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**HOME IS WHERE THE HATRED IS: A PROPOSAL FOR A
FEDERAL HOUSING
ADMINISTRATION TRUTH AND RECONCILIATION
COMMISSION**

BY BRIAN GILMORE*

“Reconciliation is not about being cosy; it is not about pretending that things were other than they were. Reconciliation based on falsehood, on not facing up to reality, is not true reconciliation and will not last.”¹

-Archbishop Desmond Tutu

“The real story of the meaning of race in modern America, however, must include a serious consideration of how one generation passes advantage and disadvantage to the next – how individuals’ starting points are determined.”²

-Thomas Shapiro

I. INTRODUCTION

In a July 2007 article³ in the scholarly publication, *Public Affairs Quarterly*, Jonathan Kaplan and Thomas Valls argued, in part, that the economic inequality that African-Americans suffer from today is a result of government-led housing discrimination from the 1930’s to the late 1960’s, and the existence of such discrimination justifies

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1. TRUTH & RECONCILIATION COMM’N OF S. AFR REPORT 17 (1998), *available at* <http://www.justice.gov.za/trc/>.

2. THOMAS SHAPIRO, *THE HIDDEN COSTS OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY* 8, (Oxford Univ. Press ed. 2004).

3. Jonathan Kaplan & Thomas Valls, *Housing Discrimination as a Basis for Black Reparations*, 21 POL. AFF. Q. 255, 255–56 (2007).

reparations for blacks in the United States.⁴ Kaplan and Valls, both sociology professors, describe this economically debilitating housing discrimination in the 20th century as an “important basis” for reparations and one of the central pillars that can be used to advance the argument.⁵

The basic argument set forth by Kaplan and Valls has been stated many times over the years.⁶ Ever since the period of unprecedented housing discrimination perpetuated by the federal government on African-Americans from 1934–1968 was detailed in several books,⁷ the only issue regarding the actions of the government has been what to do about the problem that has been created.

Many of the suggestions for economic renewal for the victims, including those discussed by Kaplan and Valls in their July 2007 article, are good ideas for some kind of restitution.⁸ However, neither Congress nor President Obama has any proposals for execution pending or under consideration (how this problem and legacy is to be addressed).⁹ More importantly, the various recommendations that were presented over the years do not consider the danger of delay. This, among other things, should be a cause for concern for the nation as a whole.

First, the U.S. is moving towards a more diverse demographic future.¹⁰ Many individuals who are the descendants of those who were

4. *Id.* at 255, 263.

5. *Id.* at 255–56.

6. JOHN YINGER, CLOSED DOORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION 187-97 (Russell Sage Found. ed. 1997); NORMAN AMAKER, CIVIL RIGHTS AND THE REAGAN ADMINISTRATION 79-81 (Urban Institute Press 1988); KENNETH JACKSON, CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 203–218 (Oxford Univ. Press ed. 1987).

7. *See* YINGER, *supra* note 7, at 187–90 (noting that the federal government primarily discriminated against African-Americans but that Hispanic-Americans, Asian-Americans, and Jewish-Americans suffered discrimination as well); *see* AMAKER, *supra* note 7, at 79–81; *see generally* JACKSON, *supra* note 7 at 203–218.

8. The most famous financial restitution paid by the United States government occurred when the government paid victims of the Japanese internment camps for their period of internment. As shall be discussed in a later section, the law, The Civil Liberties Act of 1988 set forth the procedure whereby victims of the internment were paid financial restitution for the acts of the government. *See infra* Part IVa. *See also* MICHAEL BURGAN, THE JAPANESE INTERNMENT: CIVIL LIBERTIES DENIED 88 (Minn. Compass Point Books ed. 2007).

9. The author concedes that it is possible that someone might have a similar proposal pending; however, such a proposal is currently not part of the public discourse, has not been mentioned by media outlets, and is certainly not the topic of any discussion of lawmakers and elected officials.

10. According to U.S. Census Bureau Protections released in 2008, and reported in an article in the New York Times, among other news outlets, “by 2042, Americans who identify themselves as Hispanic, black, Asian, American Indian, Native Hawaiian and Pacific Islander

discriminated against in housing transactions by their own government and who now find themselves suffering from a significant wealth disparity, will be part of a majority-minority in the country.¹¹ This should not be ignored.

