11. See Id.; see also Lani Guinier, Race and Reality in a Front-Porch Encounter, The Chron. Rev., July 30, 2009, http://chronicle.com/article/RaceReality-in-a-Front/47509/ (stating that, “The undisputed historical backdrop for the porch encounter includes 240 years of chattel slavery, 100 years of Jim Crow, and 400-plus years of intergenerational wealth transfer during most of the time black people not only owned little property – they were property.” Id.).

12. The 2009 MetLife Study of the American Dream, MetLife Insurance, 2009), http://www.metlife.com/assets/cao/gbms/studies/09010229_09AmDreamStudy_WEB.pdf (stating that, “[d]espite conventional wisdom [i.e., that the recession and job loss will deny the American Dream to many,] minority populations are more optimistic than [white] Americans that the dream is still possible. Nearly nine in ten (89%) Hispanic Americans believe that they will achieve the American dream in their lifetime, as do 82% of African Americans and 83% of Asian Americans. Only two-thirds (66%) of [whites] concur.”).

13. See sources cited supra note 2; see also THOMAS M. SHAPIRO, THE HIDDEN COST OF BEING AFRICAN AMERICAN: HOW WEALTH PERPETUATES INEQUALITY (2004) (refuting the
racial inequalities have an impact upon the areas of housing, employment, healthcare, education and business. These inequalities detract from the pursuit of the American Dream by millions of Americans. For most, the quest and struggle for the American Dream is elusive at best, and greatly magnified, by the deeply embedded structural inequalities that cause America's vast racial wealth divide. Consequently, the public policy imperative of the twenty-first century is closing the wealth gap that currently stands at 16 cents on average for all Americans of color, and perhaps, not surprisingly, is even wider for blacks at 10 cents and 12 cents for Latinos. Few, if any, politicians are sounding the clarion call to address this profound structural inequity.

The divide is significant for three reasons that are important in the context of this Article. First, it is symbolic of the capability limitations placed on the life chances of millions of Americans who have become “sedimented” at the bottom of this nation’s racial hierarchy. Second, racial inequality is masked by post-racial claims and is necessary for an understanding of the profundity of the racial wealth divide;
and third, the racial wealth divide, both positively and negatively, affects the intergenerational life chances of all racial groups. Whites who have benefitted from the wealth divide are affected positively in comparison to Americans of color who are affected negatively.\textsuperscript{20} The current recession, called by some the \textit{Great Recession},\textsuperscript{21} amplifies these differences and consequences.\textsuperscript{22}

The American racial wealth divide is extreme\textsuperscript{23} and devastating.\textsuperscript{24} It is particularly consequential and life altering for those at the bottom.\textsuperscript{25} The government’s failure to address the divide in any signifi-

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\item \textsuperscript{20} \textit{Id.} at 51 (stating that, “[w]hen black workers were paid less than white workers, white workers gained a benefit; when black businesses were confined to the segregated black market, white businesses received the benefit of diminished competition; when FHA policies denied loans to blacks, whites were the beneficiaries to the spectacular growth of good housing and housing equity in the suburbs”); \textit{see also} \textit{Drained}, supra note 17, at v (stating that “Blacks have 10 cents of net worth for every dollar of white net worth, and Latinos have 12 cents of net worth for every dollar of white net worth”); \textit{see also} Julia Berndt \& Cara James, \textit{Race, Ethnicity \& Healthcare The Effects of the Economic Recession on Communities of Color (The Kaiser Foundation, July 2009)} http://www.kff.org/minority health/upload/7953.pdf (stating that “Many people have been affected by the economic recession, but the impact has been particularly acute for communities of color. High unemployment rates, coupled with vast differences in savings and wealth have left many individuals struggling to afford various aspects of their daily lives such as housing and food, and have resulted in lapses in health care and difficulties paying for needed health care”)
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\item \textsuperscript{22} Americans of color are experiencing higher rates of joblessness, home foreclosures and homelessness. \textit{See Drained}, supra note 17, at v (providing that the black unemployment rate is 16.2 percent, 12.9 percent for Latinos, and 9 percent for whites). \textit{See generally} sources cited supra note 20 (providing detailed information on the effects of the recession on communities of color).
\item \textsuperscript{23} \textit{See Drained}, supra note 17, at v (stating that, “Blacks have 10 cents of net worth for every dollar of white net worth, and Latinos have 12 cents of net worth for every dollar of white net worth”).
\item \textsuperscript{24} \textit{See id.} (stating that “[w]orkers laid off in an economic downturn can take up to 20 years to replace their lost earnings”); \textit{see also id.} (stating that “[a]n estimated 3.4 million families have experienced foreclosure in 2009, [and] . . . nearly 60 percent of mortgage defaults were triggered by unemployment.”).
\item \textsuperscript{25} \textit{Applied Research Center, Race and Recession: How Inequity Rigged the Economy and How to Change the Rules (ARC 2009)}, http://arc.org/downloads/
cant systematic and structural way is proving catastrophic. The recession amplifies the losses. For example, a recent study states that the unemployment rate for blacks grew twice as fast, and almost twice as fast for Latinos, when compared to the unemployment growth rate for whites during the recession. For those with jobs, blacks earn forty percent less than whites, while Latinos earn thirty percent less than whites. Another study reports that blacks and Latinos were having greater difficulty affording life’s daily expenses, such as housing and food, in 2009. In addition, blacks and Latinos are not seeking care from medical professionals, relying instead on home remedies, and many are foregoing dental care at three times the rate of whites. Further, black and Latino children are three times more likely to live in poverty. It is predicted that nearly half of all black children will live in poverty if the recession continues going in the present direction.

The causes of the divide are many, the least of which are personal responsibility or effort. Past and present racially discriminatory laws (both federal and state) are major contributing causes of the wealth divide, suggesting that race, not class or gender, is the single unifying factor that explains the wealth divide for Americans of color. Race, explicitly and implicitly, motivates (or has motivated) the differential treatment experienced by whites and non-

26. See sources cited supra note 22 (discussing the effects of the recession on communities of color).
27. See generally sources cited supra note 20 (providing an exhaustive treatment of the effects).
28. See DRAINED, supra note 17, at v.
29. Id. (stating that, “[b]lacks earn 62 cents for every dollar of white income and Latinos earn 68 cents for every dollar of white income”).
30. See ECONOMIC RECESSION, supra note 20, at 1.
31. Id.
32. Id.
33. See DRAINED, supra note 17, at v.
34. Herbert, supra note 20.
35. See RACE AND RECESSION, supra note 25, at 37 (stating that, “[r]hetoric about ‘borrower irresponsibility’ suggests falsely that the foreclosure crisis resulted from a wave of bad decisions on the part of unwise borrowers. . . . Market predation made those most vulnerable into casualties of unregulated greed, and because of preexisting inequities, histories of segregation and redlining, people of color are suffering most. . . .”).
36. See infra Part III.B. (discussing structural impediments to wealth creation).
This is increasingly apparent under federal tax laws, employment laws, and banking laws. A consideration of the interplay of these laws and the wealth consequences to whites and non-whites over the last 400 years provides repeated examples of the same problem, i.e., the problem of government-sanctioned racial preferences in policies that effectively create, transfer or deny wealth-amassing opportunities to large numbers of constitutionally protected Americans based on race alone. The impact of the wealth divide and its consequences for quality of life opportunities for communities of color are additionally catastrophic for no reason other than race.

This Article proposes the Closing the Wealth Gap Truth Commission as a remedial forum for bringing together government officials, citizen victims and bystanders to dialogue, inform and generate present-day solutions for eliminating the racial wealth divide and ameliorating its consequences. Principles of transitional justice guide the forum, hoping to transition and heal a nation fractured by centuries of intentional and practiced racially motivated injustices. Transitional justice asks what successor regimes, committed to democracy, human rights, racial equality and the rule of law, can and should do to seek redress for widespread structural atrocities committed by

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37. Oliver & Shapiro, supra note 16 (discussing the "hidden cost of being black"); see Meizhu Lui et al., The Color of Wealth: The Story Behind the U.S. Racial Divide 17 (2006) (borrowing from Oliver & Shapiro suggest that the opposite of the "hidden cost of being black" is the "hidden benefit of being white"); see also Harris, supra note 9, at 1724-25 (providing an extensive discussion of the concept of "whiteness as property," how whites are privileged by it, and how whiteness is a status protected (and benefitted) by American law).

38. Beverly I. Moran & William Whitford, A Black Critique of the Internal Revenue Code, 1996 Wis. L. Rev. 751 (1996) (setting forth many examples of how the tax code taxes blacks more heavily than it does whites); see also Drained, supra note 17, at 19 (stating that, the "Bush tax cuts went overwhelming to America's wealthiest individuals."); see also Oliver & Shapiro, supra note 16, at 42-44 (discussing how "lower tax rates on capital gains and the deduction for home mortgages and real estate taxes" are part of the racialization of federal tax policy).

39. Despite the passage of federal laws prohibiting discrimination in the workplace, Americans of color continue to experience de facto discrimination. See, e.g., Race and Recession, supra note 25, at 20-27 (discussing discriminatory hiring and promotion practices being experienced by Americans of color in the workplace); see also id. (citing Christine Jolls and Cass R. Sunstein, The Law of Implicit Bias (Havard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series, June 5, 2006) http://www.nellco.org/Harvard/olin/papers/55/reporting research findings that suggest most racially biased employment decisions occur subconsciously, that racial discrimination based on assumptions and stereotypes has become institutionalized, and that, therefore, there is a disconnect between the law and practice because antidiscrimination laws require conscious intent before one can seek redress).

and under predecessor regimes.\textsuperscript{41} This theory of jurisprudence is more often applied in the context of war-torn countries, countries undergoing violent civil unrest, physical ethnic violence or regime changes.\textsuperscript{42} Nevertheless, this theory has applicability in a “stable state” such as America where the violence is not physical but economic and social. The racial wealth gap is a form of social and economic violence perpetrated under an abusive regime. The occurrence of the racial wealth gap results from historic and contemporary rules of law, some openly racially hostile and others facially neutral, which, because of social norms and conventions, permit government officials and private citizens to ignore the law and discriminate without recrimination.\textsuperscript{43}

The case for closing the racial wealth gap is a right fit for transitional justice. Transitional justice jurisprudence takes into account the role that “black letter law, institutional practice, social ontology, and historical teleology—collectively, the public face of law—play” in perpetuating social and economic abuses on a mass scale,\textsuperscript{44} affecting hundreds of thousands of Americans of color. The politics of wealth for centuries have targeted every community of color bar none. These rules and institutional policies have systematically stripped away and denied wealth building opportunities to Americans of color while affording such opportunities to white Americans. The public face of the

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\item \textsuperscript{42} See generally TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES, supra note 41 (providing a comprehensive review of transitional justice models from around the world).
\item \textsuperscript{43} See, e.g., Ojo v. Farmers Group et al., available at http://www.ca9.uscourts.gov/dastore/opinions/2009/05/11/06-55522.pdf. On May 12, 2009, the United States Court of Appeals for the Ninth Circuit handed down its decision in Ojo v. Farmers Group, Inc. et al, which involved an African-American insured who filed a class action against Farmers and others to remedy alleged racial discrimination. The insured alleged that Farmers’ undisclosed credit scoring system discriminated against African Americans who were charged higher premiums than white Americans. The United States District Court for the Central District of California dismissed the claim reasoning that the claim was reverse-preempted by a federal statute that prohibits federal legislation from interfering with state insurance laws. The irony of this case is that Farmers asserted its right to discriminate in pricing despite state and federal laws that prohibit discrimination based on race. The double insult was that the lower court upheld the pre-emption claim, ably refuted by the Ninth Circuit. See Bruce Abel, Racial Discrimination in the United States – The Subtle and Ever-Present Insidious Discrimination (July 7,2009), http://www.losangelesemplpoymentattorneyblog.com/2009/07/racial-discrimination-in-the-u.html. On October 26, 2009, the Ninth Circuit agreed to re-hear the case en banc, 586 F.3d 1108 (9th Cir. 2009), so the saga continues.
\item \textsuperscript{44} Gray, supra note 41, at 148.
\end{itemize}
law is a critical tool in the perpetuation of this atrocity. The wealth gap is an atrocity. Wealth is a barometer of the physical, mental and material well-being of a family or community. Across the nation, communities of color experience higher incidents of ill health, community violence, and limited access to a good education, good jobs, homeownership and a safety net. Consequently, transitional justice becomes the tool to move from a pre-transition state to a post-transition state where democratic principles are practiced, the rule of law is respected, and racial injustices are eliminated. In addition, this Article proposes the use of racial equity impact assessments as a tool for monitoring the racial impact on communities of color of new laws and policies before these new laws and policies are implemented. This additional layer of protection helps to sustain the transitions achieved through the Wealth Commission.

*A Raisin in the Sun* is a play about three generations of a poor working class black family, living under one roof in a tenement on Chicago's South Side, just before the dawn of the civil rights movement. It provides context and a dramatic narrative of the role wealth plays in setting up life's opportunities for blacks and whites. The play's narrative embodies the core tenets of this Article—that wealth is a means to an end rather than an end itself, that wealth is a critically important indicator of the intergenerational well-being of a family, and that the documented government-led denial of wealth under the guise of law to every non-white group of Americans warrants immediate redress at every level of government. Such redress can come in the form of the adoption and implementation of targeted policies determined through

45. See infra Part IV.B. (discussing racial equality impact statements).

46. *Lorraine Hansberry, A Raisin in the Sun* 19 (First Vintage Books Edition 1994); see also Baraka, *supra* note 1, at 9 ("[I]t has been properly hailed as 'a classic,' while the Washington Post has called it succinctly: 'one of the handful of great American dramas . . . in the inner circle, along with Death of a Salesman, Long Day's Journey into Night, and the Glass Menagerie.' ").

47. *Hansberry, supra* note 46, at 24.

48. Critical Race Theorists use narrative in literature and other sources to illuminate the complexity of legal meaning attendant to their subject. See Rhonda Magee, *The Master's Tools, from the Bottom Up: Responses to African American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 864-67 (1993) (stating that, narrative is a central tenet of Critical Race Theory and that it provides "an excellent methodological tool and antihegemonic analytical device" Id. at 865.); see also Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L.L. REV. 323, 324-26 (1990) (stating that, legal scholars should look to the bottom to hear and understand the voices of victims of discrimination in order to seek relief from the racial oppression); see also Richard Delgado, *When a Story is Just a Story: Does Voice Really Matter?*, 76 VA. L. REV. 95, 95, 103-04 (arguing that storytelling has emerged as a tool for amplifying marginalized voices who seek redress in their own voices).
a truth seeking and transition justice forum, such as, the proposed Closing the Wealth Divide Truth Commission. The proposed commission draws from the truth commissions implemented by several states\textsuperscript{49} nationally and several countries\textsuperscript{50} internationally as a way to deal with pervasive, structural racial inequalities and in some cases, mass atrocities against targeted racial or ethnic groups.\textsuperscript{51} A Raisin in the Sun becomes a literary tool for amplifying the voices of those at the bottom of the wealth divide, unmasking the human travesty that underlies the detached numbers analysis of the racial wealth divide.\textsuperscript{52}

There are people behind those numbers living at society’s fringes. There is a lack of urgency in the public discourse about the racial wealth divide.\textsuperscript{53} As a result, many more legal scholars are needed to address this problem and to offer solutions. While this Article does not provide a complete solution to a notoriously intractable problem, it does advance the understanding of the problem and contributes three key things: 1) it informs about the severity of the problem; 2) it amplifies the link between wealth and racial inequality; and 3) it presents the Sankofa Model of Transitional Justice framework\textsuperscript{54} for resolving


\textsuperscript{52} See Matsuda, supra note 48, at 324-26 (discussing how narrative can be used to give voice to those subjugated to racism and oppression).

