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## How the American Taxation System Unduly Affects the Black Community

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## How the American Taxation System Unduly Affects the Black Community

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# HOW THE AMERICAN TAXATION SYSTEM UNDULY AFFECTS THE BLACK COMMUNITY

*Irina S. Ewing*<sup>1</sup>

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## INTRODUCTION

Since the birth of the United States of America, race has played a pivotal role, whether positive or negative, in the lives of every person within its borders.<sup>2</sup> This country is notorious for habitually reminding the Black race of their inferior position within society while upholding the superior position of the White race.<sup>3</sup> The separate and unequal world that Black people exist in, parallel to that of White people, has been recognized and understood to have disparate effects on the Black community. Race affects innumerable decisions that Black people make; it affects where they live, where they go to school, whom they marry, and where they decide to raise a family, just to name a few.<sup>4</sup> Adding gender to the equation further complicates the decisions Black people must make for their futures.<sup>5</sup> The ability of the Black community to provide financially for themselves and their families is determined by immutable traits like their skin color which directly correlate with their potential income, as well as how much they are required to pay in taxes.

This article provides evidence that the American taxation system disproportionately impacts the Black community due to long-term tax policy implications, racial disparities in income, and the overall accumulation of wealth. Part I of this article will provide a brief synopsis of the start of the American taxation system and the first instances of tax implementation. Part II of this article will discuss the income disparities among the Black and White races and the interplay with gender. Part III of this article will expound on the effect that income inequalities, tax policies, and tax breaks have on wealth accumulation between Black and White families.

## I. TAXATION OF ENSLAVED AFRICAN AMERICANS DURING SLAVERY

Slavery was the genesis of the taxation system in the United States.<sup>6</sup> Enslaved African Americans were imported into the country as property, not people, and they were taxed as such.<sup>7</sup> Many states not

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2. Dirk Philipsen, *Investment, Obsession, and Denial: The Ideology of Race in the American Mind*, 72 J. OF NEGRO EDUC. 193, 207 (2003).

3. *Id.*

4. DOROTHY A. BROWN, *THE WHITENESS OF WEALTH* (2021).

5. *Id.*

6. Christopher F. Petrella, *Wealth, Slavery, and the History of American Taxation*, AFR. AM. INTELL. HIST. SOC'Y (2017), <https://www.aaihs.org/wealth-slavery-and-the-history-of-american-taxation/>.

7. *Id.*

only taxed enslaved African Americans as property but also tended to tax the enslaved of nonresidents at higher rates than the enslaved of the state's native residents.<sup>8</sup> Implementing and enforcing taxes on the enslaved African Americans was a means by which states could generate more revenue for their economies.<sup>9</sup> In 1787, due to fiscal needs caused by the wars in Europe, a direct tax was enacted.<sup>10</sup> A fixed sum was imposed on each state, and each state would allocate its share among its citizens according to their ownership of land and enslaved people.<sup>11</sup> This tax's purpose was to generate millions of dollars which would be acquired in part by levying a tax of fifty cents per enslaved African American ranging from twelve to fifty years of age.<sup>12</sup> Amidst the War of 1812, Treasury Secretary First Name Gallatin proposed and enacted a similar tax to the 1787 tax.<sup>13</sup> This 1813 tax was levied on land, houses, and the enslaved at the rate each of them [was] worth in money and in the subsequent years was increased until the need for the revenue abated.<sup>14</sup>

## II. POST-SLAVERY TAXATION

In 1863, President Abraham Lincoln issued the Emancipation Proclamation, which declared all enslaved African Americans as free.<sup>15</sup> Two years later, the Thirteenth Amendment was passed and officially ended the institution of slavery.<sup>16</sup> These events signified that the federal government could no longer tax White owners of enslaved people, and, therefore, enslaved persons were no longer considered property. Thus, enslaved persons could no longer be used as a means of economically stimulating the economy. The year of 1913 represented the

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8. *Property Taxes on Slaves*, GALE LIBR. OF DAILY LIFE: SLAVERY IN AM. (Nov. 16, 2022), <https://www.encyclopedia.com/humanities/applied-and-social-sciences-magazines/property-taxes-slaves>.

9. See generally, Tax History Project, TAX NOTES (2022), <http://www.taxhistory.org/thp/readings.nsf/ArtWeb/4AF487C90CA14FB985256E000057B5EB?OpenDocument>.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. The Emancipation Proclamation, Nat'l Archives (2022), <https://www.archives.gov/milestone-documents/emancipation-proclamation>. ("President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, as the nation approached its third year of bloody civil war. The proclamation declared 'that all persons held as slaves' within the rebellious states 'are, and henceforward shall be free.'")

16. National Geographic Society, *The 13th Amendment to the United States Constitution*, NAT'L GEOGRAPHIC (May, 20, 2022), <https://education.nationalgeographic.org/resource/13th-amendment-united-states-constitution>.

fiftieth anniversary of the Emancipation Proclamation but was also a year of turmoil for Black people in America. Under the Wilson administration, there was government-wide segregation of workplaces, restrooms, and lunchrooms. Racial tensions heightened, with a known total of fifty-one lynchings in that year alone.<sup>17</sup>

The Ku Klux Klan became notorious for terrorizing the Black community through lynchings and other violent acts. During this time, the Revenue Act of 1913 was passed by Congress and signed into law by President Woodrow Wilson. The creation and implementation of the Revenue Act of 1913 was designed to tax the working-class White taxpayers less and other wealthy White taxpayers more.<sup>18</sup> Congress was homogenous; there were no Black members of Congress.<sup>19</sup> Black livelihood, Black issues, and Black people were of no concern to the sixty-second Congress. Despite positive strides in the increasing number of Black members of Congress today, the increasing wage gap, income disparities, tax policies, and biased tax breaks still negatively impact the Black community