Second, the supporting data regarding the events related to this unprecedented housing discrimination by the FHA and other government agencies might be in danger of being lost due to the passage of time. Many of the government's early egregious acts began in the early 1930's,¹² nearly 80 years ago. While it cannot be determined if individuals with knowledge of the government policy, in fact, are dying, the passage of time should not be discounted when considering this issue.¹³

Using "restorative justice"¹⁴ ideals, American civil rights models, and a mission to move from suggestion and recommendation to execution, this article proposes that the federal government create The Federal Housing Administration Truth and Reconciliation Commission ("The FHA-TARC"). The FHA-TARC will seek to address the wealth gap between the races that the federal government perpetuated through discriminatory housing policies in the 20th century, mostly through the Federal Housing Administration (FHA).¹⁵ While any effort at restitution could focus upon a variety of discriminatory patterns (employment or education), housing is the best choice because it might fix the wealth gap.

The creation of FHA-TARC must be an act of the government. The focus of FHA-TARC would be to determine in a specific manner

will together outnumber non-Hispanic whites. Four years ago, officials had projected the shift would come in 2050." Sam Roberts, *A Generation Away, Minorities May Become the Majority in U.S.*, N.Y. TIMES, Aug. 14, 2008, at A1; See also U.S. CENSUS BUREAU, NATIONAL POPULATION PROJECTIONS, PROJECTED CHANGE IN POPULATION SIZE BY RACE AND HISPANIC ORIGIN FOR THE UNITED STATES: 2000-2050 (2008), available at <http://www.census.gov/population/www/projections/summarytables.html>.

11. See U.S. CENSUS BUREAU, *supra* note 11.

12. SAMUEL ROUNDFIELD LUCAS, *THEORIZING DISCRIMINATION IN AN ERA OF CONTESTED PREJUDICE* 63 (Temp. Univ. Press 2008).

13. See Robert S. Blacklow, *Actuarially Speaking: an Overview of Life Expectancy. What Can We Anticipate?*, AM J CLINICAL NUTRITION 1561S (2007) (explaining that the life expectancy in 1933 was less than 70 years for most of the population).

14. HEATHER STRANG & JOHN BRAITHWAITE, *RESTORATIVE JUSTICE AND CIVIL SOCIETY* 1-6 (Cambridge Univ. Press 2001).

15. Whether the FHA-TARC is an original idea is not possible to substantiate but there is no obvious available record that this specific proposal has been offered in the past. Other writers have documented the policy of the government on housing; however, many of the articles written about this topic did not explain how restitution would be executed. For accuracy purposes, FHA-TARC is a proposal that combines components of several different ideas in order to address a government created financial injustice.

who, what, when, why, and how the Federal Housing Administration (FHA) manipulated the U.S. housing market during the twentieth century to promote and advance racial segregation and economic inequality. In addition to some investigation, the FHA-TARC will also seek to provide those the federal government discriminated against with appropriate compensation.

This article builds on Professor Carlton Waterhouse's argument for reparations for African-Americans for chattel slavery and post-slavery discrimination.¹⁶ However, there are two significant differences with this proposal and Professor Waterhouse's work.

First, this proposal for the creation of a government sponsored commission does not make constitutional arguments for redress. Previous efforts of the federal government in similar situations establish this as constitutionally permissible.¹⁷ However, any challenges as to the legality of the commission are outweighed by the necessity for this effort.

It should also be noted that this commission's inquiry, while focusing upon the policies of the FHA and how those policies affected African-Americans, should not be limited to just African-Americans. The commission should inquire into any and all instances where the FHA's policy affected individuals in the home ownership process through its systematic and specific policy of discrimination.

In addition, this article is not a call for reparations for chattel slavery. This proposal asserts individuals and organizations working to achieve the goal of reparations for chattel slavery should shift their focus to the FHA-TARC commission because it is more viable.

As discussed below, the FHA's policies burdened the nation, and particularly African-Americans, with something deeply disturbing and long-lasting: a debilitating wealth deficiency.¹⁸ The FHA

16. Carlton Waterhouse, *Follow the Yellow Brick Road: Pursuing the Path to Constitutionally Permissible Reparations for Slavery and Jim Crow Era Governmental Discrimination*, 62 RUTGERS L. REV. 163 (2009).

17. The most recent example demonstrating the legal authority of Congress to enact legislation that provides restitution for the unjust acts of the federal government in the past occurred with the passage of the American Recovery and Reinvestment Act of 2009. In that legislation, Congress appropriated \$198 million to compensate Filipino veterans of World War II who joined the U.S. military right before the invasion of Pearl Harbor on December 7, 1941. American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115. See also Paul Daniel Rivera, *'We've Been Waiting a Long Time'- The Struggle to Pass the Filipino Veterans Equity Act and a Bittersweet Ending to a Sixty-Three-Year Battle*, 7 HASTINGS RACE & POVERTY L.J. 447, 447 (2010) (discussing this latest act of government restitution for its own bad acts).