\textsuperscript{53} Dedrick Muhammad, Structural Inequality: News not fit to print?(July 21,2009), http://www.ips-dc.org/articles/structural_inequality_news_not_fit_to_print (discussing President Obama’s mention of the structural inequalities during his speech to the National Association for the Advancement of Colored People Centennial Convention this summer and that newspaper headlines picked up his comments emphasizing black self-help).

\textsuperscript{54} As opposed to John Rawls’ Theory of (Rights-Oriented) Justice, the dominant justice framework in western jurisprudence.
the wealth divide crisis. This Article is developed in five parts, the first being the introduction. Part II provides a contextual background and historical perspective on Chicago black migration patterns at the turn of the 20th Century through the 1970s and situates them within *A Raisin in the Sun.* Part III identifies the problem of the wealth divide as one of racial inequality, which is amplified through the lens of the racial wealth divide. It describes the nature and magnitude of the racial wealth divide, establishes that it is multiracial, and that it persists even after controlling for certain demographics. It concludes with a discussion of the critical light racial inequality casts on the analysis and posits that, because the wealth divide is about racial inequality, dismantling the racial wealth divide now is the public policy imperative of the 21st Century.

Part III also is a discussion of wealth and the advantages that accrue to holders of wealth. The nature of wealth and the role it plays in the overall quality of life for individuals, families and the larger society is contemplated. Disadvantages also are illuminated. The Article takes the position that true equality in opportunity is needed to promote and preserve civil society. The racial wealth divide stymies progress for all, not just for the racial groups impacted negatively by the divide. Wealth brings stability and security, which then leaves a person to freely and reasonably participate in civil society. It further unveils the structural and institutional programs and policies that contribute and help sustain the wealth divide broken down by racial group. In Part IV, Section A., it is argued that what constitutes justice in an effort to dismantle and remedy the harms caused by the racial wealth divide is transitional justice. A transitional justice model, which is obligations-oriented, is proposed as an appropriate framework for achieving justice under these crisis circumstances of generations of denial, mistrust and inflicted harm. Transitional justice in theory (and as applied) gives voice and a face to the “victim,” makes the problem and its solution the responsibility of all (victims, perpetrators and bystanders), and encourages dialogue and the use of a deliberative process to resolve the problem.

Additionally, a transitional justice model brings a new moral language to the discussion of how best to eradicate the wealth divide and ties it squarely to issues of social justice. The late President John F. Kennedy is famously quoted as saying, “ask not what your country can do for you – ask what you can do for your country.”

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ment reflects an obligations-oriented approach to solving a shared problem. If one views the wealth divide as substantially contributing to a human capability failure problem in America, then partnering with those adversely affected by the wealth divide to solve the problem gives voice to the harmed in ways that "typical" western discussions of economic parity do not. In this instance, the human capability failure problem is measured by a person's capacity (or lack thereof) to exercise freedoms enjoyed by others, to function as a self-determined human being, and/or to participate in (and contribute to) the well-being of one's community.

In Part IV, Section B., the author provides examples of solutions that assist in narrowing and/or closing the multiracial wealth divide. The author believes that it is possible to implement these solutions under a transitional justice framework. The solutions implicate changes to federal tax law, banking practices, and the initiation of asset building programs at the federal and state level in general. Finally, the Article concludes in Part V by sounding Gideon's trumpet (i.e., that the multiracial wealth divide is the result of extreme racial inequality that is going unchecked). Silence is complicity. Larger numbers of scholars are needed to address this scourge, which has persisted for centuries, and is a major impediment and blight on 21st Century America—an America that projects itself to the world as a just and welcoming society for the world's huddled masses.

While there is a dearth of general and legal scholarship comparatively addressing the wealth divide, those who have written are like beacons in the fog. Those scholars who have studied the wealth divide have reached some preliminary conclusions. Investment in a primary residence, stocks and bonds, and business enterprises are typical wealth-generating practices. The residential home is typically the largest wealth-producing asset for the middle class, and stocks and bonds are the largest wealth-producing assets for the top 1% in the

56. Judges 7:11-16 (King James).

57. Such scholars include Melvin Oliver (sociology and public policy), Thomas Shapiro (sociology, anthropology and law), Beverly Moran (law and sociology), Stephanie Wildman (law), Manning Marable (history and political science), William Darity, Jr. (public policy and economics), Darrick Hamilton (economics), Dalton Conley (sociology), Edward N. Wolff (economics), Nancy Denton (sociology) and Michael Sherraden (social work). See also Beverly Moran and Stephanie M. Wildman, Race and Wealth Disparity: The Role of Law and the Legal System, 34 Fordham Urban L.J. 1219, 1219 n.1 (2007) (referencing multiple scholars in various disciplines producing a wide range of scholarship on the wealth divide. These authors have written chapters in Professor Moran's book entitled, Race and Wealth Disparities: A Multidisciplinary Discourse (2008)).

58. See Oliver & Shapiro, supra note 16, at 28.
income brackets.\textsuperscript{59} In addition to wealth-producing assets, intergenerational transfers (during life and at death) contribute to wealth.\textsuperscript{60} Scholars have identified intergenerational transfers as the single, largest contributor to the wealth divide.\textsuperscript{61} Scholars were able to make this determination using longitudinal surveys of wealth data from the 1980s forward.\textsuperscript{62} Addressing the wealth divide problem and making amends requires identifying the contributory sources that families use to generate intergenerational wealth. This information is useful in identifying the root causes of, and possible solutions to rectifying, the racial wealth divide. This Article concludes that the contributing sources of intergenerational wealth are largely governmental programs and policies, past and present, that structurally and lawfully facilitate the transfer of wealth from Americans of color to white Americans.\textsuperscript{63} Several past programs openly excluded Americans of color while, at the same time, facilitating white Americans' participation. This legacy of intentional exclusion and deprivation has followed generations of Americans into the present. One trail is a legacy of racial privilege, \textit{i.e.,} whiteness as property, and the other, a legacy of racial deprivation, \textit{i.e.,} racial subjugation and violent conquest.

The problem of the wealth divide is not historical only. Contemporary practices, government and private, making the wealth gap a present day injury, with contributory antecedents. As a result, there are some parallels to the ongoing debate about reparations, which is solely based on historical factors.\textsuperscript{64}

\begin{itemize}
\item \textsuperscript{59} Id.
\item \textsuperscript{60} Id. at 29.
\item \textsuperscript{61} See id.
\item \textsuperscript{62} See generally Shaprio, supra note 13, at 5-6, 67-72 (discussing various studies and interviews of individuals and determines that intergenerational wealth transfers contribute in large ways to the racial wealth divide)
\item \textsuperscript{63} See generally Lui et al., supra note 37 (examining throughout the book governmental and institutional rules, policies, and practices that have historically contributed to wealth deprivation in various communities of color, and conversely, privileged white Americans).
\item \textsuperscript{64} Roy L. Brooks, Atonement and Forgiveness: A New Model for Black Reparations (2004) (stating that, "The black redress movement, then, makes a twofold argument. First, slavery and the slavelike conditions under which free blacks lived denied these blacks life and liberty (basic capital), plus an estate (financial, human, and social capital) to bequeath to their heirs. Second, Jim Crow forced their descendants, who had little capital to begin with, into the worst jobs, the worst housing, and the worst educational systems, the effects of which are very much in evidence today.").
\end{itemize}
Ms. Hansberry paints a complex portrait of the tide of human emotions, dashed hopes and dreams deferred that are the consequence of government sanctioned and perpetuated racial inequality. A Raisin in the Sun, first published in 1958, is part of the genre of African American literature known as the migration narrative.\(^\text{65}\) Migration (or Great Migration, as they are sometimes called) narratives emerged in the Twentieth Century as literary attempts to "document and explore the massive dislocation of black people [from the South to the North,] and the impact of migration on [the] individual psyches [of the migrants] . . . [and] American cities."\(^\text{66}\) These narratives evolved in relation to the historical and political movements of the time.\(^\text{67}\) They cover three principle migration periods: (1) pre-WWII, (2) WWII through the civil rights movement, and (3) after the civil rights movement.\(^\text{68}\) These narratives appeared in novels, short stories, plays, poetry, autobiographies, and music.\(^\text{69}\) Characteristic to all forms and periods, the migration narrative had its own set of "tropes and narrative conventions."\(^\text{70}\) The subject of the migration narrative usually follows one to four types of conventions.\(^\text{71}\) First, the protagonist leaves the South for the North because of a trigger event, which sometimes occurs before the narrative begins.\(^\text{72}\) Second, the protagonist struggles

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\(^\text{65}\) ENCyclopedia Of The GREAT BLacK MIGRATION: Greenwood Milestones In African American History 490 (Stephen A. Reich ed., 2006)

\(^\text{66}\) Id.

\(^\text{67}\) Id. at 491 (stating that, e.g., "[t]he earliest migration narratives portray the South as an oppressive site that houses the ancestor but that thwarts black possibility through segregation, violence, and the lingering legacy of slavery. . . . [N]orthern, midwestern, and western cities provide a limited freedom but also enact acts of psychic and physical violence.")

\(^\text{68}\) Id. at 491-93. Pre-WWII writers include, Paul Laurence Dunbar (The Sport of the Gods, 1902), Jean Toomer (Cane/Blood Burning Moon, 1923), Nella Larsen (Quicksand, 1928), Rudolph Fisher (The City of Refuge, 1925). During WWII through the civil rights movement early writers include, Richard Wright (Native Son, 1940; 12 Million Black Voices, 1941). Ann Petry (The Street, 1946). Later second period writers include, Ralph Ellison (Invisible Man, 1952), James Baldwin (Go Tell It on the Mountain, 1953), Lorraine Hansberry (A Raisin in the Sun, 1958), and Paule Marshall (Brown Girl, Brownstones, 1959). Post-civil rights movement writers include, Toni Morrison (The Songs of Solomon, 1977; Jazz, 1992).

\(^\text{69}\) Id. at 494 (For example, the work of Lorraine Hansberry and August Wilson (plays), Langston Hughes and Gwendolyn Brooks (poetry), Malcolm X and Maya Angelou (autobiographies) and Muddy Waters and Stevie Wonder (music)).

\(^\text{70}\) Id. at 490.

\(^\text{71}\) Id. at 490-91.

\(^\text{72}\) Id. at 491.
initially to adapt to the urban landscape of the North. Third, the protagonist acclimates to the urban landscape and constructs his or her new urban dweller identity, and fourth, the protagonist considers the possibilities and limitations of living in the North. Distinctively, dominant themes emerged from each of the periods of the migration narrative. Housing was a dominant theme in the second period, WWII through the civil rights movement. A Raisin in the Sun reflects this theme.

At the turn of the century, 90 percent of blacks lived in the South. Of which, three-fourths lived in the rural South. Most were laborers in the fields of the South. Men, women and children worked the fields together. The school calendar was built around the agricultural calendar. Schools were closed for significant times during the planting and harvesting seasons. The first wave of migration began at the turn of the century. Blacks began to migrate north in search of better jobs, higher wages, and freedom from the racial violence and intimidation of the South. While both blacks and whites were lynched throughout the country, blacks were lynched in overwhelming numbers.

73. Id.
74. Id.
75. Id. at 491-94 (During the first period, pre-WWII, the event was a dominant theme, which could be an act of violence, like a lynching, or an act of deceit where the protagonist is lied upon. In addition, during the Harlem Renaissance, a second theme emerged, that of a “New Black” unencumbered by the social conventions of the South. During the second period, WWII and through the civil rights movement, the dominant themes were housing (e.g., Lorraine Hansberry’s A Raisin in the Sun) and increased focus the interior psyches of characters along with the focus the physical landscape. During the third period, post-civil rights movement, the narratives’ themes include relocating to the South from the North (i.e., a returning migration) and music as a byproduct of migrant.)
76. Id. at 493.
77. Hansberry, supra note 46, at 93 (stating that, “[t]hem houses they put up for colored in them areas way out all seem to cost twice as much as other houses. I did the best I could” Id. (quoting Mama Lena)).
79. Id.
80. Id. at 346.
81. Id. at 349.
82. Id. at 348.
numbers in the South. Blacks grew weary of the unpredictability of mob violence and threats to their families.

By 1916, large numbers of blacks begin to migrate from the South to the North in search of a better life. The migration continued through the 1970s. This period is known in history as the "Great Migration," when nearly six million blacks migrated to northern cities, forever changing the composition of many northern cities. Chicago was one of the most popular cities. The first wave of the Great Migration, from 1900 through 1930s, lost its momentum during the Great Depression and ceased by 1940. By then, two million blacks had migrated to the North. A second wave of migration occurred between 1940 and 1970, spurred on by World War II and the increasing need for laborers outside of the South to replace white and black laborers who left jobs in the North during WWII. During this second wave of migration, twice as many blacks, nearly four million, migrated north. Three of the four million had migrated in the twenty years from 1940 to 1960. Many of the second wave of migrants went to West coast cities, yet northern cities still received a fair share of new blacks. Chicago received about 3,000 new migrants a week during this period, usually by train. In the end, the black population in the South dropped from 90% in 1900 to 53% in 1970.

This Great Migration is emblematic of one of the Article's other core thesis that black Americans are just like other Americans, aspiring to and pursuing the American Dream of a better life, homeownership, economic stability, workforce choice and educational opportunities. Blacks left the South because they wanted access and opportunity according to their ability. Typically, race dictated these choices in the South. Blacks moving north hoped to be free of the walls that white racism built around their lives. In addition, many were seeking a safe environment to raise their family.

85. Id.
86. Id.
87. Id. (stating that, "Great Migration' (1916–1919) had brought about 500,000 African Americans southerners to northern industrial cities such as Chicago" Id.).
88. Id. (stating that the Great Migration continued into the 1970s)
89. DOUTHIS, supra note 83, at 14.
90. Id.
91. Id.
92. Id.
93. Id.
94. DOUTHIS, supra note 83, at 14.
95. Id.
96. Id.
A Raisin in the Sun chronicles a short period in the life of the Younger family – Walter Lee, Sr. (the deceased patriarch), Mama Lena (the widowed matriarch), Walter Lee, Jr. (the thirty-something son and emerging patriarch), Ruth (the son’s wife), Travis (the grandson) and Beneatha (the twenty-something sister), living on Chicago’s South Side. Walter Lee, Sr., is dead when the play begins but his dreams cast a large shadow over the play. As the story unfolds, the family anxiously awaits the arrival of a check containing the proceeds of a life insurance policy on his life. The question looming over the play is how best to spend the proceeds once the check arrives. Each member of the family has his or her own plan for the money. Each plan is a version of the American dream. For example, Walter Lee, Jr., dreams of starting a business, Mama Lena dreams of buying a family home in a neighborhood—a dream she shared with Walter Lee, Sr., Ruth dreams of a private bedroom for Travis and a private family bathroom, and finally, Beneatha dreams of going to medical school. The play is

97. The play takes place sometime during a 14-year period between 1945 (following the end of World War II) and 1959 (just before the full unfolding of the civil rights movement). HANSBERRY, supra note 46, at 22.