#### A. *Income Disparities and the Wage Gap*

Historically, Black Americans face much more difficult circumstances than their White counterparts, resulting in Black Americans taking home less income than White Americans.<sup>20</sup> Finding job opportunities that afford Black Americans a wage that allows them to provide for themselves is challenging. Black workers are more likely than White workers to work at or below the minimum wage.<sup>21</sup> Black workers in the United States made up 18% of the minimum wage workers despite being 12.7% of the population in 2018.<sup>22</sup>

The Black community has always been more vulnerable in the labor market.<sup>23</sup> The labor market experience for BLACK PEOPLE has historically been worse than that for Whites.<sup>24</sup> There are a plethora of

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17. *African American Perspectives: Material Selected from the Rare Book Collection, 1901 to 1925*, LIB. CONG., <https://www.loc.gov/collections/african-american-perspectives-rare-books/articles-and-essays/timeline-of-african-american-history/1901-to-1925/> (last visited May 15, 2022).

18. BROWN, *supra* note 4.

19. *Id.*

20. DON BEYER, *THE ECONOMIC STATE OF BLACK AMERICA IN 2020* 1, 1 (2020).

21. *Id.*

22. *Id.*

23. Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, *CTR. AM. PROGRESS* (Dec. 5, 2019), <https://www.americanprogress.org/issues/economy/reports/2019/12/05/478150/african-americans-face-systematic-obstacles-getting-good-jobs/>.

24. *Id.*

factors that have contributed to this disparity. Violent oppression of Black communities, such as the race riots that destroyed Black business owners' wealth on Black Wall Street in Tulsa, Oklahoma, systemized segregation, legal racial terrorism during the Reconstruction period through the civil rights era, systematic exclusions of Black Americans from better-paying jobs, and continued occupational segregation, all underwrite the evident income disparity and the increasing wage gap.<sup>25</sup> Consequently, the presence of added onerous circumstances surrounding the labor market for Black Americans is further exposed when the income and wage gap discrepancies are examined not only by race but by gender. Many inequities still remain.

### B. *Income Inequalities Black Men Versus White Men*

Black men earn \$0.87 for every dollar earned by White men.<sup>26</sup> Black men are the lowest earning race, with Native American, Hispanic, Pacific Islander, and Asian men exceeding Black men's position.<sup>27</sup> When comparing the pay of Black and White men with the same experience and education, doing the same job in the same location, Black men earned \$0.98 compared to the \$1.00 earned by White men.<sup>28</sup> Despite this being better news, the two cents difference adds up and furthers the wealth gap between the races over the lifetime of a career.<sup>29</sup> The impact of these factual disparities are examined further below.

### C. *Income Inequalities Black Women Versus White Women*

Likewise, Black women are doubly disadvantaged when it comes to income. According to the United States Bureau of Labor Statistics, Black women are overrepresented in low-wage jobs and underrepresented in high-wage jobs.<sup>30</sup> Not only do Black women suffer a large gender and racial wage gap, but they also earn \$0.84 for every dollar earned by White women and \$0.68 for every dollar earned by

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25. Danyelle Solomon et al., *Systematic Inequality and Economic Opportunity*, CTR. AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472910/systematic-inequality-economic-opportunity/>.

26. Stephen Miller, *Black Workers Still Earn Less than their White Counterparts*, Soc'Y HUM. MGMT. (Jun. 11, 2020), <https://www.shrm.org/resourcesandtools/hr-topics/compensation/pages/racial-wage-gaps-persistence-poses-challenge.aspx>.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

White men.<sup>31</sup> Furthermore, Black women earn \$0.92 for every dollar earned by Black men. This gender-racial gap in earnings between Black women and White men translates to a lifetime earnings difference of over \$900,000 (assuming a forty-year career).<sup>32</sup> The share of Black women who would have to change occupations in order to eliminate occupational segregation between Black women and White men fell only three percentage points, from 59% to 56%.<sup>33</sup> In the United States, Black women earn, on average, \$41,098 per year compared to the \$65,208 annually that white non-Hispanic men earn.<sup>34</sup>

The intersection of race and gender bias has had a combined effect on Black women's labor market opportunities, often resulting in the devaluation of their work and confinement of their opportunities.<sup>35</sup> Black women often experience the harshest impacts. Impacts like that of worse labor market outcomes, higher unemployment rates, fewer benefits, and less job stability for Black women contribute, in part, to the growing racial wealth gap.<sup>36</sup> Black women are also more likely than White women to juggle caregiving responsibilities for family members, such as children and grandchildren.<sup>37</sup> Eighty-four percent of Black mothers are the breadwinners of their families.<sup>38</sup> The lack of access to jobs in general, and to well-compensated jobs specifically, further exacerbates the financial challenges of these responsibilities and further demonstrates the systematic obstacles Black women and Black families face as a result.<sup>39</sup>

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31. BEYER, *supra* note 20; Don Beyer, *The Economic State of Black America in 2020*, JOINT ECON. COMM. (2020), [https://www.jec.senate.gov/public/\\_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf](https://www.jec.senate.gov/public/_cache/files/ccf4dbe2-810a-44f8-b3e7-14f7e5143ba6/economic-state-of-black-america-2020.pdf).

32. *Id.*

33. *Id.*

34. *Black Women and the Wage Gap*, NAT'L P'SHIP WOMEN FAM. (2020).

35. Weller, *supra* note 23; Christian E. Weller, *African Americans Face Systematic Obstacles to Getting Good Jobs*, CTR. AM. PROGRESS (Dec. 5, 2019), <https://www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/>.

36. *Id.*

37. Renee R. Ellis & Tavia Simmons, *Coresident Grandparents and their Grandchildren*: 2012 (2014).

38. Weller, *supra* note 23; <https://www.americanprogress.org/article/african-americans-face-systematic-obstacles-getting-good-jobs/>.