18. MELVIN OLIVER & THOMAS SHAPIRO, *BLACK WEALTH/ WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 43-44 (Routledge ed. 2006).

prevented African-Americans from purchasing homes at a moment of great change in the country, resulting in a huge wealth gap between the races that is a racial albatross for the entire nation.¹⁹ While the FHA and its policies are not the only reason for the significant wealth disparity between whites and blacks and other minorities in the U.S., it is a major reason.

This article is arranged as follows:

- Part I states the problem: the wealth disparity in the United States between whites and blacks is directly attributable to the policies of the federal government through the FHA;
- Part II discusses the history of the FHA with particular focus upon its discriminatory housing policy in the 20th century;
- Part III discusses the concept of “restorative justice” as it relates to this proposal identifying specifically previous restorative justice efforts;
- Part IV discusses the specific proposal of a FHA Truth and Reconciliation Commission, how it could operate, and what it could seek to achieve; and
- Part V concludes and discusses the proposal’s possibilities for actual implementation.

This article begins with an examination of the wealth gap in the U.S. and its relationship to government policies in regards to the housing market.

19. *Id.* at 44.

II. "BLACK WEALTH, WHITE WEALTH"

A. *Two nations*

In the United States, a country where race remains a stable social construct, racial equality is increasingly being considered to also mean economic equality.²⁰ Economic equality, in the view of the philosopher-writer, Jean Jacques Rousseau, provides the individual with security and independence, and also leads to political equality.²¹ The United States has yet to achieve racial equality despite impressive gains in the law and in society.²² To a large degree, this is due to the economic inequality between whites, blacks, and other minorities.²³

In early 2010, two reports were published documenting the severe wealth gap between whites and blacks in the United States.²⁴ The Center for Community Economic Development produced the first report, entitled, "Lifting as We Climb: Women of Color, Wealth, and the Future of America."²⁵ The report noted that "[t]here is an enormous racial wealth gap in America."²⁶ The report added: "[f]or every dollar of wealth owned by the typical white family, the typical family of color owns only 16 cents."²⁷ While the report focuses on the lack of wealth that women of color currently possess as compared to white women, it is relevant when considering the wealth issue overall. The wealth gap women of color suffer when compared to white women in the United States is described in the report as far more "damaging" than the "pay gap" between the two groups.²⁸ The report explains how "[w]ealth" is different than "income" and the importance of that difference.²⁹ It defines income, as "the amount of money received [by a family]. . . during a specific period of time," such as a bi-weekly paycheck, while wealth is a family's assets minus its

20. Julianne Malveaux, *On July 4, Hopes for a Better Nation*, USA TODAY, July 2, 2010, at 10A, available at http://www.usatoday.com/news/opinion/forum/2010-07-02-column02_ST2_N.htm.

21. CAROLE PATEMAN, PARTICIPATION AND DEMOCRATIC THEORY 22–23 (Cambridge Univ. Press ed. 1976).

22. SHAPIRO, *supra* note 3, at 5.

23. SHAPIRO, *supra* note 3, at 5–9.

24. *Id.*

25. INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, LIFTING AS WE CLIMB: WOMEN OF COLOR, WEALTH, AND THE FUTURE OF AMERICA, (2010), available at <http://insightccd.org/uploads/CRWF/LiftingAsWeClimb-InsightCenter-Spring2010.pdf>.

26. *Id.* at 1.

27. *Id.*

28. *Id.* at 4

29. *Id.* at 6.

liabilities, or net worth.³⁰ New York University Sociology Professor, Dalton Conley, explained the importance of wealth in 2001 through the prism of ‘equity inequity,’ a concept that is central to the wealth disparity explained in the report:

[E]quity inequity, which has grown in the decades since the civil rights triumphs of the sixties, cannot be explained by income differences alone. That is, while African-Americans do earn less than whites, asset gaps remain large even when we compare black and white families at the same income levels. For instance, at the lower end of the economic spectrum (incomes less than \$15,000 per year), the median African-American family has a net worth of zero, while the equivalent white family’s net worth is \$10,000. Likewise, among the often-heralded new black middle class, the typical white family earning \$40,000 per year enjoys a nest egg of around \$80,000; its African-American counterpart has less than half that amount.³¹