98. Wil Haygood, South Side Story (WASH. POST, Oct. 5, 2008 at M01), available at http://www.washingtonpost.com/wp-dyn/content/story/2008/10/03/ST2008100302959.html?sid=ST2008100302959 (stating that, “[t]he South Side never had the silky ties to whites and international celebrities like Harlem and its famed literary renaissance. But building on the once-plentiful jobs at the city’s meatpacking plants, it developed its own economic, cultural and political muscle and launched a who’s who of black American achievement. Richard Wright, Lou Rawls, Mahalia Jackson, Albertina Walker, Harold Washington, comic Bernie Mac and “Dreamgirl” Jennifer Hudson all came of age here.” He further writes that, “it is a sad fact, too, that many South Side dreams do not come true. For this is a place haunted by urban nightmares and the weight of entrenched poverty. It’s a place where a community organizer [(referring to President Barack Obama)] looking for genuine challenges might come and get down to work. The vast area — it covers about half of Chicago — feels like an edgy, screechy film with that silvery El train looping around it like an electronic snake. It’s a community that struts — and yet starves for a break. It has an urban Northern vibe, yet sings the Southern song of the gospel and blues.” Id.).

99. According to the play’s dialogue, Walter Lee, Sr., dies prematurely, having “worked hisself to death” in pursuit of his dreams. Id. at 45 (“I guess that’s how come that man finally worked hisself to death like he done.” Id. (quoting Mama Lena)). This phrasing recollects the harsh consequences of toiling under the brutality of chattel slavery. Baraka, supra note 1, at 13 (discussing how the dreams of each character come into conflict with reality, e.g., the father is said to have been worked to death (like a slave) in pursuit of the dream for a new house, stability and happiness for his children that he shared with the mother, Lena).

100. HANSBERRY, supra note 46, at 36-37 (“WALTER - (Looking at his sister intently) You know the check is coming tomorrow. BENEATHA - (Turning on him with a sharpness all her own) That money belongs to Mama, Walter, and it’s for her to decide how she wants to use it. I don’t care if she wants to buy a house or a rocket ship or just nail it up somewhere and look at it. It’s hers. Not ours – hers.”).

a story about the elusive American dream for a family of African Americans. More importantly, it is a story about wealth, its advantages and disadvantages. Wealth is the great equalizer. It empowers a person to command resources, which, in turn, helps people bring their dreams to fruition. This power to exert influence over and direct resources is an intrinsic advantage of wealth. Dreams deferred or denied, on the other hand, are an enormous disadvantage of wealth associated with wealth deprivation (and the powerlessness that goes along with it).

As portrayed, Younger family members are nearly powerless to shape their own realities, or that of the other family members. The patriarch of the family, Walter Lee, Sr., died to effect change in his family. The rest of his family must toil daily in pursuit of the American Dream. Significantly, the Younger family is but one of many poor working class families, living in neighborhoods across America. These families lack the independent financial means, short of dying, to command the necessary resources needed successfully to pursue economic, family, and community stability.

Amiri Baraka, a scholar and poet, critically reflected on A Raisin in the Sun at its 25th Anniversary. He observed that, when hopes are dashed and dreams are deferred for too long, chauvinism and self and group-hate manifest as it did in the character of Walter Lee, Jr. The character is chauvinistic and selfishly driven by his version of the

102. The references to "dreams deferred" and, later on, "festering sores" are taken from the poem, "Harlem," penned by Langston Hughes. See The Collected Works of Langston Hughes 74 (Arnold Rampersad ed. 2001) (The collection is a reprint of several previously published single works by Langston Hughes. Harlem is a part of A Montage to Harlem, first published in 1951, depicting everyday life in Harlem).

103. Hansberry, supra note 46, at 36-37 ("AsaGai - Then isn't there something wrong in a house - in a world - where all dreams, good or bad, must depend on the death of a man?" Id.).

104. In reviews of A Raisin in the Sun, Reviewers depicted the Younger family as a middle class family. But see Robert Nemiroff, Introduction to A Raisin in the Sun 9 (First Vintage Books Edition, 1994) (stating that, "in many reviews (and later academic studies), the Younger family - maintained by two female domestics and a chauffeur, son of a laborer dead of a lifetime of hard labor - was transformed into an acceptably "middle class" family. The decision to move became a desire to "integrate" (rather than, as Mama says simply, 'to find the nicest house for the least amount of money for my family.')" Id.). Researchers typically define middle class in terms of three criteria: (1) income, (2) occupation and (3) college degree. Oliver & Shapiro, supra note 16, at 69-70). By these measures, the Younger family is not middle class. Although no direct mention of income is made in the story, Mama does state that it will take three salaries to pay the monthly mortgage at the new home so I suspect the wages are low. In addition, the occupations are not middle class occupations, such as, white-color jobs. White collar jobs include, e.g., "sales clerks and teachers to executives, professionals, and the self-employed." Id. at 70. Beneatha is the only college-educated person in the home. Hansberry, supra note 46, at 36.

105. See sources cited supra note 17.
American Dream, while at the same time feeling the powerless. Mr. Baraka describes this feeling as the “powerlessness of [a] people to control their own fate or that of their families in a capitalist America where race is place, white is right, and money makes and defines the man.”106

At about midpoint in the play, Hansberry brings Walter’s dream of owning a business into conflict with the dreams of his mother, sister and wife. Walter loses most of the insurance money in a business swindle to an unscrupulous partner who runs off with the money.107 Walter’s decision to preference his dream over the dreams of his mother, wife and sister was selfish and chauvinistic. Walter’s mistake nearly destroys his family’s dreams.108 Family dissonance is yet another consequence of wealth deprivation.109

In other ways, the play is true to life in that not all black families are wealth-deprived. One of the play’s central characters, George Murchison, is from a financially well-off black family typifying the black bourgeoisie.110 The character pursues the sister, Beneatha, but not for her intellect. George represents the connectedness in the black community between those who have and those who do not. George courts “wealth-deprived” Beneatha who symbolizes in the play the growing black intellectual community. Yet George is dismissive of Beneatha’s wish to be educated. Perhaps a shortcoming of Hansberry’s work is that wealth and intellect clash in the characters of Beneatha and George, while at the same time, there is no portrayal of the balance and harmony that can exist between them. The son of the black bourgeoisie is not intellectual (and makes no portends about it), and

106. Baraka, supra note 1, at 15.
108. Id. at 138-49.
109. Id. at 145.
110. Ms. Hansberry came from such a family. Her mother was college-educated, her father was a successful businessman, and her grandfather was a successful African Methodist Episcopal minister. Both parents were activists who fought against discrimination in both housing and education. Her father ran for Congress in 1940. When Ms. Hansberry was 7-years old, her family, which included three siblings, moved to a racially segregated white neighborhood. Whites pressured the family to abandon their new home, committing several acts of violence. The Hansberry home was vandalized several times. Her parents eventually filed a lawsuit seeking a court order to stay in their home, fighting a covenant in their deed that restricted the sale of their home to whites only. Her parents won the lawsuit. Through the years, important black leaders, like Paul Robeson, W.E.B. DuBois and Langston Hughes, visited the Hansberry home. Interestingly enough, Ms. Hansberry later would borrow the title of her play, A Raisin in the Sun, from a line in Langston Hughes’ poem, Harlem. See Goodman Theater Student Guide to Raisin, available at http://www.goodmantheatre.org/_pdfs/studentguide_raisin.pdf (last visited October 30, 2009).
Beneatha is asked to choose between the certitude of near certain financial security for herself (and her future family) with George and the pursuit of an intellectual life if she pursues her education. Notwithstanding, Hansberry’s portrayal of racial inequality and the effects of wealth deprivation, many effects remain today, some fifty years later.

*A Raisin in the Sun* is a poignant example of the fact that the lack of wealth speaks more about a failure of human potential, *i.e.*, a failure of human capability,111 than it does about pure dollars and cents. The seriousness of wealth deprivation is the bounty of unrealized human potential strewn across the American landscape. In the play, Walter Lee, Jr.’s, inability to alter the path of his life and that of his family, independent of the insurance proceeds on his father’s life, is symbolic of the problem, *i.e.*, the unrealized human capability (and accompanying powerlessness) that accompanies a life at the bottom without wealth.112 The human desire to be self-determined in order to shape one’s reality according to an accepted set of social and cultural norms is a powerful human desire that transcends race, class and gender.

111. AMARTYA SEN, *INEQUALITY REEXAMINED* 109 (2003) (discussing economic deprivation in terms of capability deprivation, *i.e.*, the inadequate command over resources, whether through markets, means of production, public provision or other means. Capability deprivation is multidimensional. Sen argues that policies should be developed to give people the capabilities (i.e., freedom or ability to achieve). *Id.* He asserts that wealth deprivation exists anytime a person lacks sufficient resources (including wealth) to command the necessary resources needed to lead the life of her choosing. A person might use her resources to achieve certain basic capabilities, such as, being well-nourished, adequately clothed and sheltered, and minimally educated, or to exceed the basic needs level, to receive a higher education, to access advanced medical procedures, and to live in a resource-rich neighborhood. This approach is distinguished from an income or wealth approach that views economic deprivation solely from the vantage point of a lack of income (i.e., income deprivation) or an inability to consume.).

112. Walter Lee, Jr., is employed as a chauffeur for a wealthy white man, spending his days driving around his employer and fantasizing about working a white-collar job in Chicago’s skyscrapers. Both his wife, Ruth, and mother, Lena, work (or have worked) as domestics in the homes of wealthy (i.e., wealth-advantaged) white families, and his sister, Beneatha, is a full-time student who aspires to be a medical doctor. *Id.* at 108 (“Walter – You wouldn’t understand yet, son, but your daddy’s gonna make a transaction . . . a business transaction that’s going to change our lives . . . . That’s how come one day . . . I’ll come home and I’ll be pretty tired, you know what I mean, after a day of conferences and secretaries getting things wrong the way they do . . . cause an executive’s life is hell . . . . And I’ll pull up the car on the driveway . . . just a plain black Chrysler, I think, with white walls – no – black tires. More elegant. Rich people don’t have to be flashy . . . though I’ll have to get something a little sportier for Ruth – maybe a Cadillac convertible to do her shopping in . . . . And I’ll come up the steps to the house and the gardener will be clipping away at the hedges and he’ll say, ‘Good evening, Mr. Younger.’ And I’ll say, ‘Hello, Jefferson, how are you this evening?’”).
The pursuit of the American Dream compels those who pursue its ends.\textsuperscript{113} Yet, the American Dream is an asset-driven and dependent dream that remains elusive for many Americans regardless of race but even more so for Americans of color.\textsuperscript{114} This dream requires a great many resources to pursue, achieve and maintain.

In discussing the father, Mama Lena remarks that he was “[c]razy about his children! . . . Always wanted them to have something – be something.”\textsuperscript{115} She then states that “[he] used to say, . . . ‘[s]leem like God didn’t see fit to give the black man nothing but dreams – but He did give us children to make them dreams seem worth while.’”\textsuperscript{116} Mama Lena’s statement reflects that the father, Walter Lee, Sr., lived life through an unfulfilled prism. He suffered a human capability failure, meaning that he lacked the opportunity and resources to manifest his dreams during his lifetime. Life taught him that it was all right to dream but that, in all likelihood, his dreams would remain just that—dreams. Like so many others, Walter Lee, Sr., personally lacked sufficient command over resources, living off the wages of a laborer. He

\textsuperscript{113} The “American Dream” is often symbolized by the assets one possesses. For example, a home, a retirement portfolio, an investment or savings account, business investments, and the capacity to pass it on to one’s offspring. \textit{Lui et al.}, supra note 37, at 135. As discussed previously, the “American Dream” can be described in terms of the power to command resources to shape one’s life on acceptable (or agreed upon) cultural terms. \textit{See} notes 6, 18-19 and accompanying text.

\textsuperscript{114} The Center for American Progress determined that “children born in the bottom [quintile of family income] have a 1% chance of reaching the top 5%. Even more, disturbing, . . . 42% of children born in the bottom quintile will remain there, and an additional 42% will make only make it to the lower-middle [fourth quintile] or middle class [third quintile]. \textit{See} \textit{Amaad Rivera et al., State of the Dream 2009: The Silent Depression} 6 (United for a Fair Economy, 2009). Various other statistics reveal how elusive the dream remains in the absence of wealth. For example, people living in poverty (of which a larger percentage of blacks, Latinos and Native Americans do) are less likely to access and use health care for dental visits, preventative care screenings (e.g., mammograms), or primary care visits. Additionally, blacks and Hispanics are more likely to be obese, which portends other more serious chronic illness. The gap in life expectancy between blacks and whites has narrowed, but persists. \textit{See National Center for Health Statistics}, \textit{Health, United States, 2008 with Chart Book} 28-36, 218(U.S. Dept. of Health and Human Services, CDC, Mar. 2009) http://www.cdc.gov/nchs/data/hus/hus08.pdf#028. In addition, in 2005, racial minorities were 20 to 30 percent less likely to own a home than whites in most of the country. \textit{United States Census Bureau}, available at http://www.census.gov/hhes/www/housing/hvs/annual05/a nn05t20.html. Last, blacks experience higher rate of serious crimes and the highest rates of serious violent crimes (i.e., serious violent crimes include homicide, rape, robbery, and aggravated assault). Blacks are 30 percent more likely to be victimized by violent crimes than whites. \textit{Office of Justice Programs, Bureau of Justice Statistics}, at http://www.ojp.usdoj.gov/bjs/cvict_v_h.htm#race (last rev’d as of October 21, 2009). Health, home ownership and crime rates are strong indicators of overall quality of life and are inversely correlated to income (and by extension, wealth).

\textsuperscript{115} \textit{Hansberry}, supra note 46, at 45.

\textsuperscript{116} \textit{Id.} at 45-46.
chose a surer alternative. He purchased a life insurance policy and he worked himself to death.\footnote{Id. at 45 ("MAMA I guess that's how come that man finally worked hisself to death like he done. Like he was fighting his own war with this here world ").} His death proceeds could be used to jump-start his family's dreams. Still today, it is common for the only legacy an American of color passes on to the next generation are the proceeds of a life insurance policy.\footnote{My mother died leaving a small insurance policy that would be split four ways after funeral expenses. She was aware that this was her financial legacy to her children.} Like many Americans of color, the father lived and died believing that the next generation would have a better chance, and just maybe, make the American Dream a reality.

This Article hopes to deepen the understanding of racial wealth divide that affects the Younger family's plight. Their plight is shaped by systemic, government-sanctioned laws and policies, not a lack of personal drive, desire, or ambition. Instead, the social and economic living conditions of their South Side Chicago neighborhood\footnote{See Haygood, supra note 57.} are due to a legacy of wealth deprivation visited upon a subset of Americans by the invisible, and sometimes not invisible, hand of their government. This legacy is the result of racial hostility and animus, bolstered by structural and individual racism that preferences whiteness.\footnote{"[T]he law has established and protected an actual property interest in whiteness itself, which shares the critical characteristics of property and accords with the many and varied theoretical descriptions of property. ... Whiteness is not simply and solely a legally recognized property interest. It is simultaneously an aspect of self-identity and of personhood, and its relation to the law . . . is complex." Harris, supra note 9, at 1724-25 (providing an extensive discussion of the concept of "whiteness as property," how this concept privileges white Americans, and how whiteness is a status protected by American law).} Whites enjoy this privileged status based on the rule of law and policies few whites had any role in creating. In the course of embracing their privileged status, many whites also came to embrace the idea that blacks (and other people of color) were subordinate to whites. These rules of law and policies establish and maintain whiteness as property and protect the entitlements that go along with the status.\footnote{See Alice O'Connor, Poverty Research and Policy for the Post-Welfare Era, 26 ANN. REV. SOCIO. 547, 553 (2000) (There is "the historical and ongoing legacy of [governmental] social policies designed to establish or maintain a hierarchical and racially segregated status quo" that enhances and protects the historically privileged status as whiteness as property. Id.).}

Asset wealth (or, in this case, its absence) is not the complete story though. It is in "asset wealth" (and all that it affords and represents) that the many contributing factors to racial inequality collide. Structural, institutional and individual racial discrimination collides with class and gender discrimination to create a stratified America.
One consequence of which is the vast wealth divide. State-sanctioned wealth deprivation weakens Americans of color, thereby crippling America. This Article posits that a country is only as strong as its weakest link, making America only as strong as its most wealth-impoveryed citizen. Every American (irrespective of race, class or gender) has a stake in closing the wealth divide that, in large part, began hundreds of years ago before our births with the colonization of the Western hemisphere, the inception of slavery and the sustained transatlantic slave trade. The pilfering of land, resources and human labor for the benefit of whites is at the heart of the wealth divide, but it is not the whole story. This practice the Article calls “race jocking,” i.e., the intentional taking, positioning and benefitting of one race over another for reasons of racial advantage and perceived superiority.