39. *Id.*



*D. The Importance of Wealth Accumulation*

For every dollar owned by a typical White household, the typical Black household earned only \$0.59.<sup>40</sup> Per the United States Census Bureau in 2018, the median annual household income for Black households was around \$42,000 less than all households and approximately \$29,000 less than White households.<sup>41</sup> The latter had an annual median income of \$70,642.<sup>42</sup> The increase in wage inequality overlaps with the racial disparities in wage growth. The lack of wage and salary growth for the Black community has left the Black community to make up a vast majority of the bottom of the income distribution.<sup>43</sup> This results in the Black community continuously fighting to achieve financial equality from a more subservient position than any other community in America.

Tax policies have preserved the racial inequality that has long plagued and defined America. Title 26 of the United States Tax Code, also known as the Internal Revenue Code, enacted by Congress, are the federal statutory tax laws that apply to residents of the United States. The Code directs the collection of taxes, the enforcement of tax rules, and the issuance of tax refunds.<sup>44</sup> On the surface, the United States Tax Code appears to be race-neutral, but access to income and wealth is not so accessible. In an article written by Dorothy Brown, a tax law professor at Emory University, Brown stated that changes to the tax code “benefit white taxpayers, while putting Black taxpayers at a further disadvantage” despite Black and White Americans having made similar life choices.<sup>45</sup>

Intergenerational wealth transfers are a determining factor in the distribution of wealth in the United States and the racial wealth gap.<sup>46</sup> Racial inequities in wealth accumulation and income persist throughout lifetimes and result in disparities in retirement readiness among Black Americans.<sup>47</sup> For Black men and women alike, ranging

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40. BEYER, *supra* note 20; *The Economic State of Black America in 2020*, *supra* note 31.

41. *Id.*

42. *Id.*

43. *Id.*

44. Julia Kagan, *Tax Code*, INVESTOPEdia (July 18, 2020), <https://www.investopedia.com/terms/t/tax-code.asp>.

45. BROWN, *supra* note 4; DOROTHY A. BROWN, *How the U.S. Tax Code Privileges White Families*, ATL (March 23, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/us-tax-code-race-marriage-penalty/618339/>.

46. Darrick Hamilton & William A. Dairty, Jr., *The Political Economy of Education, Financial Literacy, and the Racial Wealth Gap*, 99(1) FED. RESV. OF ST. LOUIS 59, 64 (2017).

47. *Id.*

from ages fifty-five to sixty-four, each holds \$30,000 in their savings compared to White men's \$101,000 and White women's \$60,000.<sup>48</sup> The destruction of wealth through violent oppression, systemized segregation, and occupational exclusion still has lingering effects on how much money Black Americans have in their savings. Due to the lack of sufficient funds in these accounts, Black Americans, unlike their White counterparts, cannot partake in tax-favored activities, like buying a home.

### 1. Tax Subsidies on Homeownership & its Contribution to the Black-White Wealth Accumulation Gap

Certain incentives under tax law are more readily available and beneficial to White taxpayers as opposed to Black taxpayers.<sup>49</sup> Subsidies are an incentive given by the government to individuals or businesses in the form of cash, grants, or tax breaks.<sup>50</sup> In the purview of the UNITED STATES Tax Code, homeownership is a tax-favored activity.<sup>51</sup> Homeownership subsidies continue to benefit White homeowners more than Black homeowners.<sup>52</sup>

Internal Revenue Code section 163(h), 121, 165(c), and their interaction, result in distinctive homeownership experiences between the Black and White races in America. The Internal Revenue Code section 163(h) provides that families can deduct the interest paid on their mortgage on the condition that their mortgage does not exceed \$750,000.<sup>53</sup> Pursuant to Internal Revenue Code section 63, taxpayers only benefit from the mortgage interest deductions if their itemized deductions are greater than the prearranged standard deduction amount.<sup>54</sup> Suppose the taxpayer's standard deductions add up to more than the fixed amount of the standard deductions determined by their filing status, such as single or married. In that case, the taxpayer will itemize their deductions.

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48. Congresswoman Carolyn Maloney, RET. INSECURITY 5 (2019).

49. BROWN, SUPRA NOTE 4

50. The Investopedia Team, *Hire Purchase Agreements: Definition, How They Work, Pros and Cons*, Investopedia (Feb. 22, 2022), <https://www.investopedia.com/terms/s/subsidy.asp>.

51. *Id.*

52. Dorothy A. Brown, *How the U.S. Tax Code Privileges White Families*, THE ATL. (Mar. 23, 2021), <https://www.theatlantic.com/ideas/archive/2021/03/us-tax-code-race-marriage-penalty/618339/>.

53. Dorothy A. Brown, *Homeownership in Black and White: The Role of Tax Policy in Increasing Housing Inequity*, 49 MEMPHIS L. REV. 205, 214-21 (2018).

54. I.R.C. § 63 (2021).

On the other hand, if the taxpayer's deductions are less than the standard deduction amount, then the taxpayers will take the standard deduction.<sup>55</sup> A majority of taxpayers do not itemize deductions, but most homeowners do.<sup>56</sup> In 2012, the Center on Budget and Policy Priorities published a report that 77% of homeowners with incomes higher than \$100,000 received the mortgage interest deduction benefits.<sup>57</sup> This left those who had mortgages and belonged to the middle and lower class unable to obtain this tax benefit.<sup>58</sup> Higher-income taxpayers are more likely to claim the mortgage interest deduction, deduct larger amounts of mortgage interest, and receive larger tax benefits from the mortgage interest deduction than lower-income taxpayers.<sup>59</sup>

Internal Revenue Code section 121 establishes that a gain from the sale of a home is typically tax-free.<sup>60</sup> I.R.C. section 121 also establishes that, to benefit from this tax-free gain, the taxpayer must satisfy the ownership and use requirements.<sup>61</sup> If a taxpayer has owned and used their house for an aggregate period of two years out of the five years prior to its date of sale, they may be eligible for this tax subsidy.<sup>62</sup> The amount that is excluded from the tax depends on the filing status of the taxpayer. For example, if you are married, the first \$500,000 of gain from the sale of your principal residence or home is tax-free.<sup>63</sup> If you are single, the first \$250,000 of gain from the sale of your principal residence or home is generally tax-free.<sup>64</sup> Many taxpayers who belong to the middle and lower class are not likely to receive this tax-free subsidy due to the lack of satisfying the ownership and use requirements under Internal Revenue Code section 121.