The Center for Community Economic Development report explains the disparity that Conley is describing in more detail, highlighting the specific reasons for why the disparity exists.³² As the report notes, there is already a gender gap in wealth that is significant; however, women of color experience the largest gender wealth gap.³³ The disparity is more striking when it is removed from the context of gender and the comparison is made on racial grounds: “single black and Hispanic women have one penny of wealth for every dollar of wealth owned by their male counterparts . . . and a tiny fraction of a penny for every dollar of wealth owned by white women.”³⁴ The report also comments on the reasons for the disparity.³⁵

As expected, while many factors caused the wealth gap between women of color and white women, land and/or home (property) ownership is the key factor.³⁶ This is significant considering this article’s proposal to form a commission that will seek to resolve

30. *Id.*

31. Dalton Conley, *The Black-White Wealth Gap*, THE NATION, Mar. 26, 2001, at 20, available at <http://www.thenation.com/issue/march-26-2001>.

32. INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, *supra* note 27.

33. *Id.* at 2.

34. *Id.* at 7.

35. *Id.* at 14–19.

36. *Id.* at 19

this historical problem, through research, investigation, analysis, recommendations, and actions. The report notes that due to the implementation and enforcement of various laws against women of color, including African-American women, the opportunity to build wealth (assets) over time has been non-existent.³⁷ African-American women in particular have been victimized by the lack of homeownership throughout history.³⁸ The report describes homeownership as “out of reach” for most women of color including African-American women.³⁹ Even in a situation where a woman of color owns a home, the amount of equity she owns in the home is far lower than the amount of equity a typical white woman owns in her home.⁴⁰ In addition, the growth of that equity historically has been much slower for women of color as opposed to white women.⁴¹ This is important because it is through home ownership that most middle class families are able to build the majority of their wealth.⁴²

In the 1995 book, rereleased in 2006, *Black Wealth/White Wealth*⁴³ co-authored by sociologists Melvin L. Oliver and Thomas M. Shapiro,⁴⁴ these very important trends relating to wealth, race, and the housing market were explained in greater detail.⁴⁵ However, *Black Wealth/White Wealth* examines the phenomenon between blacks and whites and does not distinguish women of color from white women.⁴⁶ The book addresses the problem from a racial perspective and concludes that with respect to wealth, there are two nations in the United States—one white, likely to possess wealth, and the other black, likely to be deficient in wealth.⁴⁷

As Oliver and Shapiro explain early on “wealth reveals a crucial dimension of the seeming paradox of continued racial inequality in American society.”⁴⁸ They add that the “continuation of

37. *Id.* at 5–6

38. *See id.*, at 11–12.

39. *Id.* at 11

40. *Id.*

41. *Id.*

42. Kai Wright, *The Assault on the Black Middle Class*, THE AMERICAN PROSPECT, July 1, 2009, at A7, available at http://www.prospect.org/cs/articles?article=the_assault_on_the_black_middle_class.

43. OLIVER & SHAPIRO, *supra* note 19.

44. UNIVERSITY OF CALIFORNIA, SANTA BARBARA, DIVISION OF SOCIAL SCIENCES, http://socialsciences.ucsb.edu/dean_bio.html (last visited Oct. 29, 2010); BRANDEIS UNIVERSITY FACULTY GUIDE, <http://www.brandeis.edu/facguide/> (last visited Oct. 29, 2010).

45. OLIVER & SHAPIRO, *supra* note 19, at 4.

46. *Id.* at 98–99.

47. *Id.* at 20–21

48. *Id.* at 12

persistent and vast wealth discrepancies among blacks and whites with similar achievements and credentials presents another daunting social policy dilemma.”⁴⁹ The 1995 wealth disparity they report is still substantial and troubling.⁵⁰

According to their findings, for every “\$8 to \$19” in wealth that blacks possessed at that time, whites owned \$100.⁵¹ Blacks only owned three percent of all wealth in the United States at that time, although they received far more of the money earned (over seven percent) and made up eleven percent of the households in the United States.⁵² Shapiro and Oliver also conclude that much of the problem can be linked to the lack of homeownership amongst African-Americans historically; a key component in the accumulation of wealth in the U.S. for middle class families.⁵³ As this article demonstrates, the homeownership issue is linked directly to policies of the federal government, especially the Federal Housing Administration (FHA).⁵⁴

B. *A house is not a home*

The Institute on Assets and Social Policy provides a second report on race briefly noted in the media.⁵⁵ Their report entitled, “The Racial Gap Increases Fourfold,” is essentially an update of the work of Thomas Shapiro and Melvin Oliver in *Black Wealth/White Wealth*. Thomas Shapiro was instrumental in completing this report along with Tatjana Meschede and Laura Sullivan.⁵⁶ The findings further establish that the wealth gap remains a serious concern with respect to improving race relations.