III. THE PROBLEM ENTRENCHED RACIAL INEQUALITY AMPLIFIED THROUGH THE MULTIRACIAL WEALTH DIVIDE

Racism doesn’t just come dressed in white sheets or voiced by skinheads, but lies in institutions that, like the FHA, have quietly and often invisibly channeled America’s wealth, power, and status disproportionately to white people. Those advantages are passed on and accumulate, generation to generation, giving ... [whites] a head start in life.123

A. The Nature and Magnitude of the Problem

The genesis of the study of the wealth divide is interdisciplinary. Sociologists, historians, social workers, lawyers, economists and

122. Slavery is the offshoot of two world phenomena—The European Renaissance and the Commercial Revolution (marked by “the breakdown of [European] feudalism, the rise of towns, the heightened interest in commercial activities, and the new recognition of the strength and power of capital”). JOHN HOPE FRANKLIN, FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS 31 (1980). Wealth is the signature demarcation of the “strength and power of capital.” According to Franklin, the Renaissance “gave to man a new kind of freedom – the freedom to [passionately] pursue those ends that would be most beneficial to his soul and body.” Id. Franklin then argues that this freedom made it possible for man to enslave another in the personal exercise of that freedom. Id. (referencing W.E.B. DuBois saying that “it was the freedom to destroy, the freedom of some to exploit the rights of others”). Franklin further asserted that the Commercial Revolution brought about a type of competition that was “characterized by ruthless exploitation of any commodities that could be viewed as economic goods.” Id. That would include human beings that themselves became commodities in a system to exploit true economic goods. Id.

community activists have studied the conditions of impoverished communities, looking for explanations and solutions. This work has been undertaken for decades, each discipline shedding light on the problem from a different vantage point. Sociologists unpacked the social and public policy dimensions of race and class inequality, while historians traced the occurrence and root causes of these conditions. Social workers studied ways to lift people and their communities out of racial segregation and poverty, and lawyers identified the inequality, founding ways to obtain justice for traditionally dis-empowered people, removing barriers to fairness and justice along the way. While economists see racial and class inequality in dollar terms, community activists collect data, analyze, propose and organize to implement solutions. The activists and community organizations are at ground zero. They directly engage the “subjects” of study and put a human face on the problem. Some scholars work across disciplines to amplify their understanding of poor communities.

At its inception, the study was less about the wealth divide and more about the conditions of inequality that manifest in society. While stripping away the complex layers of social isolation, destitution and alienation, scholars, sensing it, began to confirm the centrality of economic well-being in detangling America’s legacy of two worlds: one white and the other people of color, one rich and the other poor, one male and the other female, and one with access to the American Dream and the other—dreams deferred. With this growing awareness,

124. E.g., Dalton Conley, Nancy Denton, Melvin Oliver, Thomas Shapiro and Beverly Moran.
126. E.g., Michael Sherraden and Larry Brown
127. E.g., Kimberly Crenshaw, Dorothy Brown, Richard Delgado, Beverly Moran, Derrick Bell, Thomas Shapiro, Stephanie Wildman and Patricia Williams.
128. E.g., Darrick Hamilton, William Darity, Jr. and Edward Wolff.
129. E.g., Insight Center for Community Economic Development’s Closing the Racial Wealth Gap Initiative, CFED, National Women of Color, United for a Fair Economy, NAACP and the National Urban League.
130. E.g., Thomas Shapiro, Melvin Oliver, William Darity, Edward Wolff, Beverly Moran, and Manning Marable.
132. See Gilmore, supra note 131, at 262-66 (discussing history of discrimination and government policy).
scholars have focused on economic inequality as a way to level the playing field.\textsuperscript{133} Income was the poster child of economic inequality.\textsuperscript{134} Therefore, the first iterations of this work focused on understanding and closing the income gap.\textsuperscript{135} Not until very recently (i.e., within the last ten to fifteen years) did the lens shift from income gaps to wealth gaps.\textsuperscript{136} Scholars started to tune into the differences between income and wealth, and how each contributes in different ways to lingering racial and class inequality. Several books and articles detailing economic inequality have been published.\textsuperscript{137} Even though there is a growing body of scholarly literature, it is still quite small in comparison to other areas of inquiry.

The income gap is vast but substantially less than the wealth gap, and there are differences between the two. Income typically measures wage-type earnings and is used to pay day-to-day living expenses. It is a labor-market indicator.\textsuperscript{138} Income is a measure of contemporary financial resources from wages, pensions, and social assistance.\textsuperscript{139} Wealth, on the other hand, typically measures the difference of the sum of income and other owned assets over debts owed. Unlike income, wealth is not a labor-market indicator and is used by wealth holders to plan for the future, to create opportunities and to command resources. Wealth is used to secure a certain standard of living and to pass that standard of living onto one’s children as social and class status.\textsuperscript{140} Both contemporary and historic assets are funneled into wealth. Income and wealth combined help families cre-

\textsuperscript{133} Moran & Wildman, supra note 57, at 1219.
\textsuperscript{134} OLIVER & SHAPIRO, supra note 16, at 29-32.
\textsuperscript{135} Id.
\textsuperscript{136} See, e.g., Beverly I. Moran, Capitalism and the Tax System: A Search for Social Justice, 61 SMU L. Rev. 337 (2008) (proposing exempting a large portion of wage income from all forms of taxation and introduces a wealth tax on amounts above that needed for working people to enter the housing market); see also LUI ET AL., supra note 37, at 129 ("Taxing very wealthy people and large, profitable corporations would be necessary to pay reparations without cutting back on other federal spending. Instead tax policy is moving the other way."").
\textsuperscript{137} See, e.g., BEVERLY MORAN, RACE AND WEALTH DISPARITIES: A MULTIDISCIPLINARY APPROACH (2008); SHAPIRO, supra note 13; DALTON CONLEY, BEING BLACK, LIVING IN THE RED (1999); OLIVER & SHAPIRO, supra note 16.
\textsuperscript{138} Labor-market indicators are the outcomes – earnings, occupational prestige, and social mobility– of labor-market processes, which include working a job. Melvin L. Oliver & Thomas M. Shapiro, Wealth and Racial Stratification, in AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES, VOLUME II, 223 (Commission on Behavioral and Social Sciences and Education, 2001) [hereinafter “Wealth and Racial Stratification”]. “Income is the quintessential labor-market outcome indicator.” Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
ate opportunities to secure a good life in whatever form desired, e.g., education, business capital, home acquisition, job training, access to justice, access to health care and so on.

The case of blacks in America is paradigmatic of the plight of other racial groups. The median income of blacks in 2007 was about 78 percent of white income. The racial wealth divide, on the other hand, was just 10 percent of white wealth for blacks, and 16 percent overall for all racial groups. Native Americans earned about 60 percent of white wages, yet wealth estimates generally are not available because of federal government policies that control Native American lands, natural resources and generated income, holding these assets in trust. There is little individual or group accounting for the wealth of Native Americans held by the federal government. Latinos and Asian Americans present a different challenge. Income and wealth data for these groups are reported as aggregates. For Latinos, the 2007 income gap percentage was about 72 percent, and Asian Americans reportedly

141. See DRAINED, supra note 17, at v (stating that, “Blacks have 10 cents of net worth for every dollar of white net worth, and Latinos have 12 cents of net worth for every dollar of white net worth”).

142. LUI ET AL., supra note 37, at 30 (stating that, the federal government “controls when and how . . . [Native American] land is leased, how much money . . . oil and gas and other resources sell for, and how the money earned is distributed.” Id.).

143. See Vaughan Woodruff, Voice of the Voiceless, Elouise Cobell’s Lawsuit Provides Warning to Us All, THE TRIBUTARY (November 12, 2008), http://www.indiantrust.com; see also http://www.indiantrust.com/index.cfm?FuseAction=Overview.Home and http://www.nativelegalupdate.com/articles/land-use/ (both links give you access to a summary of the lawsuits initiated (and settled in December 2009) by Native Indians against the United States government over the government’s failure to properly account for and pay over funds generated by oil, mineral, timber and grazing leases on Native American lands and supposedly held in trust for the Native Americans under the Dawes Act of 1887); cf. TONY HILLERMAN, THE SINISTER PIG (2004) (A work of fiction that first appeared on the New York Times Best Seller list on May 25, 2003 (http://www.nytimes.com/2003/05/25/books/bestsellers-may-25-2003.html). Like Hansberry in A RAISIN in the SUN, Hillerman interweaves the fact of wealth deprivation into the fictional plot line of The Sinister Pig. This book is the sixteenth in Hillerman’s Chee/Leaphorn Navajo Tribal Police series of crime fiction novels. In essence, the story is about a murder at the edge of the Jicarilla Apache natural gas field, and the Navajo Tribal Police Sergeant Jim Chee questions rather the murder is linked to diverted oil and gas revenues (i.e., the subject of the trust fund litigation). The following are a few excerpts from the book where the trust fund is mentioned: “Chee said. Ah. Are we getting into what happened to the Indian Trust Fund oil and gas royalty money?,” THE SINISTER PIG, supra, at 100, and “Not unless it [i.e., the murder] connects in some way with the forty billion dollars that seems to have disappeared from the Indian Trust Fund. A sort of evaporation that the General Accounting Office thinks has been going on since way back when. Leaphorn n . . ., again said: ‘Forty billion. I read about that in that suit the lawyer, Covell, wasn’t it, filed against the Secretary of the Interior. I thought maybe that number was typographical error. Too many zeros on the end of that number. And you think this homicide of ours might be connected?’”).
earned 106 percent of the income earned by whites Americans.\textsuperscript{144} These numbers obscure the fact that country of origin, immigrant status, and timing of immigration skew the numbers for some groups of Latinos and Asian Americans, and that these groups are not homogenous.\textsuperscript{145} For example, Cuban Americans who immigrated in the fifties and sixties are more likely to be owners of small and medium-sized businesses, and consequently possess greater wealth.\textsuperscript{146} Likewise, Korean immigrants who migrated to the United States recently entered under rules that required them to bring assets with them to the United States. These same Korean immigrants are likely to convert these assets into income-producing assets by starting a business.\textsuperscript{147} Nevertheless, wealth statistics are extreme for these two groups. Latinos owned 12 cents for every dollar possessed by whites in 2007, and Asian Americans owned about 16 cents of wealth (again, this number will be lower for immigrating Asians from poorer nations). In any event, no matter how you slice the wealth pie, Americans of color suffer catastrophic deficits in wealth when measured against whites. One might ask, what is the big deal? This vast divide is significant because wealth provides advantages that can be leveraged to manifest a reasonable quality of life. Many of these advantages are lost to Americans of color because of the extreme wealth deficit.

The focus on wealth brings to light the effects of pernicious and persistent structural, institutional and individual racism.\textsuperscript{148} It focuses

\begin{itemize}
\item \textsuperscript{144} US Census Bureau, Current Population Survey, Annual Social and Economic Supplements, Historical Income Tables – People (tbl. P-4), available at http://www.census.gov/hhes/www/income/histinc/incpertoc.html (this information was tabulated from the data reported on Table P-4). The information on the American Indian and Alaska Natives was compiled from data reported as part of the American Community Survey 2007, Selected Population Profile in the United States (American Indian and Alaska Native) accessed through factfinder.census.gov (on file with author).
\item \textsuperscript{145} See, e.g., US Census Bureau, Racial Statistics Branch, We the People: Asians in the United States 1-4, 16(Dec. 2004), http://www.census.gov/prod/2004pubs/censr-17.pdf ("The Asian population is not homogeneous. It includes many groups who differ in language, culture and length of residence in the United States." Id. at 1. Additionally, Asian Indian and Japanese families had incomes more than $10,000 higher than all Asian families, and Cambodian, Hmong, Korean, Laotian, Pakistani, Thai, and Vietnamese had incomes substantially lower than the median of all Asian families. Id. at 16. Consequently, these latter Asian groups are more likely to fall at the bottom of the wealth gap, much like African Americans, Latino Americans and Native Americans.)
\item \textsuperscript{146} Oliver & Shapiro, Wealth and Racial Stratification, supra note 100, at 226 (citation omitted).
\item \textsuperscript{147} Id. at 227.
\item \textsuperscript{148} See, e.g., Charles L. Nier, III, The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact Upon African American Wealth Accumulation, 11 U. PA. J. L. & SOC. CHANGE 131 (2007-2008) (quoting then Candidate, now President Barack Obama stating that, many of the disparities that exist in the African American community
the scholar on the subset of questions to investigate and reveals deep patterns of racial imbalance within society that are not apparent when looking through the lens of income. A study of wealth uncovers both quantitative and qualitative racial inequality. Studies of the wealth divide make it possible to interrogate how wealth assets are created, expanded, and preserved. Wealth studies also have the potential to reveal the ways in which racial animus contributes to the wealth divide, the nature of the relationship between racial inequality and the wealth divide, and how racialized policies drove America to this place of the great wealth divide and disguised America’s injustices. In addition, it helps to see the nature and magnitude of racial inequality in a way not seen through the lens of income. By focusing on wealth, it is possible to determine if racial inequality is inclining or declining. Wealth also gives people the power to shape corporate and political dimensions of living within the civil society. Therefore, a study of wealth is a study of power. In turn, studying society from the perspective of the racial wealth divide lifts the veil on structural and institutional programs and policies that ferment wealth inequalities experienced by large numbers of Americans of color, both individuals and families. Wealth reveals in whose hands power resides.

B. Lifting the Veil on the Past: The History of the Wealth Divide

1. In General

The American Dream narrative is based, in part, on the belief that “anyone can make it to the top by ... working hard and tugging mightily at [their] boot-straps.” American heroes supposedly are made of self-invented men and women who succeed on “pure grit, gumption and ingenuity.” However, little note is made of the role that the invisible hand of government plays in helping these “self-made” individuals achieve the American Dream. This version of the

today can be directly traced to inequalities passed on from earlier generation that suffered under the brutal legacy of slavery and Jim Crow” (citation omitted).