Section 165(c) of the Internal Revenue Code addresses losses. Subsection (c) states that if a taxpayer sells their home at a loss, that loss is not deductible and cannot be used to reduce one's taxable income.<sup>65</sup> In creating this code section, Congress's rationale was that a "home" is not an investment, its primary purpose is to be a place of living, and, therefore, the loss in value is deemed a personal loss. Per-

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55. Brown, *supra* note 53.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. I.R.C. § 121 (2021).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. I.R.C. 165(c) (2021).

sonal losses are not allowed to impact your tax bill; however, losses to investment properties can be deducted up to a certain limit and, therefore, affect your tax bill.<sup>66</sup>

Another aspect of tax subsidies and race that contribute to the Black-White disparity in wealth accumulation is that White home buyers determine the level of engagement in the homeownership market.<sup>67</sup> If White home buyers do not want to live in a racially diverse neighborhood, the demand for that neighborhood decreases.<sup>68</sup> This leads the price of the homes in that racially diverse neighborhood to decrease and, in the long run, results in the selling price of those homes being less than they would be if the white demand for that neighborhood was higher.<sup>69</sup> Consequently, Black homebuyers who can afford to live in those racially diverse neighborhoods are at a disadvantage when they decide to sell their homes at a lower price and, therefore, do not get to claim the Internal Revenue Code section 121 tax subsidy that exists when a taxpayer sells their home at a gain.<sup>70</sup> Additionally, this allows the appreciation gap to continue to grow, allowing the money that White homeowners acquire upon selling their homes at a gain to be tax-free, while the opposite occurs for Black homeowners selling their homes at a loss.<sup>71</sup>

## 2. Race & its Effect on Homeownership

Throughout American history, the White middle class has always been able to partake in various opportunities that allowed them to develop and build wealth. White supremacy, and sheer hate for Black people, led to the destruction of wealthy up-and-coming Black communities in places like Wilmington, North Carolina, in 1898 or Tulsa, Oklahoma, in 1921. These acts of violence hindered the Black community from obtaining wealth.<sup>72</sup> Institutional practices like redlining, which involved the undervaluation of houses in predominantly Black neighborhoods, continued to augment racial wealth incongruences. The failure to correct those underlying inequities significantly

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66. *Id.*

67. Brown, *supra* note 53.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. Trymaine Lee, *How America's Vast Racial Wealth Gap Grew: By Plunder*, N.Y. TIMES (2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html>.

contributed to the increasing wealth gap throughout subsequent generations.

The end of World War II brought many challenges domestically. In particular, the vast number of veterans coming home from the war created a housing crisis.<sup>73</sup> World War II caused a temporary moratorium on domestic housing construction, except for defense purposes.<sup>74</sup> Approximately four million veterans were demobilized and returned home to the United States by 1945.<sup>75</sup> In 1934, the Federal Housing Administration (“FHA”) was founded, and its purpose was to facilitate home financing, improve housing standards, and increase employment in the home construction industry. Post-World War II, loans insured by the Federal Housing Administration were unavailable to Blacks who wanted to buy in all-Black neighborhoods or Whites who wanted to buy in racially diverse neighborhoods.<sup>76</sup> These particular loans came with low and fixed interest rates, low down payments, and lower costs, but Blacks were generally “shut out” of that market.<sup>77</sup> Despite the Supreme Court explicitly stating in *Shelley v. Kraemer* that racially restrictive covenants were a violation of the Equal Protection Clause of the Fourteenth Amendment, these practices continued.<sup>78</sup> Twenty years later, in *Jones v. Alfred H. Mayer Company*, the Supreme Court held that the Fair Housing Act of 1968 made it illegal to discriminate in housing based upon race.<sup>79</sup> Due to the delay in implementing laws that would aid the Black community in their acquisition of homes at reasonable prices, Black home buyers had to pay higher rates for homes in White areas where Black home buyers were not welcome and faced violence. This violence and fear of loss of life led to Blacks not being able to obtain loans and, many times, led to the abandonment of their property.<sup>80</sup> Many Black families left their properties to keep their families safe and, in doing so, lost generations of wealth.<sup>81</sup>

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73. HUD’s *Historical Timeline* (1930-2010), U.S. DEP’T HOUS. DEV. (2016), [https://www.huduser.gov/hud\\_timeline/docs/HU\\_timeline\\_2016.pdf](https://www.huduser.gov/hud_timeline/docs/HU_timeline_2016.pdf).

74. *Id.*

75. Tyler Bamford, *The Points Were All That Mattered: The US Army’s Demobilization After World War II*, NAT’L WWII MUSEUM, (Aug. 27, 2020), <https://www.nationalww2museum.org/war/articles/points-system-us-armys-demobilization>.

76. Brown, *supra* note 4.

77. *Id.*

78. *Shelley v. Kraemer*, 334 U.S. 1, 20-21 (1948).

79. *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413 (1968).

80. Ronald H. Silverman, *Homeownership for the Poor: Subsidies and Racial Segregation*, 48 N.Y.U. L. REV. 72, 82-83 (1973).