The evidence, gathered from 1984–2007 data,⁵⁷ determined that the wealth gap between blacks and whites quadrupled.⁵⁸ While the wealth gap in 1984 was approximately \$20,000 it is now estimated that

49. *Id.*

50. *See infra* Part II.b.

51. OLIVER & SHAPIRO, *supra* note 19, at 99.

52. *Id.* at 99–100.

53. OLIVER & SHAPIRO, *supra* note 19, at 110–112.

54. OLIVER & SHAPIRO, *supra* note 19, at 41–43.

55. Thomas Shapiro, Tatjana Meschede, & Laura Sullivan, *The Racial Gap Increases Fourfold*, THE INST. ON ASSETS & SOC. POL’Y (May 2010), available at <http://iasp.brandeis.edu/pdfs/Racial-Wealth-Gap-Brief.pdf>.

56. *Id.*

57. *Id.* at 1.

58. *Id.*

the wealth gap between whites and blacks is \$95,000.⁵⁹ While this estimate did not include home equity, the findings did take into account problems African-Americans experienced in the housing market. They described the issue as follows:

[E]vidence from multiple sources demonstrates the powerful role of persistent discrimination in housing, credit, and labor markets. For example, African-American and Hispanics were at least twice as likely to receive high-cost home mortgages as whites with similar incomes. These reckless, high-cost loans unnecessarily impeded wealth building in minority communities, and triggered the foreclosure crisis that is wiping out the largest source of wealth for minorities.⁶⁰

As a result of housing policy and housing market practices during this time period, the country did not equalize economically according to the findings of the brief.⁶¹ The nation has become even more economically unequal along racial lines.⁶² More importantly, the relationship between housing and wealth accumulation is the key to understanding why a federal agency's housing policy from decades ago continues to affect the lives of people today. In other words, a house is so much more than just a place where a family lives each day.

Home ownership is the "primary store of wealth for most Americans."⁶³ It constitutes twenty percent of all household wealth across the nation, and is the "important anchor" for household wealth.⁶⁴ Most Americans own a home as opposed to owning stock.⁶⁵ Even low income Americans benefit from owning a home as they possess, on average, 81 times more wealth than a person with a low-income that is a renter.⁶⁶ For all of these reasons, the ownership of a home has been historically essential to building wealth in the United

59. *Id.*

61. *Id.* at 2.

62. *Id.*

63. Eric Belsky & Joel Prakken, *Housing Wealth Effects: Housing's Impact on Wealth Accumulation, Wealth Distribution and Consumer Spending*, JOINT CENTER FOR HOUSING STUDIES, HARV. UNIV. (Dec. 2004), 3, available at <http://www.jchs.harvard.edu/publications/finance/w04-13.pdf> p. 3.

64. *Id.* at 3.

65. *Id.* at 5.

66. *Id.* at 3.

States. A home is not only important for the wealth it builds but for what it enables a family to accomplish with that wealth.

“Homeownership,” according to sociologist Thomas M. Shapiro, “is the way families gain access to the nicest communities” and most importantly, “quality education.”⁶⁷ Homeownership is also the reason why the policies imposed by the FHA⁶⁸ upon African-Americans and other minorities was, and continues to be, so destructive for the entire nation.⁶⁹ The FHA not only promoted segregation but the agency altered life outcomes for millions of minority children.⁷⁰

III. THE FEDERAL HOUSING ADMINISTRATION (FHA)

A. The New Deal

The key to understanding this problem is unraveling the actions and policies of the Federal Housing Administration from 1934–1968. The agency helped transform the nation from one of renters to one of middle class homeowners.⁷¹ However, most of these homeowners were white, and that was by design.⁷² For African-Americans and other minorities, the history of the agency and its policy decisions is tragic.

President Franklin Roosevelt and the U.S. Congress created the FHA in 1934.⁷³ At the time, the nation was experiencing the Great Depression. It was a difficult time economically in the United States:

The United States had gone through bad times before, but Americans had never seen anything like the winter of 1932–1933. Millions of workers had lost their jobs and many had also lost their savings when local banks closed for good. Some parents searched through garbage cans hoping to find food for their children,

67. SHAPIRO, *supra* note 3 at 3.

68. *Id.* at 107–108.