149. See generally Conley, supra note 137 (presenting a detailed study of questions raised by considering the effects of race discrimination on contemporary wealth inequalities).
150. Id.
151. Moran, supra note 140 (presenting the work of multiple scholars across disciplines).
153. Id.
American Dream narrative positions wealth and poverty as the result of personal choices in behavior.\textsuperscript{154} Quite to the contrary, state action (and not personal behavior) is at the heart of the redistribution of wealth in the United States. State action both overt and covert is responsible in large measure for the racial imbalance in wealth holdings in America today. The invisible hand of the government played a role, either through preferential "white only, or nearly white only" land acquisition programs, preferential tax treatment in the form of low capital gains rates, tax-free or tax-deferred retirement savings, deductions from income for charitable gifts, and tax-free or near tax-free transfers of wealth (at death or inter vivos). Many of the acclaimed American heroes, such as, Sam Walton, J. Paul Getty, and others, needed land and other resources to amass their wealth. The government helped them to secure the initial grants of land and natural resources.\textsuperscript{155} Personal behavior choices alone were not sufficient. It has been explained this way, "[t]hroughout U.S. history, federal and state governments have provided 'wealth starter kits' for some to turn their work into worth."\textsuperscript{156} The government gave away "land, free public government-backed mortgages and farm loans, a social safety net, and business subsidies to white families, sometimes exclusively and usually disproportionately."\textsuperscript{157}

Various groups of people of color have experienced state-sanctioned impediments (i.e., actions and inactions) to wealth creation.\textsuperscript{158} Many aspects of state-sanctioned, institutional and private discrimination uniformly affected Americans of color but many more did not. This section of the Article details the historical experiences of various communities of color in the United States as it relates to overt and covert practices that effectively transferred wealth from these communities to communities of white Americans. While the story of American democracy holds out the hope that the opportunity to rise economically is available to all who are willing, ready and able to work hard; historically, this has not been the case. This has not been so for all colonized, captive or immigrant communities of color.

\begin{itemize}
  \item \textsuperscript{154} Id. at 4.
  \item \textsuperscript{156} Id. at 5.
  \item \textsuperscript{157} Id.
  \item \textsuperscript{158} Lui \textit{et al.}, supra note 37, at 19 (providing an exhaustive discussion of racial differences and similarities in matters of wealth creation).
\end{itemize}
2. Native Americans

For example, with the first arrival of European colonizers, Native Americans were systematically and violently stripped of their greatest wealth asset, *i.e.*, land. Between 1500 and 1900, Native Americans where pushed into the interior of the country and went from controlling nearly all of the North American continent to controlling less than 4% of the original United States. Colonization, treaty-making (and breaking), relocation to reservations, distribution of Native American land through allotment (interfering with Native American customs of group ownership and caretaking responsibility for land), and the placement of Native American land in trusts managed by the federal government each contributed (and continue to contribute) to the wealth loss and deprivation experienced by modern-day Native Americans.

3. African Americans

On the other hand, African Americans' wealth deprivation walk started violently with the institution of the mid-Atlantic slave trade in the 1500s. Continental Africans were forced to leave behind in Africa any wealth already owned, and forced to provide free labor (i.e., a valuable asset) in the Americas for nearly 250 years. Slavery began in North America in the 1640s in Virginia. Driven by its reliance on a plantation economy to grow tobacco and desire for cheap labor, Virginia enacted the first law inscribing the inferior status of blacks in North America. Indentured servants who ran away had the terms of their indenture extended—whites for a few years and blacks for decades or even for life. The first recorded sales of human beings took place in Virginia in the

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159. *Id.* at 36.
160. *Id.* at 36-72 (providing a detailed analysis of government practices that greatly contributed to the forced transfer of Native American land principally to white Americans and the continuing challenges to Native American sovereignty and wealth accretion).
161. OLIVER & SHAPIRO, *supra* note 16, at 37. During slavery, enslaved blacks by law were prohibited from owning property or accumulating assets. In addition, enslaved blacks were prohibited from engaging in wealth producing activities, such as, starting a business and entering into contracts that courts would enforce.
162. LUI ET AL., *supra* note 37, at 79.
164. LUI ET AL., *supra* note 37, at 79.
165. *Id.* at 79 (referencing FUCHS, *supra* note 163, at 10).
By the 1660s, there were more than 1,000 enslaved Africans in Virginia. Between 1680 and 1705, Virginia passed a set of laws called the "Slave Codes," which, in effect, limited the political rights (often necessary to exercise control of over wealth) and labeled the children of slaves as slaves. With the founding of South Carolina in 1670, which institutionalized slavery in its chartering document and the incursion of the Royal African Trading Company of England now doing business in North America, the numbers of Africans enslaved and transported across the Atlantic grew exponentially. It has been said that, "African slavery produced the initial start-up capital for what ultimately would become the basis for capitalism in the United States." Millions of Africans were forced into this highly organized and systematic system of wealth suppression and transfer.

Once freed, formerly wealth-deprived Africans were promised land and other resources that never materialized. In addition to the unfulfilled promises of land post-slavery, African Americans were systematically excluded by law from government-sponsored general land distribution programs; for example, the yeoman-farmer programs.

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166. Id.
167. Fuchs, supra note 163, at 10.
168. Lui et al., supra note 37, at 79.
169. Id.
170. Id. at 74.
171. Id. at 85. In 1865, General Sherman who confiscated plantations as he marched through the Southern United States issued an order promising black soldiers forty acres and a mule to those who fought for the Union Army during the Civil War. The order was later rescinded. Id. at 86. In addition, Congress created the Freeman's Bureau in 1865 to distribute abandoned Confederate land to the newly freed Africans. Over forty thousand black families moved onto these lands, only to be dispossessed by General Howard following the assignation of President Abraham Lincoln. Many were evicted from their land by force by the Union army. General Howard, who led the Freedman's bureau, held the belief that blacks should "earn" land (ignoring the 250 years of free labor) and not receive it as a gift. As a result, he encouraged blacks to work and save their money to buy the lands initially intended for free distribution under the act that created the Freedman's Bureau. Conley, supra note 137, at 33-34. General Howard "recommended that northerners, including bureau agents, purchase or lease farms to provide work for the freedman." Id. at 34. This practice and belief became the precursor for the farm tenancy program, known as sharecropping, which too transferred wealth from small black farmers (i.e., business owners) to white landowners. Id. ("We were barefooted. My feet been frostbitten lots of time. My dad couldn't afford to buy no shoes. He'd get in debt and figure every year he going to get out . . . ' But she added, '[then] they'd [white landowners] tell you, "You bought so and so."' They get through figuring it up you lacking $100 for coming clear. What the hell could you do? You living on his place, you couldn't walk off." Id. (quoting the recollections of Moses Burge, the daughter of black sharecroppers in Georgia)). Lui et al., supra note 37, at 86. The Freedman's Bureau, largely unsuccessful in creating black landowners was abolished in 1872.
AMERICA'S RACIAL WEALTH DIVIDE

which confiscated\textsuperscript{172} Native American land and transferred the land for free to white Americans.\textsuperscript{173} In addition, laws were enacted that specifically denied to blacks the right to work independently,\textsuperscript{174} access banks (i.e., making deposits and getting loans), own a business, and own land.

Following the periods of enslavement, the Reconstruction period, post-slavery up to 1900, was a mixed opportunity for African Americans. While the Homestead Acts and the Freedman's Bureau were less than successful in creating a large group of landowning former enslaved Africans, the passage of the Thirteenth and Fourteenth Amendments to the United States Constitution\textsuperscript{175} and the passage of the Civil Rights Acts of 1866, 1870 and 1875 were steps in the right direction. For example, the Civil Rights Act of 1866 gave black men

\textsuperscript{172} The author has intentionally avoided the use of the word redistributed in this context. To re-tilt the playing field, the language of the discourse must shift to provide insightful descriptions of what happened (and what I propose happen). The word redistributed masks the violence of the act—the act of transferring people of color wealth to whites. The word seems innocuous when the truth is the opposite. The less-violent tenor of the discourse tends to lull those who benefit and those who are victimized into thinking that those who benefit did so on their own merit and those who have not are responsible for their own failings. In surveys of white perceptions about blacks, stereotypic labels of laziness, less-intelligent, financially-irresponsible are used to describe the financial prowess (or lack thereof) of blacks to manage their own financial assets. It is not uncommon that the oppressed group takes on the views of the oppressor. Blacks can be heard to say that "they're (other blacks) just lazy, or that they aren't trying hard enough." This self-loathing perpetuates a system of inequality and deprivation that the dominant culture put in place.

\textsuperscript{173} See The Homestead Act of 1862, 12 Stat. 392 (1862), repealed by Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701-1785, distributed land in the West to non-Confederate whites for free, excluding blacks and other racial groups.; see also Oliver & Shapiro, supra note 16, at 14. In the tradition of homesteading, The Southern Homestead of 1866 provided a legal basis and mechanism for the lawful acquisition of property by blacks, both formerly enslaved and free. The act opened up lands in Alabama, Arkansas Florida, Louisiana and Mississippi for settlement, and provided a six-month window for blacks to apply before whites were permitted to apply. Lui et al., supra note 37, at 86. Unlike the 1862 Act, this Act permitted former Confederate white soldiers to apply for the land by simply swearing (i.e., stating that they had never taken up arms against the Union or given aid and comfort to the enemies. Id. The various Homestead Acts were responsible for the fact that three quarters of Americans owned land by 1900.) Conley, supra note 137, at 34,35. Also, one-quarter of Southern black farmers owned their own farms by 1900. Oliver & Shapiro, supra note 16, at 15. Homesteading was only so successful because laws permitted whites to lay claim to land settled by blacks because the law prohibited blacks from legally enforcing their title to land. Consequently, titles held by whites were honored over that of the blacks. Conley, supra note 137, at 35.

\textsuperscript{174} Conley, supra note 137, at 35 The "Black Codes" were laws enacted in many Southern states that required blacks to work for others. A black person who could not prove employment (usually by a white person) that person would be arrested for vagrancy; see also Lui et al., supra note 37, at 87 (discussing how white farm owners would pay the vagrancy fines of jailed black, requiring the blacks to work off the fine.

\textsuperscript{175} U.S. Const. amends. XIII & XIV.
the right to enforce contracts, own property, and sue in court. Yet, the systematic exclusion of blacks from wealth amassing opportunities continued in the 20th century.

Through the Jim Crow era (from mid 1800s through the passage of the Civil Rights Act of 1964), blacks were excluded from a number of wealth building opportunities. African Americans were specifically excluded from several of the New Deal programs instituted in the aftermath of the Great Depression, which saw the loss of land holdings and businesses by large number of similarly situated blacks. Southerners in Congress blocked efforts to include rural black workers in social security legislation. Domestic and agricultural workers were excluded from receiving social security benefits upon retirement. At least 60 percent of African American workers performed domestic or agricultural work in the 1930s. The practical effect of being left out of the social security legislation is that retired and disabled African Americans (and Latinos) would have to spend their savings during old age rather than handing those amounts down to the next generation by intergenerational transfers, and younger family members would be required to support indigent older family members, again diverting resources away from wealth amassing activities.

The redirection of America’s wealth through taxation, transportation, and housing policy to the overwhelmingly white suburbs, some would argue, is the “most dramatic barrier to black-white wealth equity in the [20th] century.” Taxation policy provided “greater tax

176. LUI ET AL., supra note 37, at 83-84 (referencing the Civil Rights Acts).
177. Id. at 90-91; see also CONLEY, supra note 137, at 36 (“During this period of decline, which includes the Great Depression, many farmers, both black and white, were losing their land, but there appears to have been a net transfer of land from blacks to whites. August Meier and Elliot Rudwick estimate that the rate of land loss for blacks averaged 350,000 acres per year. (citation omitted). . . . As the number of black-owned farms dropped . . . . , the numbers of African Americans who migrated [North to industrial cities grew.]”).
178. LUI ET AL., supra note 37, at 92 (Latinos were excluded along with African Americans.); see also OLIVER & SHAPIRO, supra note 16, at 38 (making the additional point that over time blacks and Latinos have disproportionately paid more into the system and received less due to shorter life spans. They make the further point that, for African Americans, the initial exclusion of blacks was built on concessions made to former slaveholders or other interested parties, institutionally and programmatically privileging whites.).
179. LUI ET AL., supra note 37, at 92.
180. Id.
181. CONLEY, supra note 137, at 36.
182. The central thesis of Lorraine Hansberry’s A Raisin in the Sun is efforts of an urban black family to recapture and benefit from the wealth transferred from to the suburbs in the 40s and 50s.
183. CONLEY, supra note 137, at 36; cf. OLIVER & SHAPIRO, supra note 16, at 16-18 (recounting the suburbanization of America and its adverse impact on black communities).
savings for relocating to the suburbs.” Transportation policy “encouraged freeway construction and subsidized cheap fuel and mass-produced” cars. Housing policy provided incentives “for the acquisition of single-family detached housing, [and at the same time, fostered a bureaucratic framework that shielded racially discriminatory practices in government-backed mortgages.”]

President Franklin D. Roosevelt urged the creation of the Home Owners Loan Corporation (“HOLC”) in 1933 to stem the tide of foreclosures occasioned by the Great Depression. Lending officials of HOLC institutionalized the racially discriminatory practice of ranking residential communities. It was the practice of these lending officials to give the lowest (i.e., redlining) desirability ranking to neighborhoods that were changing racially or all-black, older and lower income desirable. All-white neighborhoods were deemed more desirable and usually given higher rankings.

After the Great Depression, the practice continued under the lending programs of Federal Housing Authority (“FHA”), established in 1937, and the Veteran Administration is lending programs, established in 1944, following World War II. Both programs had the practical effect (though not legislated) of funneling federal dollars to the suburbs to the exclusion of urban centers, densely populated with Americans of color. This funneling happened for three principal reasons: 1) the bias in favor of single-family dwellings over multifamily projects, 2) a bias toward new projects rather than rehabs, and 3) use of “professional appraisals.” The FHA went so far as to openly state that “subdivision regulations and suitable restrictive covenants” should be used to maintain racially segregated communities to avoid a decline in property values.

185. Id.
186. Id. at 16-17.
187. Id.; see also Lui et al., supra note 37, at 95; Conley, supra note 137, at 36.
188. Id. at 17; see also Conley, supra note 137, at 36-37.
189. Id. at 17; see also Conley, supra note 137, at 36-37.
190. Oliver & Shapiro, supra note 16, at 17-18, 39-40; see also Conley, supra note 137, at 37.
191. See also Conley, supra note 137, at 37.
193. Id. at 18, 40 ("The FHA's use of restrictive covenants continued until 1949, when, responding to the Supreme Court's outlawing of such covenants in 1948 (Shelly v. Kramer), it announced that 'as of February 15, 1950, it would not insure mortgage on real estate subject to covenants.'"). A Raisin in the Sun depicts the facts that led her parents to litigate through the United States Supreme Court. Mr. Hansberry purchased a home before the sellers realized he was black. The sellers tried to avoid the contract, relying on a restrictive
Beyond taxation, transportation, and housing, two other state-sanctioned laws (i.e., ADC/AFDC and the GI Bill) helped to solidify the author's view that the systematic deprivation of wealth experienced by blacks and other communities of color requires an equally strong governmental law solution to undo centuries of law-driven, state-sanctioned wealth suppression and alienation, and the advantaging of white citizens. First, the Aid to Dependent Children program was created in 1936 to assist single women and their dependent children. This act excluded children in poor two-parent families on the fear that black, able-bodied workers would stop working to receive the benefits. Under the program, states were permitted to establish their own benefit guidelines. Not surprisingly, both Southern and Northern states created barriers to participation that were targeted at black women and children. Once participating, programmatic policies require recipients to deplete savings and limit asset accumulation. These policies too are anti-wealth amassing, and in turn, negatively affect quality of life.