81. *Id.*

Currently, the Black homeownership rate is at its lowest since the 1960s.<sup>82</sup> Black homeownership is at 42% compared to the 73% that accounts for White homeownership in the United States.<sup>83</sup> The effects of post-World War II tax policies and the lack of applicable tax subsidies available for Black Americans under the current taxation system still affect the Black community today. Accompanied by the lack of applicable tax subsidies, BLACK PEOPLE lack the requisite knowledge of the tax subsidies available to them.

### *E. Education*

There is also the issue of education. In the United States, there is a common misconception that the higher the level of education one receives, the more money one will make. This is false. For the Black community, education is yet another influence that contributes to the difficulty associated with the accretion of wealth. Education or lack thereof, aids the racial inequality that exists between White and Black taxpayers, women and men alike. Education serves as a barrier to access to wealth accumulation for the Black community. The level of education not only controls how much a taxpayer gets paid, and where a taxpayer can be employed, but it also affects whether a taxpayer can obtain fringe benefits, among many other things.

#### 1. Fringe Benefits

There are also racial disparities when it comes to fringe benefits. Fringe benefits are additions to compensation that companies give their employees.<sup>84</sup> Common fringe benefits include health insurance, life insurance, tuition assistance, childcare reimbursement, cafeteria subsidies, below-market loans, employee discounts, employee stock options, and, in some cases, personal use of company-owned vehicles.<sup>85</sup> Despite most fringe benefits not being tax-exempt, they benefit employees by not requiring employees to obtain these benefits on their own and pay for these services out of pocket. As is the case for many companies, employers offer fringe benefits that aid employees in sav-

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82. Jacob Passy, *Black homeownership rates hits the lowest level since the 1960s—that's unlikely to change in Pandemic Year 2*, MARKETWATCH (Mar. 23, 2021), <https://www.marketwatch.com/story/most-black-americans-arent-homeowners-how-can-we-change-that-11615431459>.

83. *Id.*

84. Kagan, *supra* note 44.

85. *Id.*

ing for their retirement.<sup>86</sup> By providing employees with plans to start saving for their retirement, employers equip their employees with a certain amount of income to rely on when their employees decide to start their retirement.

Typically, companies that employ over fifty full-time employees are legally required to follow the Employer Shared Responsibility Provision of the Affordable Care Act.<sup>87</sup> To comply with the Affordable Care Act, employers must offer their employees affordable health insurance that complies with the Act's requirements.<sup>88</sup> The Family Medical Leave Act also provides that eligible employees are allowed up to twelve weeks of unpaid, job-protected leave each calendar year for the birth or adoption of a child, to care for a seriously ill immediate family member, or if the employee has a serious health condition that prevents them from working.<sup>89</sup>

Typically, companies that provide fringe benefits like health insurance, retirement plans, or childcare reimbursement are corporations. Most corporations require their employees to have a particular level of higher education. Between 2007 and 2017, more than 75% of new job postings required bachelor's degrees, but fewer than four in ten American workers at that time had that specific credential.<sup>90</sup> College degree requirements now serve as another way to discriminate against the minority communities in the United States.<sup>91</sup> The bachelor's degree requirement inflicts grave damage to Black, Latino, and rural workers. This requirement screens out approximately 70% of African American workers and 80% of Latino and rural workers.<sup>92</sup> These workers are skilled through alternative routes but typically do not have the level of education required for corporate employment.<sup>93</sup>

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86. *Id.*

87. Kaylee Kolditz, *Everything You Need to Know Before Hiring Your 50th Employee*, U.S. CHAMBER OF COM. (Dec. 2, 2019), <https://www.uschamber.com/co/run/human-resources/hiring-50th-employee>.

88. *Id.*

89. *Id.*

90. Byron Auguste, *Opinion: The majority of Americans lack a college degree. Why do so many employers require one?*, WASH. POST (Jul. 20, 2021), <https://www.washingtonpost.com/opinions/2021/07/20/majority-americans-lack-college-degree-why-do-so-many-employers-require-one/>.

91. *Id.*

92. *Id.*

93. *Id.*

## 2. Levels of Education

Economic success depends not only on whether an individual received an education but also on whether an individual received an education satisfactory enough to lead a well-paying career.<sup>94</sup> A landmark 2019 study found that poverty furthers the racial achievement gap in education instead of racial segregation.<sup>95</sup> Graduation and dropout rates are not accurate depictions and do not adequately reflect the degree of educational disparities present in the United States. The quality of education provided to children from kindergarten through twelfth grade is directly correlated with the wealth of specific communities.<sup>96</sup> Other factors, such as school funding and redlining, directly affect the ability to hire the proper educators, the amount of local property taxes, and the wealth of the surrounding residents. Since race is strongly linked to wealth and income, poor neighborhoods tend to be Black neighborhoods and consist of impoverished families who have no other choice but to send their children to schools serving the children who live in and around the surrounding communities.

This occurrence incentivizes wealthy families to live in close proximity to other wealthy families. By doing so, wealthy families can send their school-aged children to better-funded schools that have a system consisting of a school board, faculty, and staff that can provide a higher quality of education to the children residing in that area. This, consequently, leaves the less wealthy minority communities consisting of Blacks and Latinos to inhabit other poverty-stricken and underdeveloped neighborhoods. In turn, these minority communities are forced to send their school-aged children to the underfunded schools that serve their neighborhoods. Despite minority children graduating from high school and or college, they still face steeper odds than their middle- or upper-class counterparts. High minority concentrated schools tend to have lower performance scores than the schools with more White children. This is mainly due to a lack of proper funding, not race per se.<sup>97</sup>

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94. *Id.*

95. Sean Reardon et al., *Is Separate Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps* 19 STANFORD CTR. EDUC. POL'Y ANALYSIS 1 (2022).