69. *Id.*

70. DALTON CONLEY, *WEALTH AND POVERTY IN AMERICA: A READER* 87 (Wiley ed. 2003).

71. See PHILIP RUBIO, *A HISTORY OF AFFIRMATIVE ACTION, 1619–2000* 97 (Univ. Press of Miss. 2001).

72. *Id.*

73. See OLIVER GILLHAM, *THE LIMITLESS CITY: A PRIMER ON THE URBAN SPRAWL DEBATE* 37 (Island Press 2002).

while homeless people lived in shacks made of cardboard and scraps of wood.⁷⁴

Yet, the economic depression of that era was even more catastrophic than that description indicates. Daily existence was compromised. Economist John Kenneth Galbraith described the period well in his book, *The Great Crash 1929*:

After the Great Crash came the Great Depression which lasted, with varying severity, for ten years. In 1933, Gross National Product (total production of the economy) was nearly a third less than in 1929. Not until 1937 did the physical volume of production recover to the levels of 1929, and then it promptly slipped back again. Until 1941 the dollar value of production remained below 1929. Between 1930 and 1940 only once, in 1937, did the average number unemployed during the year drop below eight million. In 1933, nearly thirteen million were out of work, or about one in every four in the labour force. In 1938 one person in five was still out of work.⁷⁵

Confronted with this dismal economic reality, beginning in March 1933 when he assumed office, President Roosevelt believed massive government intervention and investment was necessary to stabilize the economy.⁷⁶ Creation of the FHA was part of that government intervention.⁷⁷

The overall intervention that President Roosevelt proposed in the 1930's is now known as "The New Deal."⁷⁸ The New Deal was an "unprecedented expansion of federal government programs" that "reshaped politics, presidential power, and the role of the federal government in the economy of the United States of America."⁷⁹

74. MICHAEL BURGAN, *THE GREAT DEPRESSION* 4 (Minn. Compass Point Books ed. 2002).

75. *THE GREAT CRASH, 1929*, JOHN KENNETH GALBRAITH 152 (Hamish Hamilton Ltd. ed. 1955).

76. Patrick J. Maney, *The Roosevelt Presence: The Life and Legacy of FDR* 48-49 (Univ. of Calif. Press ed 1998).

77. PAUL F. CONKIN, *THE NEW DEAL* 46 (The Crowell Amer. Hist. Series ed. 1967).

78. RONALD EDSFORTH, *THE NEW DEAL: AMERICA'S RESPONSE TO THE GREAT DEPRESSION I* (Blackwell Publishers Inc. 2000).

79. *Id.* at 1.

President Roosevelt attempted to address a myriad of problems during the New Deal era, including housing issues, by providing the nation with specific government programs.⁸⁰ Roosevelt created the Federal Deposit Insurance Corporation (FDIC) to aid the troubled banking industry.⁸¹ He created the Securities and Exchange Commission (SEC) to regulate the stock market, which was a major cause of the economic collapse.⁸² The President also introduced the National Industrial Recovery Act (NIRA)⁸³ and the National Recovery Administration (NRA).⁸⁴ Finally, in the area of housing, President Roosevelt created the Federal Housing Administration (FHA).⁸⁵

The FHA was preceded by two important government housing programs: The Home Owner's Loan Corporation or HOLC of 1933 and the Federal Home Loan Bank Act (FHLB) of 1932.⁸⁶ While the Federal Home Loan Bank Act was created during the administration of President Herbert Hoover, the HOLC came into existence under Roosevelt's New Deal.⁸⁷ The focus of both programs was to rebuild the nation's housing and lending industries.⁸⁸

These agencies had similar purposes. The chief focus was to energize the housing and lending market at a particularly difficult time.⁸⁹ The FHLB sought to accomplish its goals with "long term amortized mortgages," "low-interest rates," "federal subsidies," and reduced "construction costs."⁹⁰ President Roosevelt signed the HOLC into law in June 1933, but it only existed until 1935.⁹¹ The purpose of the HOLC was to stabilize the housing market during difficult economic times.⁹² The HOLC purchased delinquent debts from original lenders such as banks, savings and loan associations and other

80. MANEY, *supra* note 77, at 50–51.

81. CONKIN, *supra* note 78, at 62.

82. *Id.*

83. The National Industry Recovery Act, 15 U.S.C. § 701 (1934).

84. The National Industry Recovery Act, *supra* note 84, at § 702.

85. CONKIN, *supra* note 78, at 62.

86. The Federal Home Loan Bank Act, 12 U.S.C. § 1421 (1934); *See* Kevin FOX GOTHAM, RACE, REAL ESTATE, AND UNEVEN DEVELOPMENT 53 (State Univ. of N. Y. Press, Albany 2002).