In addition to ADC/AFDC, the Servicemen’s Readjustment Act of 1944—commonly referred to as the GI bill—made education and home ownership dollars available to veterans. All veterans were eligible to participate under the law, but in practice, whites enjoyed most of the benefits, and little or none, of the program benefits flowed to
black veterans or other veterans of color.\textsuperscript{199} Black veterans were unable to take advantage of the education benefits because many white colleges refused to admit them.\textsuperscript{200} Historically Black College and Universities were swamped with applications from GIs, as a result, and had to turn away 55 percent of its veteran applicants.\textsuperscript{201} In addition, the average black veteran had a 5th grade education, compared to an unusually high education level for white veterans.\textsuperscript{202} This is significant because education is the next single, largest correlated variable of an individual's ability to earn an income and, in turn, amass wealth, other than intergenerational wealth transfers.\textsuperscript{203}

The GI bill's opportunity for home ownership assistance was also significant. For most Americans, the home accounts for almost half of the wealth owned. That is because home values generally outpace inflation and retain value better than any other single asset.\textsuperscript{204} Few black veterans were able to take advantage of the home ownership opportunities under the bill.\textsuperscript{205} The Veteran's Administration was only a guarantor of the loan so a borrower would need a willing seller and willing lender to get the loan. Whites refused to sell homes in white neighborhoods with higher property values to blacks,\textsuperscript{206} and few banks in the South would lend to blacks, even sometimes requiring collateral that few blacks possessed.\textsuperscript{207}

\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Id.
\textsuperscript{204} Some suggest that, in today's market, investment in the private market is fastest way to accrue wealth. While this may be the case, the unpredictability of the private market may be a reason to discourage individuals from pursuing this strategy. I am open to the idea of pooling assets in group funds to spread the risk across a large group. Perhaps, federally-funded black funds are required to enlist state-action to re-level the playing field because state-action created the lopsided playing field.
\textsuperscript{205} Id. at 97.
\textsuperscript{206} HANSBERRY, supra note 46, at 119 ("Lindner – Well – I don't understand why you people are reacting this way. What do you think you are going to gain by moving into a neighborhood where you just aren’t wanted and where some elements – well – people can get awful worked up when they feel that their whole way of life and everything they've worked for is threatened." Id.)
\textsuperscript{207} LUI ET AL., supra note 37, at 97 ("In the summer of 1947, Ebony magazine[, a black-owned publication,] did a survey in thirteen Mississippi cities and found that of 3,229 VA loans, only two went to African Americans.")
4. Latino Americans

For Latino Americans, wealth exclusion is a varied story because Latino Americans come from many countries with varied histories. As a population, Latinos are a diverse group. Approximately, 67% are of Mexican origin, 4% are Cuban, 9% are Puerto Rican, 14% are Central and South American, with more from Central America than South America, and 6% classified as Hispanic or Latino other.” The historical roots of the racial wealth divide vary with each group. For purposes of this discussion, the author will focus on the largest group, Mexican Americans, who can trace the roots of their wealth deprivation back to foreign policy. Mexican Americans experienced dual colonization—first, from the Spanish Colonizers and later from the British, German, Dutch and French pilgrim colonizers of the East. Before the arrival of the colonizers, Mexico dominated portions of the southwest and southeast United States without little interference. Following Christopher Columbus’s arrival in the west in 1492, Spain colonizers soon followed in the 1500s, establishing Spanish settlements in Georgia, New Mexico, Arizona and Florida. Mexico itself became a colony of Spain in 1521 after Cortes defeated the

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208. LUI ET AL., supra note 37, at 151-52 (Cuban Americans benefitted from the tension created in the Western Hemisphere by the Russian-Cuban alliance. The United States established an immigration policy designed to encourage more Cubans during the period 1958 to 1973 to leave Cuba and enter America. The federal government offered low interest business loans, low-interest housing loans, special social services, cash and medical assistance to Cuban refugees. Id. at 152. It worked. In 2001, Cuban Americans had the second highest high school and college completion rate of all Latino groups, a higher home ownership rate, more families earning $75,000 and over, and lower unemployment rates compared to other Latino immigrant groups. Id. The corollary is that the Cuban nation (and remaining citizens) are greatly impoverished by U.S. isolationist policy toward Cuba.).

209. LUI ET AL., supra note 37, at 148 (Spain had colonized Puerto Rico but withdrew, ceding it to the United States in 1898 during the climax of the Spanish-American war. Eventually, U.S. domination of the farming industry lead to a shift in Puerto Rican assets being shifted to American interests in the form of large industrial monopolies. By 1930, American capitalists monopolized “60 percent of sugar production, 80 percent of the tobacco industry, 60 percent of all public services and banks, and 100 percent of the maritime lines.” Id. Additionally, the 500 small and medium-sized (i.e., Puerto Rican-owned farms) that existed in 1910 had consolidated into 46 large corporations, owned and managed by non-Puerto Ricans. Id.)


212. LUI ET AL., supra note 37, at 140.
Aztecs. During the 1600s and 1700s, Spain continued to colonize the southwestern and southeastern portion of America, and a number of Caribbean Islands. Large numbers of Mexican landowners (i.e., sheep and cattle herders) owned land in the southern portion of the United States. In 1821, Mexico won its independence from Spain; the wealth divide is explained by what happens next.

In 1824, the Monroe Doctrine was scripted. It supposedly provided a roadmap for the independence of the emerging republic of Mexico and several Central and South American republics. The doctrine pledged United States protection from European incursions for emerging Latino republics. At the time, Mexico and the United States were about the same size. As the U.S. desire for expansion grew (and more European immigrants migrated west), more and more portions of Mexico were taken and annexed to the United States. In 1837, European settlers in Texas who outnumbered Mexicans fought the Mexican government and established Texas as an independent territory. Citizenship rights were granted to all within the borders of Texas except for Native American and enslaved Africans. Mexicans who were not Native American or African were permitted to keep their land. Texas was annexed in 1845, described as part of eastern colonizers view that it was their "manifest destiny" to take over North America. Eventually, the hunger for all of North America led to the war between the United States and Mexico in 1846 that culminated in the 1848 Treaty of Guadalupe Hidalgo. Mexico ceded Upper California, Texas and New Mexico, including modern-day Arizona, giving up half of its landmass to the United States. Under the treaty, America agreed that Mexican landowners would be permitted to keep their land holdings (i.e., wealth assets). When the United States Congress ratified the treaty, the provision (i.e., Article X) protecting Mexican landowners was removed. Yet, Congress gave assurances that Mex-
can titles would be honored and land holdings protected. The omission of the provision protecting the land holdings of Mexican Americans forced Mexican Americans into United States courts to defend their land holdings. Language and cultural barriers abounded. Many Mexican Americans did not speak English and were unfamiliar with American laws. In addition, attorneys hired to defend these landowners often charged exorbitant fees, and Mexicans lost their land because of the fees. Within a generation of the Treaty, Mexican Americans were transformed from landowners to a dispossessed and poverty-stricken minority.

5. Asian Americans (including Pacific Islanders)

The last group, Asian Americans, like Latinos are a varied group yet all entered the United States as voluntary (or near-voluntary) immigrants, much like Europeans, usually fleeing economic distress, lack of opportunity and/or war in their home countries. Beyond the shared status of voluntary immigrants with Europeans, the Asian experience too is a story of wealth exclusion and suppression. The Naturalization Act of 1790 limited eligibility for citizenship in the New America to whites only. Court battles were fought over the years to decide a group's status as white. The lack of citizenship (and the passing of other anti-Asian laws) was a major tool in the suppression of wealth building for Asian Americans in their new country. For example, one of the earliest examples was the Foreign Miners Tax law implemented in California. It required Chinese gold miners to pay taxes but not European gold miners. In addition, the claims of Chinese miners were not enforced and thefts from their

222. LUI ET AL., supra note 37, at 143; see also INSIGHT, supra note 152, at 8.
223. LUI ET AL., supra note 37, at 143-44; see also INSIGHT, supra note 152, at 8.
224. INSIGHT, supra note 152, at 8 ("From landowners, they became a class of permanent subsistence workers."); see also LUI ET AL., supra note 37, at 142 ("The treaty ultimately resulted in a massive transfer of land from Mexican Americans to Anglo Americans.").
225. LUI ET AL., supra note 37, at 177-78; see also INSIGHT, supra note 152, at 9.
226. Id. at 178 (Native Americans are not immigrants. They occupied the land before Europeans arrived. Latino Americans, particularly, Mexican Americans, lived on foreign land in their native country that was appropriated by the United States through conquest. African Americans were brought to America as property, being wholly dispossessed of all wealth previously owned.).
227. INSIGHT, supra note 152, at 9; see also LUI ET AL., supra note 37, at 179 (In modern times, Asians first arrived in America in the 1840s.).
228. Id. (Armenians sued to be white and won. Chinese and Japanese sued and lost. South Asians, at first classified as white (i.e., Caucasoid), then later declassified.).
229. INSIGHT, supra note 152, at 9.
mines were a regular occurrence. Taxes collected from Chinese miners accounted for one-fourth of the annual state budget of California in the 1860s. Yet, California state jobs and services underwritten with tax dollars were transferred exclusively to whites. The same was true of Chinese workers working on the railroads in California. These workers could not take advantage of state-sponsored resources because they lacked citizenship. In essence, Chinese workers paid into the system but were excluded from taking anything out. Their wealth was transferred to the benefit of white Americans. The status of being white entitled white Americans, through no effort of their own, to benefit from some of the earliest government-sponsored entitlement/welfare programs.

The 1924 Alien Land Act targeted Japanese Americans, denying them citizenship and the right to own land and form corporations. Like a few other groups, the Japanese retreated into ethnic enclaves to build wealth independent of white America and carved out jobs that whites would not perform, such as laundry work. They were largely successful until World War II when things changed. World War II and the internment of Japanese Americans changed the wealth profile of this immigrant community. Interred Japanese Americans had one week to dispose of all of their wealth (i.e., assets). Most sold their homes and business assets to whites at substantially reduced prices. This too was an enormous wealth transfer from a community of color to whites under the guise of the law.

Native Hawaiians, unlike immigrating Asians, more closely parallel the experience of Native Americans. Native Hawaiians occupied the land that would be later confiscated by Europeans. American agricultural industrialists overthrew the last Hawaiian native leader in 1893. Hawaiians were dispossessed of most of the land, and any remaining land was placed in trust. The trust today is controlled by a group of trustees, and the state of Hawaii and courts, provides oversight. With all of the visual prosperity associated with Hawaii, Native Hawaiians are the most income and asset-poor of all people living in Hawaii.

230. Id.
231. Id.
232. Id. (arguably "one of the first tax-based racial transfers of wealth").
233. Id.
234. See supra notes 67-70 and the accompanying text (discussing wealth difference among sub-groups of Asians based on country of origin).
235. Id.
236. Id.
237. Id.
C. Wealth and its Advantages

A low-riding Honda with tinted windows, clothes sporting FUBU and Phat Farm, and a little bling bling are all signs of wealth. Well, at least, that's what the people in my urban neighborhood seem to tell me.238

1. Defining Wealth

Wealth typically is a measure of net worth—cash and owned assets over debts owed. Wealth can be quantified in terms of dollars and cents. Yet, it has financial, political and cultural meanings as reflected in the quote that begins this section. Wealth is synonymous with private ownership and the capability to wield the power that accompanies private ownership. Wealth defines in crucial ways an individual or family's access to life's chances.239 As the above quote suggests, one's definition of wealth generally reflects what one owns and/or has the capacity to own. It reveals "a particular network of social relations and a [subset] of social circumstances that convey a unique . . . meaning pertinent to race in America."240 FUBU and Phat Farm have cultural currency in the African American community. Those who embrace the above definition inhabit a particular social space in urban America—a space that is densely populated by people of color, largely African American and Latino, who live between the middle to lower rungs of the economic ladder in this society. The above definition of wealth is probably not shared by the upwardly mobile middle class and upper-middle class wealth holders, regardless of race, but particularly, not white Americans. More definitions of wealth-producing assets include home equity, stocks and bonds, retirement benefits, general real estate holdings, business income, insurance policies and savings. Additionally, for those who receive it, wealth includes intergenerational transfers by gift either during a lifetime, or


239. HANSBERRY, supra note 46, at 44 (Mama Lena talking with her daughter-in-law, Ruth discusses various opportunities the insurance proceeds [(i.e., the wealth)] opens up for her family. "I ain't rightly decided. . . . Some of it got to be put away for Beneatha and her schoolin' — and ain't nothing going to touch that part of it. Nothing. . . . Been thinking that we maybe could meet the notes on a little old two-story somewhere, with a yard where Travis could play in the summertime, if we use part of the insurance for a down payment and everybody kind of pitch in. I could maybe take on a little day work again, few days a week." ).

240. OLIVER AND SHAPIRO, supra note 16, a t 3.
at death. Wealth ultimately is a measurement of the security and well-being of an individual, family, community, nation and/or race.

Defining the contours of wealth in communities of color in order to better understand how wealth is accumulated requires consideration of broader notions of community well-being and individual responsibility and accountability to the collective. African American communities are made viable through kinship circles that extend beyond the traditional nuclear family. Grandparents, aunts and uncles, cousins, nieces and nephews typically depend on each other for food, housing, monies, jobs and other resources.\(^{241}\) The kinship group provides the economic safety net that private wealth provides for white families.\(^{242}\) African Americans are more likely to share earnings with, or spend earnings on behalf of, an extended family member than white Americans.\(^{243}\) Some scholars have suggested that this tendency contributes to the savings rate gap, and in turn, the wealth gap.\(^{244}\)

This co-dependence takes many forms, including pooling of assets in informal groups.\(^{245}\) These pools act as savings and wealth accumulation vehicles.\(^{246}\) This practice of pooling resources occurs in many people of color communities, and is often overlooked in formal studies of wealth practices in these communities. For example, immigrants from Mexico, Korea, and China each have documented cultural practices of pooling funds in groups.\(^{247}\) In these circumstances, individuals make weekly contributions to a general fund and those funds

\(^{241}\) Id.
\(^{242}\) Id.
\(^{243}\) See Hamilton & Darity, supra note 41 ("Economists ... found that, after accounting for household income, blacks historically have had a slightly higher savings rate than whites. ... This indicates even greater black frugality because many higher-income blacks offer more support to lower-income relatives than do whites, further reducing their resources to save.").
\(^{244}\) Id. (referencing other scholars who share their point of view).
\(^{245}\) See, e.g., Gilda Haas, Creating Cultural Windows to Banking Opportunities, 11 Community Investments (December 1999), http://www.frbsf.org/publications/community/investments/cra99-3/page2.html (discussing the savings practices of immigrant groups from Asia (e.g., Korea and Cambodia) and the Americas (e.g., Salvadoran and Mexican), and how banks can adapt their practices to these cultural savings practices).
\(^{246}\) See, e.g., ALEX COUNTS, SMALL LOANS, BIG DREAMS – HOW NOBEL PRIZE WINNER MUHAMMAD YUNUS AND MICROFINANCE ARE CHANGING THE WORLD at 18-20 (2008) (providing examples of how Yunus' Bangladesh model has been adapted around the world, including on Chicago, Illinois' South Side. The Women's Self-Employment Project ("WSEP"), a nonprofit, was created by a bank executive from South Shore Bank, a small South Side bank. WSEP was started to meet the requests of women for loans to start small businesses. WSEP established the Full Circle Fund ("FCF"). The FCF was based on the Bangladesh model, with a few changes to suit black and Latino women in urban Chicago.).
\(^{247}\) Id. (for example, the Mexican practice is called tanda and the South Korean practice is called kye.).
are distributed to members of the pool/circle on a frequent basis pursuant to the rules set by the group. These monies are often used for down payments on homes, job training and education, and start-up business costs, much the way intra-family wealth is used by white Americans.248

2. Other Definitions of Wealth

For many, wealth has a variety of non-economic meanings and measures. These meanings and measures indicate social well-being. It affords the holder of wealth the power to create a "good life." While the meaning of a good life may vary, there are some widely held and shared notions of what makes for a good life. Components of a good life include economic mobility and security. It includes advantages in the development of human capital (i.e., an education), development of business opportunities (i.e., starting a business and accessing start-up capital), acquiring a home (i.e., making down payments, borrowing against home equity), better health (i.e., access to top-quality health care – physicians, specialists, tests and the ability to finance expensive medical procedures), community location (i.e., ability to live in high amenity neighborhoods), capacity to travel (i.e., access to the world), political influence (i.e., access to candidates through campaign finance) and security (i.e., the capacity to withstand economic crisis and job termination). These advantages help to define or build the "good life."