96. *Id.*

97. *Id.*



Research concludes that increased school funding improves student outcomes.<sup>98</sup> When Black students are increasingly concentrated in separate school districts from White students in the same state, total school revenue shifts unfavorably away from the Black students' districts to White students' districts.<sup>99</sup> Predominantly-minority school districts, as a whole, receive \$23 billion less than majority-white school districts, even though predominantly-minority school districts serve the same number of students.<sup>100</sup> Schools with higher private funding can support extracurricular activities, which have been shown to increase student academic performance.<sup>101</sup> As a result of this school district segregation, many Black Americans are held back because of widespread differences in the quality of education they receive. School segregation and its effects on the Black American community is a mighty determinant of economic success. Additionally, these issues undermine the belief that every American has the same chances and opportunities to achieve economic success.

Institutional practices like redlining, which involved the undervaluation of houses in predominantly Black neighborhoods, continued to augment racial wealth incongruences. The failure to correct these underlying inequities significantly affected the increasing wealth gap throughout subsequent generations. College-educated Black workers face a larger absolute income gap than White workers who are without a college education.<sup>102</sup> In 2018, high school educated Black Americans earned \$3,500 less than White Americans.<sup>103</sup> Black college-educated workers with bachelor's degrees and above earned \$11,000 less than the White college-educated workers with the same level of education. Additionally, a larger number of underemployment exists amongst Black workers as opposed to White workers. Underemployment is defined as working in occupations that do not make use of one's education and, consequently, result in less pay. When Black Americans are employed and equipped with a college or advanced degree, they are more likely than their White counterparts to be underemployed regarding their skill level. Almost 40% of Black college grads are in a job that

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98. Victoria E. Sosina & Ericka S. Weathers, *Pathways to Inequality: Between-District Segregation and Racial Disparities in School District Expenditures* 5 AERA OPEN 1, 3-4 (2019) (discussing the relationship between school funding and student outcomes).

99. *Id.*

100. \$23 BILLION, EDBUILD (Feb. 2019), <https://edbuild.org/content/23-billion/full-report.pdf>.

101. Beckett A. Broh, *Linking Extracurricular Programming to Academic Achievement: Who Benefits and Why?*, 75 AM. SOCIO. ASS'N. 65, 95 (2002).

102. BEYER, *supra* note 20.

103. *Id.*

typically does not require a college degree, compared to the 31% of White college grads.<sup>104</sup>

### 3. Poverty Affects Student Performance

Poverty makes it difficult for students to excel at school. Segregated school districts within impoverished communities have the largest achievement gaps. In the 2016-2017 school year, about 74% of Black students compared to 31% of White students were in mid-high or high poverty schools, with 44% of the Black students in high poverty schools, compared to 8% of White students.<sup>105</sup> The children in these communities, which are surrounded by crime and violence, adversely affect their level of achievement. Poverty adds yet another barrier to success for minority communities because they cannot solely focus on the task at hand but, in most cases, are worried about their livelihoods and their families.

### 4. Lack of Teacher Diversity

The lack of diversity of teachers in schools that serve minority communities also plays a part in low student performance. The racial makeup of the United States teaching force over the past decade has been stagnant at around 80% of teachers being White and mostly female.<sup>106</sup> This composition is at odds with the overall United States population, which has declined from 70% White to around 50% White.<sup>107</sup> Studies show that diversity in education, whether it be students or teachers, improves intellectual engagement, self-motivation, citizenship, cultural engagement, and academic skills, such as critical thinking, problem-solving, and writing.<sup>108</sup> The lack of diversity disadvantages students who are unable to be immersed in such environments. A lack of funding of schools that serve underserved students, for the purpose of hiring diverse teachers, also contributes to the harm state fiscal policies have on communities of color.<sup>109</sup>

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104. JHACVOCA WILLIAMS & VALERIE WILSON, BLACK WORKERS ENDURE PERSISTENT RACIAL DISPARITIES IN EMPLOYMENT OUTCOMES 1 (2019).

105. *Id.*

106. Seth Gershenson & Alberto Jacinto, *The teacher diversity gap is literally inherited*, BROWN CTR. CHALKBOARD (Apr. 2, 2019), <https://www.brookings.edu/blog/brown-center-chalkboard/2019/04/02/the-teacher-diversity-gap-is-literally-inherited/>.

107. *Id.*

108. AMY STUART WELLS, ET AL., HOW RACIALLY DIVERSE SCHOOLS AND CLASSROOMS CAN BENEFIT ALL STUDENTS, 2 (2016).

109. *Id.*

## III. HOW STATE REVENUE SYSTEMS HARM COMMUNITIES OF COLOR

State fiscal policy choices about how much revenue to raise and from whom to collect it are critical decisions that can worsen, reserve, or reduce racial and economic inequalities.<sup>110</sup> Taxes collected by the state are not based upon people's race; however, historical racism and ongoing forms of discrimination and bias mold the income people have and the property they own.<sup>111</sup> Consequently, due to the United States' legacy of racism, tax policies cannot be race-neutral.

As it is in many states in the U.S., there is a taxation structure that asks taxpayers with lower incomes to pay more of a share of their income than those who are a part of the 1%. Such regressive tax structures can make racial income inequality worse as income becomes more unequal after state and local taxes are calculated.<sup>112</sup> According to the Institute on Taxation and Economic Policy, in Oregon, citizens with the lowest incomes pay about 12.8% of their income in state and local taxes, while those in the top 1% pay about 8.2% of their income in state and local taxes.<sup>113</sup> On the national average, the state and the local tax rate is 11.8% for taxpayers with the lowest incomes but only 7.6% for the wealthiest.<sup>114</sup> This equates to taxpayers of Oregon and taxpayers in many other states bearing a heavier burden for roads, schools, health care, and other investments that contribute to broadly shared prosperity.<sup>115</sup> Black and Latino taxpayers with the lowest incomes are more likely to shoulder these tax loads than any other race.