87. DAVID M. P. FREUND, COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA 111 (2007).

88. *Id.* at 109–112.

89. *Id.*

90. GOTHAM, *supra* note 87, at 53.

91. FREUND, *supra* note 88, at 112.

92. *Id.* at 111.

financial institutions that had extended home credit.⁹³ Thereafter, the HOLC would refinance these loans with long terms loans for the homeowners, fully amortized.⁹⁴ The government created the agency to “rescue both lenders and borrowers” by providing homeowners with “liberal” loans and by providing the federal government with a means to take a “direct role in shaping private housing markets.”⁹⁵

But the significance for purposes of this discussion of the HOLC was the racial component that was central to its work. While the specificity of these policies is still unclear, the existence of these policies is well-known.⁹⁶ The HOLC devised a credit rating system in the U.S. for credit worthiness that was based upon race and ethnicity, with race being the most undesired category.⁹⁷ The decision and the policy of the HOLC is the first significant decision by the government that contributed to the perpetuation of economic inequality in the United States:

The HOLC assigned one of the four ratings to every block in every American city, with the highest rating going to new, racially homogenous, all-White neighborhoods, a second grade to outlying Jewish and White working-class neighborhoods, and a third grade to racially mixed neighborhoods.⁹⁸

“All-Black” neighborhoods were assigned the lowest credit grade under the government’s rating system “regardless” of the age of the “dwellings” or the “income” of the residents.⁹⁹ This was, indeed, the creation of the institutionalization of redlining in the United States.¹⁰⁰ These ratings were posted in the local offices of the HOLC

93. David C. Wheelock, *The Federal Response to Home Mortgage Distress: Lessons from the Great Depression*, 90(3, Part 1) FED. RESERVE BANK OF ST. LOUIS REV. 133, 141 (May/June 2008), <http://research.stlouisfed.org/publications/review/08/05/wheelock.pdf>.

94. FREUND, *supra* note 88, at 111.

95. *Id.* at 111–12

96. GOTHAM, *supra* note 87, at 53.

97. *Id.*

98. *Id.*

99. *Id.*

100. Stella J. Adams, *Putting Race Explicitly into the CRA*, REVISITING THE CRA: PERSPECTIVES ON THE FUTURE OF THE COMMUNITY REINVESTMENT ACT 167, 168 (Federal Reserve Banks of Boston and San Francisco, 2009), http://www.frbbsf.org/publications/community/cra/putting_race_explicitly_cra.pdf. Redlining is a process by which goods and services are made unavailable or only made available on less favorable terms because of where a person lives regardless of otherwise objective characteristics. African-Americans historically have been the primary targets and financial victims of the practice.

and in “City Survey Files,”¹⁰¹ meaning that the racially driven information was openly and widely distributed, perpetuating racially biased treatment towards African-American neighborhoods. Under this system, more than one million mortgages were re-financed.¹⁰² African-Americans, in other words, were captive consumers of this racially biased system.

B. FHA and the modern mortgage system

The FHLB and the HOLC formed the basis for the modern mortgage system in the United States.¹⁰³ These two agencies and their respective policies converged in the Housing Act of 1934.¹⁰⁴ This act created the Federal Housing Administration (FHA).¹⁰⁵ The agency was described upon its creation as the most “widely discussed” of the New Deal agencies created by President Roosevelt.¹⁰⁶ Roosevelt had high hopes for the program during the economic troubles of the early 1930’s, because it would immediately release \$3 million in private capital into the housing market.¹⁰⁷

The FHA’s work was not to lend money to banks, housing developers, or consumers to invigorate the housing market. Rather, the FHA took a different, more effective, approach. It sought its goals by insuring private loans for the construction of homes and to purchase homes.¹⁰⁸ Due to the fact that private lenders were certain of their investments as a result of the insurance protection provided by the FHA, lenders were prepared to extend loans.¹⁰⁹ However, while the underlying approach of the FHA was highly successful, the racial policy that originated with the HOLC was a part of the FHA approach.¹¹⁰

This decision began the wholesale perpetuation of governmental housing policy based upon race that would perpetuate economic inequality amongst the races for decades.¹¹¹ While there had

101. GOTHAM, *supra* note 87, at 53.

102. *Id.*

103. *Id.*

104. 12 U.S.C. 1701 *et seq.* (1934).