Additional advantages of wealth include the ability to pass on the "good life" to one's children in the form of bequests, lifetime gifts, education, homes and social status. In the experience of many, wealth's greatest significance is the capacity to pass on the "good life." The opportunity to change the playing field for future generations is highly motivating. Each generation hopes that the next generation will do a little better than the prior one. Families work and sacrifice in one generation so that the next generation can live a better quality of life. In some African American communities, and perhaps others, wealth means numerous and healthy children and grandchildren. For others, wealth is marked by owning many things, like televisions, cars, jewelry and clothing. For still others, wealth is measured by cash, stocks and bonds, and business net worth. In some Native American communities, wealth is reflected by what one was gives away to others and is captured by the traditional Native American saying that, "[i]t is

248. See generally J. Neimbhard, Cooperatives and Wealth Accumulation: Preliminary Analysis, 92 Am. Econ. Rev. 325 (This article discusses the use of cooperatives in communities of color to accumulate wealth.).
more blessed to give than to receive." One scholar suggests, "[w]ealth is [simply] defined by what a person, culture or society values," which the author tends to agree with.

3. Personal Wealth Narrative

In the African American experience, education is highly valued. Education is (and was) seen as a surefire way up and out of working class communities. The author's maternal grandfather, Arthur E. Dunlap, had less than a high school education and was born in the late 1800s in the South. He was born in Little Rock, Arkansas. He married and had thirteen children by the mid 1930s. Ten of his children reached adulthood. He promised each of them a paid college education to all who wanted one. At least, five of his children earned bachelor degrees by 1955. The author's maternal grandmother, Ruth J. Dunlap, earned her high school equivalency as an adult, late in life. Both grandparents intrinsically understood what collectively most African Americans seem to get having experienced life at the bottom of an unjust society— that education is an essential stepping-stone of social mobility. African Americans seem to understand that the surest way to gain access to wealth and upward mobility is to get an education. The author's mother could be heard to say, "[a]n education is the one thing that people can't take-away once you receive it."

The author's grandfather was a self-employed home repair businessman—one of the key activities of wealth creation, i.e., running a business. He advantaged himself and his family first by moving from Little Rock, Arkansas to St. Louis, Missouri in the early 1900s, and then by moving from the inner city of St. Louis to the county (i.e., the "suburbs") in the late 1950s or early 1960s. He lived the Raisin in the Sun story. He purchased a home large enough to house him and his wife and the families of three of his adult daughters. The block where he purchased was a single block of mostly African American homeowners surrounded by white families. The school district was a solid school district and overwhelmingly white. His grandchildren were among the handfuls of black children attending the neighborhood schools through high school. Within twenty years, the neighborhood began to shift, large numbers of white Americans moved out, and large numbers of African Americans moved in. Real estate values declined and so did his wealth.

250. Id.
Nevertheless, his foresight redounds to the benefit of his great grandchildren and great, great grandchildren today. Many possess bachelor degrees and several possess graduate and professional degrees. The youngest generation is excelling in elementary, secondary school, attending elite universities, and colleges around the country. Those grandchildren with degrees tend to earn higher incomes than the others do. A number of his grandchildren are the working poor. Irrespective of education or occupation, all of his grandchildren to varying degrees suffer from the crisis of the wealth divide. The author’s grandfather left a home situated on one-half acre of land that contained four separate multiple bedroom living units; nevertheless, the home was lost to taxes following the death of his wife, nearly twenty-five years after his death. His then-living adult children never benefitted from an intergenerational transfer of wealth in the form of home equity because of infighting.

Finally, a last advantage of wealth for purposes of this discussion includes the fact that wealth permits and promotes civic engagement, giving holders of wealth freedom to innovate and take risks. The wealthiest Americans contribute the largest amounts of absolute dollars in money and property to nonprofits and volunteer at a slightly higher rate. For example, the wealthiest 1% contributes 13% of the monies donated to nonprofits in 2007. Wealth provides the security needed to freely make charitable contributions of time and resources. A vibrant civil society depends on engaged citizens and diverse voices. The wealth divide silences voices and skews reality. Wealth as the author is using it is not the same as wealthy or rich. Wealth exists in gradations. Many wealthy individuals live reasonably well but not opulently. They go to work in the morning and come home in the evening. This wealth discussion is more is about the advantages, beyond the advantages to the wealthiest in society. Many middle-class and upper middle-class families possess significant wealth (though not wealthy) and enjoy the good life.251

251. See Economic Recession, supra note 20, at 2 (stating that, “Before the start of the recession, there was a six-fold difference between the median value of net worth for [w]hite, non-Hispanic families ($171,200) with holdings compared to families of racial and ethnic minorities ($28,300) with holdings.”); see also Drained, supra note 17, at vi (stating that, in 2009, “The median value of the financial assets held by white families with assets was $39,500, while families of color with assets held only $5,500.”).
IV. An Approach and Framework for Achieving Justice Now

A. The Sankofa Model of Transitional Justice

Justice, therefore – and especially justice across boundaries (gender, race, nations, cultures, religious traditions) – is a reflection of the kind of reciprocal acknowledgment of the humanness of the other whenever and wherever you go up to them.\(^{252}\)

1. What is a Just Solution?

What is a just resolution to closing the multiracial wealth divide? Is the wealth divide a consequence of laziness and ineptitude on the one hand, and rewarding meritorious behavior on the other, or, is it the result of a larger, more systematic program of shifting the wealth of the many peoples of this nation into the hands of white America? The previous sections of this Article address each of these questions shedding light on the lived experience of large numbers of Americans of color who live at the bottom of the wealth divide. Western traditional conceptions of justice, i.e., rights-oriented justice,\(^ {253}\) are insufficient to bring justice to the hoards of African Americans, Latino Americans, Native Americans and Asian Americans who are burdened by the wealth divide. A just solution must empower, give voice to, and acknowledge without qualifiers the harm caused and havoc reeked upon a people by state-sanctioned practices favoring the white majority in a supposedly equality-based, civil democratic society. For those now living who are privileged by the wealth divide and who also attribute that privilege to the actions of long ago dead relatives relieving themselves of responsibility for the problem, a broader conception of justice is needed to convey the gravity of modern times, and how those living today are responsible (and indeed have an obligation) to actively participate in the resolution of the multiracial wealth divide, expeditiously and justly.

The perception of what is justice depends on the lens of justice through which one peers. The nature and magnitude of the multiracial wealth gap and the entrenched historic practice of racial difference embedded in government policies in this society requires an approach to justice that will, not only resolve the problem, but also heal the nation,

\(^{252}\) RICHARD BELL, RETHINKING JUSTICE: RESTORING OUR HUMANITY 81 (2005).

\(^{253}\) Rights -oriented justice focuses on punishing the offender where the offender can be identified, and where appropriate, through a second civil process affording relief to the victim. Also, at its core, only persons who caused the harm should be made to compensate for the harm.
realigning the ethos of white privilege and social deprivation experienced by Americans of color. Awarding the “victims” of wealth deprivation their “due” while those who benefitted from the systematic ritual of structural racism disassociate themselves from the wrong occasioned to Americans of color will not suffice in righting the wrong. Such righting of the wrong would leave lingering racial animosity, hurt, and resentment.

2. Goals of the Sankofa Model of Transitional Justice

Various theories of justice can guide us in designing social institutions, reforming them and living within them. This Article advocates for transitional justice as the anchor theory for guiding the design of a framework for dismantling racial inequality and the conditions of wealth deprivation it fosters. Core principles of the transitional justice model include: 1) safeguarding the autonomy of others, 2) engaging in a deliberative process, 3) respecting each other’s human dignity in a participatory process, and 4) seeing the solution to the harm caused as a whole community responsibility. Transitional Justice Models have the goal of helping a successor regime transition from the predecessor regime that committed the abuses to a new regime that is committed to the rule of law, democracy in fact, and the protection of human rights. The primary task of a national public policy to eradicate the wealth divide is to do away with the deprivations that prevent people from freely living a life that he or she has reason to value. This freedom is substantive and inescapably focused on the agency and judgment of the individual. This is not an issue of charity. By addressing the wealth divide from the perspective of a capability failure problem, individuals are given the resources to support their capability to participate freely in the decisions of his or her community, and to have a sense of responsibility for the community to which he or she belongs. This brings about deliberative democracy.

The eradication of the wealth divide is a two-fold process: the process of (1) enhancing individual freedoms and (2) making the social commitment to bring this about. Social commitment is equivalent to the idea of social justice. The commitment to eradicate the wealth divide, enabling individuals to identify freely those things that are of value to them and to possess the capability to get those things, includes a sense of accountability and responsibility on the part of all and not

255. Id.
256. Id. at 86.
just those who live the state of deprivation. As people who live, in a broad sense, together, each of us cannot escape the idea that the problems caused by the wealth divide are quintessentially all of our problems. White Americans today too are responsible for these problems (and not just their ancestors). People living today cannot shirk the task of judging how things are, how they got this way, and what needs to be done to reverse course. As reflective beings, people possess the ability to contemplate the lives of others. This ability helps in judging how things are and determining what needs to be done.

There is no cultural or other context to justify the multiracial wealth divide. To suggest that there can be no justice and no peace because the chief architects of the present day plane of injustice are no longer living and that the living are incidentally, involuntary beneficiaries of these divisive policies and practices put in motion decades, and perhaps, even centuries before, is to provide a relativized account of justice. This account nearly always relegates calls for justice to an imbalanced account of how justice for one (the victims of the multiracial wealth divide) is an injustice to the other ("innocent" white Americans who are privileged by the wealth divide). Some might argue that to eradicate the wealth divide for multiracial groups in America would be to perpetuate a modern-day injustice on white America, i.e., a group that in theory has no responsibility for creating the wealth divide, and consequently, has no responsibility for eradicating it.

3. Transitions

Justice in the context of eradicating the wealth divide requires all to think differently. We must think about obligations rather than rights. Obligations-oriented justice\(^\text{257}\) is preferred over rights-oriented justice. We must begin by asking, "what ought I (or we) do?", rather than with the opposite question "what I (or we) ought to get?" The shift forces us to face truths forthrightly, posing a question that can only be addressed from the perspective of the victim. Transitional models force us to come to terms with the past as we act upon the future. In contrast, by putting rights first, those claiming the rights from institutions will be less-certain about where to lodge their complaints. No one today takes responsibility for the wealth transfer programs of the late

257. Obligations oriented justice shifts the paradigm. The wrong or abuse perpetrated against the victim creates obligations. These obligations fall upon the perpetrator, victims, witnesses, and society, to create a public record of the truth of the wrong, and to obligate oneself to transitioning from the pre-transition state of abuse to a post-transition state of right based on democratic principles, human rights and rules of law that are consistent with democracy.
1800s and early 20th Century. The perspective of obligations is more connected with taking actions. From a critical race theory perspective, the embracement of a transitional theory of justice is the author’s attempt to develop a jurisprudence that accounts for the role of racism in American law and government policies that helped to create the racial wealth divide. It is further hoped that transitional justice works to eliminate the racial wealth divide and to eliminate all forms of racial subordination occasioned by the wealth divide going forward.

At the core of Sankofa Model of Transitional Justice is listening to the lived experiences and histories of those oppressed by government programs that transferred assets to white Americans and spurred the great wealth divide we see today. It brings together victims, perpetrators and the community at large (i.e., bystanders). Victims are active participants in defining the harm done to them, and coming face to face with the perpetrator, in this case, the government. All are brought into dialogue with each another “to discuss how they have been affected by the harm and [to] come to some agreement as to what . . . [should] be done to right any wrongs suffered.”

This process is designed to be restorative, requiring participants in the process to engage in reciprocity. Reciprocity is democratic in practice. A reciprocal perspective cannot be reasonably rejected by any person committed to democracy because it requires only that each person seek terms of cooperation that respect all as free and equal citizens.” From a critical race theory perspective, the author’s embracement of a transitional theory of justice is her attempt to develop a jurisprudence that accounts for the role of racism in American legal and governmental policies that helped create the racial wealth divide and that works to eliminate the divide and all forms of subordination occasioned by it. One aim of transitional justice is to promote greater equity between perpetrators and victims. This aim allows victims to determine what forms of restoration are most important to them. It encourages a participatory process that emphasizes the need to respect each other’s humanity and dignity. A second aim is to avoid dominating victims by third party decisions and to empower victims to express their own grievances and claims. Transitional justice depends on a deliberative process. This perspective poses the question of whose justice is relevant here—the government?, victims?, bystanders? The process of transitional justice permits reasonable and deliberative con-

258. Id. at 102.
259. Id.
consideration of these questions. This process better enables moral outcomes in disputes.

A third aim is to nurture "taking responsibility for righting the wrong," especially by offenders (i.e., that is why closing the racial wealth divide is a public policy imperative). By infusing political action at all levels of the government — executive, judicial and legislative with righting the wrong, the most responsible party, i.e., the government, is stepping up to take responsibility for the wrong it occasioned to a subset of its citizens. A wrongdoer taking responsibility is a morally superior outcome than when the wrongdoer is made to take responsibility by a third party imposed sanction. Perpetrators taking active responsibility for righting the wrong is transforming for the perpetrator, while forgiving is transformative for the victim. Both are a way of reconciling justice to be able to live with the past but not be beholden to it.260

B. Application and Possible Solutions

The legal system can force open doors, and sometimes even knock down walls, but it cannot build bridges. That job belongs to you and me. The country can't do it. Afro and white, rich and poor, educated and illiterate, our fates are bound together. We can run from each other, but we can't escape each other. We will only attain freedom if we learn to appreciate what is different, and muster the courage to discover what is fundamentally the same. America's diversity offers so much richness and opportunity. Take a chance, won't you? Knock down the fences, which divide.261

1. In General

If the U.S. were to follow suit by establishing an officially sanctioned process for acknowledging our racialized history, it could help build deep understanding across communities and reveal new trans-

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260. See Terry Keleher, Jump Starting Racial Justice, YES! MAGAZINE (June 4, 2009), http://www.commondreams.org/print/42949 (PDF file) ("South Africa's Truth and Reconciliation Commission provided a forum for constructive and candid conversation about historic racial inequalities. ... The public airing of the ongoing harm caused by abuses of justice and human rights transformed the country. ... South African [sic] emphasized a restorative, rather than a retributive system of justice, where individual offenders and society as a whole were obligated to officially acknowledge and take responsibility for the harms done to victims and communities." Id. (emphasis added)).

formative possibilities. Solutions must be interdisciplinary and multifaceted. The perniciousness and pervasiveness of racial inequality as reflected in the wealth divide is deeply rooted and structural. The imperative to confront and remedy this gross inequality with a commitment to dismantling America's legacy of racial discrimination, alienation and isolation is a matter of public policy. It is public because the government played such a large role in setting up the wealth divides that it must also play a large role in dismantling it. It is policy because a course of action based upon a set of agreed goals, objectives and principles is needed to guide efforts to forever dismantle the racial wealth divide. Justice now is required. Delayed justice (or no justice) is not acceptable. On a daily basis, Americans of color face hopelessness and powerlessness brought on by the harm that attends the wealth divide.