Revenues acquired through taxes are crucial to funding public ventures in education and health and safety.<sup>116</sup> Consumption taxes, also known as sales taxes, are the most regressive type of taxes relied on by state and local governments. Sales taxes are the most significant drivers of racial inequity in state and local tax codes.<sup>117</sup> Low-income and middle-income families pay a bigger share of their incomes in consumption taxes than the rich.<sup>118</sup> Policies that disadvantage low-income

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110. Michael Leachman, *More State Lawmakers Should Consider How Racism Shapes Tax Policy*, CTR. ON BUDGET & POL'Y PRIORITIES BLOG, (2021), <https://www.cbpp.org/blog/more-state-lawmakers-should-consider-how-racism-shapes-tax-policy>.

111. *Id.*

112. CARL DAVIS, ET AL., TAXES AND RACIAL EQUALITY: AN OVERVIEW OF STATE AND LOCAL POLICY IMPACTS, 5 (2021).

113. Leachman, *supra* note 110.

114. *Id.*

115. *Id.*

116. DAVIS, *sura* note 112.

117. *Id.*

118. *Id.*

individuals and families, like those of heavy reliance on sales and excise taxes, negatively affect the Black community. Systematic advantages conferred upon wealthier White families have always positioned them to save and build their wealth. White families tend to pay lower sales and excise tax rates because the portion of income set aside into their savings is only taxed after a lengthy delay, if at all.<sup>119</sup>

Tennessee's state and local tax system exemplifies how state and local tax policies harm the Black and minority communities. Tennessee's tax system lacks a personal income tax and relies heavily on sales and excise tax dollars.<sup>120</sup> Consumption taxes take a larger share of income from low-income and middle-income Black families than wealthier White families, since low-income families spend much more of what they earn on basic expenses.<sup>121</sup> This regressive distribution across income levels is demonstrated in the distribution of taxes across race and ethnicity.<sup>122</sup> Black and Hispanic families in Tennessee are taxed at rates above the statewide average, while White and Asian families are taxed at below-average rates.<sup>123</sup> Ultimately, racial income imbalance is exacerbated by the regressive nature of Tennessee's tax code. Policymakers at the state and federal levels have the power to make changes that can rectify the prevalent income imbalances of our current taxation system. Considering that the government instituted these policies, it is their duty to remedy the system.

#### IV. RECOMMENDATIONS FOR HOW STATES CAN REMEDY THEIR INCOME TAX SYSTEM & IMPROVE POLICIES

State governments can remedy the harm inflicted upon their taxpayers by examining what their tax code says and how it affects those who have been historically harmed. In order to remedy states' tax codes to be more equitable and fair to people of color, states can eliminate or scale back tax deductions, preferential tax rates, and other tax expenditures that favor wealthier residents.<sup>124</sup> Equitable tax policies help connect people of all races, ethnicities, gender, and incomes to resources and opportunities they need to succeed.<sup>125</sup> By having state budgets and tax policies geared toward addressing these harms, along

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119. *Id.*

120. *Id.*

121. DAVIS, *supra* note 112.

122. *Id.*

123. *Id.*

124. Leachman, *supra* note 110

125. *Id.*

with the creation of additional opportunities for people of color, the economies of every state would be more equitable and would produce benefits for all of its residents.<sup>126</sup>

States could also rectify the harm imposed upon people of color, specifically the Black community, by implementing a progressive tax system for raising revenue. This progressive taxation system could abridge the racial income gap by requiring predominantly White families with greater incomes to pay more of their share in taxes.<sup>127</sup> Instituting a vigorous progressive personal income tax system with graduated tax rates, broad bases, and substantial refundable low-income tax credits would result in more effective methods to narrow the racial income gap.<sup>128</sup> Minnesota is a prime example of how robust personal income tax can mitigate the racial income inequality that exists in many states like Tennessee. The State of Minnesota levies a robust personal income tax with refundable credit for low-income families and higher rates for top earners in their state.<sup>129</sup> In doing so, they allow the state to rely less on regressive sales taxes.<sup>130</sup> Minnesota taxes lower-income groups at rates slightly below the statewide average. Black families pay a rate of 0.4% below average, while Indigenous families pay an average of 0.5% below average, and Hispanic families' average rate is 0.7% below average.<sup>131</sup> White families, by contrast, pay slightly more on average because they have higher average incomes.<sup>132</sup>

The federal government has a plethora of avenues it could pursue to remedy the impairments that the Tax Code has inflicted upon the Black Community. Policymakers could encourage the tax code's power to reduce racial inequities by reducing income and wealth and by raising revenues in ways that would require the taxing of income from the wealth that currently goes untaxed. Policymakers could also repeal the vast regressive tax breaks that are common throughout the current tax code.<sup>133</sup> Federal tax credits like those of EITC and CTC could be strengthened and given more support than is currently afforded to these types of credits. The federal tax breaks given to higher-

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126. Leachman, *supra* note 110.

127. Davis, *supra* note 112.

128. *Id.*

129. *Id.*

130. *Id.*

131. Davis, *supra* note 112, at 9.

132. *Id.*

133. Chye-Ching Huang & Roderick Taylor, *How the Federal Tax Code Can Better Advance Racial Equity*, CTR. ON BUDGET & POL'Y PRIORITIES BLOG (Jul. 25, 2019), <https://www.cbpp.org/research/federal-tax/how-the-federal-tax-code-can-better-advance-racial-equity>.

income households for higher education and homeownership can be scaled back to remedy the historic income inequality in the United States.<sup>134</sup>

On a more controversial note, the federal government could pass a reparations package. If a reparations package were to be passed and enforced, included in this package should be a policy that would allocate a nominal amount or a specific percentage of individual tax returns to descendants of enslaved persons. Consequently, when these individuals file their taxes for that preceding year, those who are approved should receive the allocated amount as a deduction to their current income tax or as an incentive. This could look like an approved person of enslaved descent paying a discounted tax rate or receiving a tax return of a specific amount each year. In looking for ways to remedy the inequities present in the American taxation system, the United States can look to other countries and examine how they tax their citizens and the type of taxation systems they employ.

#### A. *Taxation Systems & Policies Abroad*

Income tax and taxation policies are common to many other countries outside of the United States. Where one lives determines how much or how little is charged on the net income of the individual or of a business. Income tax and tax policies serve as a means for the government to generate revenues. In 2019, Sweden ranked number one out of fifteen countries with the highest income tax collected from its residents.<sup>135</sup> In that tax year, Sweden's highest income earners paid more than 50% of their taxable income in income taxes.<sup>136</sup> Many other countries, such as Portugal and Ireland, were in the top fifteen for having some of the highest tax rates.<sup>137</sup> Despite Sweden ranking first for the highest income tax rates, its progressive tax system also affords very little income inequality.<sup>138</sup> Like Sweden, Portugal also has a progressive taxation system that uses tax to increase equality between

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134. *Id.*

135. Express Web Desk, *Income Tax Havens: These 7 Countries have no income tax*, INDIAN EXPRESS (Jan. 22, 2020), <https://indianexpress.com/article/business/income-tax-havens-these-seven-countries-have-no-income-tax-even-countries-with-zero-income-tax-6226573/>.

136. *Id.*

137. Andrew Henderson, *15 Countries with The Highest Tax Rates In the World*, NOMAD CAPITALIST (2021), <https://nomadcapitalist.com/finance/countries-with-the-highest-tax/>.

138. Gwladys Fouché, *Where tax goes up to 60 per cent, and everybody's happy paying it*, GUARDIAN (Nov. 15, 2008), <https://www.theguardian.com/money/2008/nov/16/sweden-tax-burden-welfare>.

high-income and low-income owners.<sup>139</sup> In Portugal, the tax rate ranges to 48%.<sup>140</sup> Portuguese citizens are subject to a progressive tax that applies equally among all citizens in the workforce.<sup>141</sup> In Ireland, the tax rate is as high as 40.4% and is charged with respect to all properties, profits, or gains.<sup>142</sup> Ireland's progressive tax rate results in little to no income tax being paid by low earners and a high rate applying to middle and top earners.

By contrast, there are some countries with no income tax at all. The United Arab Emirates, the Bahamas, Kuwait, and Monaco are a few of these tax-free income countries.<sup>143</sup> These countries are considered "tax havens," and their economies are dependent on natural resources like oil.<sup>144</sup> The revenues obtained from these oil-rich countries sustain their economies to the extent that they can survive without collecting income taxes from their residents.<sup>145</sup> Having this sort of tax-free system makes these countries attractive to foreign business but also promotes equality among their residents.

The United Arab Emirates has zero income taxes for individuals, allowing individuals the privilege of obtaining tax-free salaries. However, individuals still pay tax on specific goods and services where a "value-added tax" is levied.<sup>146</sup> In the Bahamas, there are no taxes imposed on personal or corporate income.<sup>147</sup> Areas of wealth accumulation, like inheritance and capital gains, are also tax-free in the Bahamas, and these tax-free income benefits can be enjoyed by all, not just those who acquire citizenship.<sup>148</sup> Irrespective of nationality, anyone residing in Kuwait is given the privilege of enjoying tax-free personal income. Kuwait's tax law does not distinguish between resident and nonresident unless it is a foreign corporate entity.<sup>149</sup> Monaco's tax laws allow any person who has resided in the state for

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139. *Taxes in Portugal*, TAX FOUND. (2022), <https://taxfoundation.org/country/portugal/>.

140. *Id.*

141. Henderson, *supra* note 137.

142. *Id.*

143. *Id.*

144. Leachman, *supra* note 110.

145. *Id.*

146. *Id.*

147. *Id.*

148. *Id.*

149. *Kuwait*, KPMG (Jan. 2021), <https://home.kpmg/xx/en/home/insights/2021/07/kuwait-thinking-beyond-borders.html>.

three months or more to become a resident and exempt from paying income tax.<sup>150</sup>

Tax-free havens allow residents to experience less income inequality compared to that of residents of the United States. The tax-free nature of countries like the United Arab Emirates, the Bahamas, Kuwait, and Monaco, accompanied by their tax laws, allows for their residents and, in some cases, nonresidents to not be subjected to tax laws and policies that disproportionately treat and affect communities of color. Factors such as race, tax exemptions or subsidies, job descriptions, and education level are not considered when determining which individuals are taxed at a higher or lower rate. These countries can generate revenue through other avenues and provide a landscape where their residents can build their wealth without as many barriers.

### CONCLUSION

This article was created to display the structural racism and disproportionate impact that the American taxation system has on the Black community. The perpetual repercussions of tax laws and policies accompanied by income disparities have left the Black community in an unequal position in society. This is due to the creation and application of a tax system primarily focused on working-class White taxpayers and not Black taxpayers.<sup>151</sup> Despite the ever-increasing awareness of the racial inequities of the taxation system by professors like Dorothy Brown, an increase in the number of Black members of Congress, and states like Minnesota slowly repealing tax laws and instituting tax policies and tax law changes to address the prevalent racial inequality, the Black community is still being impaired and is in a weak position to achieve financial freedom. To combat this problem, this article suggests ways that state and federal governments can remedy the current inequities in their taxation systems to promote racial equality by implementing more progressive tax systems, taxing the wealth of the rich that currently goes untaxed, and creating a reparations proposal for descendants of enslaved people.

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150. Craig Anthony, *Why Is Monaco Considered a Tax Haven?*, INVESTOPEDIA (Oct. 26, 2022), <https://www.investopedia.com/ask/answers/060316/why-monaco-considered-tax-haven.asp>.

151. Brown, *supra* note 4.