The solutions put forth in this Article meet three criteria, all of which facilitate the administration of transitional justice. First, the proposed solutions raise the consciousness of all in society - the haves and the have-nots. Second, the proposed solutions include legislators acting on behalf of the public, establishing policy, accepting full responsibility for, and taking action to involve the government in the resolution of this profundity. Wealth deprivation is one of the lingering vestiges of centuries’ old policies and practices fanning the flames of racial inequality while peddling American democracy and human rights superiority abroad. Americans of color have a human right to live freely and reasonably within this society, expecting that their race/color will not be an impediment. Additionally, people of color have a right to expect that racial impediments will not be fostered or reinforced by their very own government as they attempt to fully participate in and realize the American Dream. Third, the proposed solutions encompass broad areas of government action, i.e., tax laws, banking regulations, housing, education, health care, and other programmatic areas under the purview of the federal government. Further, the government actively must enforce the changes to achieve racial equality in terms of people’s capability to amass wealth.

2. Establish the Closing the Wealth Divide Truth Commission

This Article proposes establishing a “truth commission” to oversee and facilitate governmental efforts to dismantle the multiracial wealth divide and the administration of the transitional justice framework. This Article is also proposing the use of racial equity plans to

262 Keleher, supra note 260.
monitor progress and to prevent future discrimination. The “Closing the Wealth Gap Truth Commission” would programmatically address all three criteria while redressing the havoc reeked upon societal members by the wealth divide. Government agencies would be required to use racial equality impact assessments plans to monitor and prevent inflicting new racial harms.\textsuperscript{263}

The overall framework would include small town hall-type meetings across the country facilitated by a trained workforce. The goal is to set up a process that meets the following objectives:

1. To focus on the harms (i.e., the structural and institutional racial injustices) rather than on the rules that have been broken;
2. To show equal concern and commitment to victims, witnesses and bystanders participating in the process of transitioning justice;
3. To work toward the restoration of victims, empowering them and responding to their needs as they see them;
4. To enforce the rule of law, encouraging government rule enforcers to understand, accept and carry out their obligations;
5. To provide opportunities for dialogue, direct or indirect, between victims, witnesses and perpetrators as appropriate;
6. To involve and empower the affected community through the justice process, and increase its capacity to recognize and respond to racial harms;
7. To encourage collaboration and reintegration, rather than coercion and isolation, making it right for all going-forward
8. To give attention to the unintended consequences of our actions and programs, and
9. To show respect to all parties, including victims, witnesses, and perpetrators.

Using this framework, town hall meetings will be held in urban and rural communities across the nation. People may testify at the meetings, in writing or orally. Records must be kept of the proceedings. Victims, perpetrators (government actors charged with a particular responsibility), and bystanders will be permitted to testify about how the wealth divide affects them. Once the town halls are completed, a small committee of experts, scholars, government officials and citizens will be asked to cull the record for themes, plausible remedial ideas, and make a plan for going forward. The types of remedies targeted by the Truth Commission are primarily group, and not individual. The harms inflicted have been targeted at the group and occasioned because of one’s membership in the group. As a result, the proposed remedies are offered at the level of the group. Proposed

\textsuperscript{263} See supra Part IV.B. (discussing racial equality impact statements).
group remedies might include establishing life accounts for targeted populations at birth, overhauling the banking system to prevent predatory practices in lending, account management, and access, establishing job creation strategies for targeted populations, and enforcing existing anti-discrimination laws to their fullest.

Collecting and disseminating information will be an important function of the Truth Commission. Raising the consciousness of Americans requires capturing detailed information about wealth, objectively communicating facts about wealth, and correcting misconceptions about how wealth is created, maintained and transferred. This phase of the process must communicate to the public the idea that a solution for those negatively affected by the wealth divide is a solution for the overall prosperity of the nation (i.e., a shared prosperity). This double benefit raises overall quality of life for all, not just the affected large numbers of Americans of color. Public service announcements, pamphlets and online dissemination of information about the privilege of wealth and deprivation facts can go a long way in bridging the ignorance gap that exists in society about how wealth is created, maintained and transferred. The information communicated must inform about the advantages and disadvantages of wealth, and the fact that many white Americans are beneficiaries of a legacy of unchallenged discrimination as a major contributor to their relative wealth positions vis-a-vis others in society. Wealth data was not actively collected until the 1980s. Longitudinal wealth data is still marginally collected. The collection of more refined wealth data is needed in order to perform more sophisticated wealth analysis.

Government legislators who are elected by the people must act on behalf of the people. First, legislators must acknowledge that there is an extreme wealth divide in this country, and that the wealth divide was created mostly by structural impediments in the law. This step

264. See Harris, supra note 9, at 1707 (providing an extensive discussion of the concept of “whiteness as property” and how such concept privileges white Americans and how whiteness is a status protected by American law); see also discussion supra Part III.B. (discussing how the law was used to protect and advance white wealth transfer to whites by various racial groups over time that advantaged whites in terms of wealth amassing); see also Mike Lillis, Congress Nibbles on Edges of Wealth Gap - Congress Considers Reforms to Narrow Widening Divide Between Whites and Blacks, The Washington Independent(April 13, 2009), http://washingtonindependent.com/38331/congress-nibbles-on-edges-of-wealth-gap (“That the wealth disparity is so wide is largely attributable to prejudiced policies both public and private. Advocates and academics point out that some of the largest federal benefit programs of the last century propped up whites but largely excluded [people of color].”).

265. Lillis, supra note 221 (discussing the fact that some legislators were surprised by the extreme racial wealth divide statistics (i.e., that the wealth divide between black and
involves acknowledging that the wealth divide exists and is an inequality that has been longstanding in this society. Laws that created impediments were enacted by earlier Congresses and signed into law by past presidents. Knowing that some of these laws were expressly enacted with the intention of discriminating based on race while others were sources of discrimination only as applied, legislators will need to implement the Truth Commission. The Truth Commission is an approach to redressing the problem by gathering information from vast resources, understanding the problem from multiple perspectives, and proposing and taking action based on these understandings.

The time has come for a federally sponsored truth commission that addresses the historical and structural root causes of the multiracial wealth gap persisting and widening in America today. The Truth Commission must operate within a transitional justice framework, i.e., permitting the victim to define the harm, hearing from a cross-section of society that is impacted by the existence of the wealth gap—African American, Anglo American, Latino American, Asian American and Native American, and holding the government accountable and responsible for the harms and taking action to redress the harms. Victims will be given the opportunity to propose solutions to close the gap and cease the occasion of the harms. An addition to the process of the Truth Commission is a second process known as proactive racial impact planning and analysis. This process requires a systematic review of government action with the aim of anticipating and preventing adverse impacts for any racial group of new governmental policies. We are past the point of just talking about the existence of the wealth divide and the litany of problems it causes. Legislators must articulate a public policy, such as the Truth Commission’s, based on a transitional justice model and the racial impact analysis that gives voice to the victims of racial inequality, conveys the urgency of redressing the problem now, and provides a checks and balance process for confirming that laws impeding wealth are replaced with laws that foster wealth amassing and equality.

266. Keleher, supra note 217.
267. Id. (discussing Great Britain use of the Racial Equality Impact analysis in all policy-making processes at the government level).
3. Checks and Balances: Use of a Racial Impact Planning & Analysis Tool

The Sankofa Model of Transitional Justice depends on successfully transitioning from the predecessor regime to the successor regime. In the context of closing the wealth divide, the transition is from a state where even, in the wake of civil rights laws dismantling the racial inequalities of the past, structural racial inequalities persist. The public face of the law must be dealt with in order to eradicate race-based causes of inequalities. The transition is to a state where the public face of the law matches the societal commitment to enforcing the rule of law, protecting and promoting human rights, and securing democracy in fact for all, irrespective of race. A problem inherent in the predecessor regime was the racial bias and implicit discrimination that went unchecked and unchallenged. This Article advocates for the adoption of a tool introduced in the United Kingdom and used in the United States on a limited basis, the Racial Equality Impact Assessment Tool. The United Kingdom, in enacting the Race Relations Act of 1976 makes “racial discrimination unlawful in employment, training and related matters, in education, in the provision of goods, facilities and services and in the disposal and management of premises.” The act prohibits two kinds of racial discrimination – direct and indirect. The law was amended by the Race Relations (Amendment) Act 2000 extending the anti-discrimination provisions to police and other authorities. In addition, the amendment


271. Id. ("Section 1(1)(a) defines direct racial discrimination which arises where a person treats another person less favourably on racial grounds than he treats or would treat someone else. 'Racial Grounds' means any of the following: colour, race, nationality (Including citizenship) or ethnic or national origins. The nature and effect of the action are to be considered rather than the openly expressed intention of the discriminator.” (emphasis in the original)).

272. Id. ("[S]ection 1(1)(b) defines indirect discrimination. This consists of treatment which may be described as equal in a formal sense as between different racial groups but discriminatory in its effect on one particular racial group.” (emphasis in the original)).


274. Id.
imposed a statutory duty on public authorities to determine the racial impact of legislation.\textsuperscript{275} The racial equality impact assessment tool became the vehicle for satisfying this statutory duty. According to the law, an "Equality Impact Assessment (EIA) is a thorough and systematic analysis of a policy, whether that policy is written or unwritten, formal or informal, and irrespective of the scope of that policy."\textsuperscript{276} All policies and procedures are reviewed before being implemented. The review will vary based on the policy and the assessed concerns for affecting racial equality. The assessment process generally consists of six steps: (1) initial screening, (2) task defining, (3) information gathering, (4) making a judgment, (5) action planning, and (6) publication and review.\textsuperscript{277} It is beyond the scope of this Article to explain each of the steps. Needless to say, each step is designed to guard against the unintentional implementation of a rule or policy that has a disparate racial impact on a racial group. In the new era of a truly post-racial America, surfacing and acknowledging the truth of the racial inequality problem, ameliorating the present day effects of the problem, and preventing future discrimination, the government can use the racial equality impact assessment as a means to facilitate a system of checks and balances.

V. Conclusion

Harlem

What happens to a dream deferred?
Do not go gentle into that good night.
Rage, rage against the dying of the light.
What happens to a dream deferred?

Does it dry up
Like a raisin in the sun?
Or fester like a sore—
And then run?

Does it stink like rotten meat?
Or crust and sugar over
Like a syrupy sweet?

Maybe it just sags

\textsuperscript{275} Id. at §71; see also Explanatory Notes to Race Relations (Amendment) Act 2000 ch.34, at “http://www.opsi.gov.uk/acts/acts2000/en/ukpgaen_20000034_en_1 (last visited Jan. 10, 2010).

\textsuperscript{276} Explanatory Notes, supra note 232.

\textsuperscript{277} EqIA Six Step Process, at http://www.idea.gov.uk/idk/core/page.do?pageId=8017502 (prepared by local government group tasked with implementing the assessments) (last visited Jan. 10, 2010).
Like a heavy load.

Or does it explode?278

The multiracial wealth divide is the public policy imperative of the Twenty-first Century. Shrinking, and eventually, eliminating the divide must be a top government priority. Simply proclaiming that we live in a post-racial or color-blind society does not make it so. Our failure to address the festering sore of the racial wealth divide may mean, "It explodes." Racism must be rooted out, acknowledged and its effects redressed. The conscious consideration of race and racial equality are essential to preventing a repeat of the past. A modern racial justice movement built around dismantling and redressing the wealth divide is a good beginning to fostering a government commitment to and legal responsibility for eliminating structural barriers to racial equality, preventing racial discrimination, promoting racial equality and encouraging good race relations. Transforming America's legacy of racialized privilege into a legacy of inclusive democracy for all is important to America's future ability to compete in a world community. There are no dispensable citizens. The government has a responsibility to all Americans to create a level playing field so that all are similarly rewarded for personal effort. In order to make this vision a reality, all Americans and the government must surface and acknowledge the truth, take steps to ameliorate the present consequences of centuries' old racialized policies and privileges, and chart a course for racial equality and equity for the future.

This Article proposes a transitional justice framework for tackling these challenges. Transitional justice as represented in this Article requires acknowledging human conditions where people cry out about the injustices done to them, appreciating that justice is not about fairness per se but transcends fairness in search of equality of respect and a willingness of the privileged to face those crying out for justice, trying to understand the afflictions from the victims’ perspective. This kind of justice requires facing the victim, as the victim exists (and not seeing what one needs to see to live with one’s own privilege). This too requires that the privileged in society understand that privilege is not

278. See The Collected Works of Langston Hughes 74 (Arnold Rampersad ed. 2001) (The collection is a reprint of several previously published single works by Langston Hughes. Harlem is a part of A Montage To Harlem, first published in 1951, depicting everyday life in Harlem).
“part of . . . [any] essential nature, but an accident of fate,”\textsuperscript{279} and that privilege is not based on personal attributes, characteristics or behavioral choices. Transitional justice actively considers the moral dimensions of justice, affliction and redress. It seeks to acknowledge through deliberative a process the harms done, to promote dialogue regarding solutions, and to promote racial equality and equity for the good of everyone concerned.

Multiracial groups in America have been equally but differently victimized by structural and institutional barriers to equal participation in the American Dream. Yet all similarly experience a wealth divide that on average means Americans of color own sixteen cents for every $1 owned by white Americans. Closing the wealth divide is a whole society problem that must be lead by the government. Truth commissions, racial equality plans, changes to tax laws and other federal laws are essential components of any plan to dismantle the multiracial wealth divide. The divide is so cavernous that it will take bipartisan political will and commitment to move the government from a position of inertia to consciously ridding America of one of the last scourges of the last couple of centuries—the centuries’ old racialized policies that empowered white Americans while intentionally dis-empowering hoards of people of color. The time has come to consciously and aggressively address this problem though it started hundreds of years earlier with the first large-scale wealth transfer program, taking the labor of enslaved Africans for free to create one of the wealthiest and most powerful nation’s on the planet. Failing to redress the wealth imbalance in society is continually to victimize the victims of the wealth divide repeatedly. America cannot continue to ignore cries for redress and claim itself a just society. Violence of one kind or another will continue to permeate this civil society until human capabilities are equally developed in order for all to live reasonably within the society. Today’s policy of containing people of color in the inner city cores of America only works for so long. Eventually, the urban pestilence will spill over into privileged America, disquieting neighborhoods, schools, churches, daycares and places of employment. The American Dream should be accessible to all, and past transgressions must be addressed. What happens to a dream deferred? Does it dry up, like a raisin in sun? Or does it just explode? I submit that it is exploding.

\textsuperscript{279} BELL, RETHINKING, supra note 252, at 32 (quoting Simone Weil, a young Jewish European philosopher whose writings are central to Mr. Bell’s work. Ms. Weil died at the age of 34, having only written for about 15 years.).