105. GILLHAM & MACLEAN, *supra* note 74, at 37.

106. Frank Kluckhohn, *Housing Program Gives High Hopes*, N.Y. TIMES, Sept. 23, 1934, at E6.

107. *Id.*

108. GILLHAM & MACLEAN, *supra* note 74, at 37.

109. *Id.*

110. *Id.*

111. *Id.*

been discrimination in housing by government policy prior to the creation of the FHA towards African-Americans, Mexicans, Native Americans, and other minorities, the FHA's policy decisions and involvement with the housing market was more widespread.¹¹² The creation of the FHA was the start of a unique form of institutional racism in the U.S. and a particular brand of racial discrimination that has been discussed widely:

Racial minorities were marginalized much more profoundly by FHA operations, a fact that makes the agency's treatment of racial issues particularly revealing. In contrast to the conference, the FHA rarely, and in its general publications never, spoke directly about the housing of special 'racial groups.' Instead it subsumed questions about race into purportedly normative, social scientific guidelines for protecting the free market for housing. It defined that market as only serving white families, thus systematically, if quietly, writing people of color out of the very logic of homeownership.¹¹³

This is the key to understanding the impact of the FHA's policy on lives of ordinary citizens, particularly African-Americans. If the FHA had implemented a policy that was not heavily influenced by racial stereotypes, the economic inequality promoted by the policy might not have occurred.

The FHA's efforts to influence the direction of the housing market, beginning with the period of the Great Depression, were highly successful.¹¹⁴ Within one year of its creation, most of "mortgages and modernization loans" were loans the FHA insured.¹¹⁵ The FHA's efforts were successful in increasing residential construction of new properties, as well as the manufacturing of building materials.¹¹⁶ Congress endorsed the FHA, in 1937 by voting to make the agency permanent.¹¹⁷ Within three years, the agency had

112. FREUND, *supra* note 88, at 155-57.

113. *Id.* at 157.

114. *Banks Leading in Loans Insured by FHA on Mortgages and for Modernization*, N.Y. TIMES, Sept. 15, 1935.

115. *Id.*

116. *Id.*

117. *FHA is Permanent*, N.Y. TIMES, Feb. 21, 1937.

\$15 million available to provide insurance on housing market transactions.¹¹⁸

However, the agency failed to similarly help African-Americans and other minorities; a result that was, no doubt, by design. The adoption by the FHA of the HOLC's rating system meant that the U.S. government had decided to "racialize" the U.S. housing market.¹¹⁹ In fact, the government had created a housing market that was a "Jim Crow" housing market; legal, accepted, and supported by all the necessary parties.¹²⁰ It was described as follows:

Beginning in the 1930's, as a result, racial exclusion was no longer simply pursued by white homeowners and defended as a requirement imposed by the everyday workings of the market for homes. Exclusion by race was now firmly situated, by government statute, within the everyday workings of a newly designed market for homes. The act of excluding minorities from neighborhoods now had a very different relationship to the actual market. . . (the rules governing its operations literally *required* it) and because that market was dependent on federal support and oversight.¹²¹

Racially restrictive covenants "are agreements entered into by property owners binding themselves not to sell or lease their property to blacks and other racial or ethnic minorities."¹²² These agreements were written directly into the deeds of the property ensuring that the covenant would be attached to the property.¹²³ With respect to government policy developed prior to the creation of the FHA, racial covenants were a key component. In fact, the FHA expected and encouraged the use of these covenants in order for mortgage insurance to be issued.¹²⁴

118. *Id.*

119. FREUND, *supra* note 88, at 132.

120. Karl Taeuber, *The Contemporary Context of Housing Discrimination*, 6 YALE L. & POL'Y REV. 339, 347 (1988).

121. *Id.* at 132.

122. JAMES A. CURRY, RICHARD M. BATTISTONI & RICHARD B. RILEY, *CONSTITUTIONAL GOVERNMENT: THE AMERICAN EXPERIENCE* 252 (5th ed. 2003).

123. DAVID B. MUSTARD, *RACIAL JUSTICE IN AMERICA: A REFERENCE HANDBOOK* 56 (2003).

124. Thomas Hanchett, *The Other Subsidized Housing*, in *FROM TENEMENTS TO THE TAYLOR HOMES: IN SEARCH OF AN URBAN HOUSING POLICY IN TWENTIETH-CENTURY AMERICA* 164-166 (John F. Bowman, Roger Biles & Kristin M. Szylyvian eds., 2000).

For decades, racially restrictive covenants in housing were legal in the United States¹²⁵ as a result of the 1926 Supreme Court of the United States decision in *Corrigan v. Buckley*.¹²⁶ The Court dismissed all legal and public policy arguments attacking private racial covenants in housing as “lacking in substance or color of merit.”¹²⁷

It took the Court more than twenty years to overturn the *Buckley* decision. In 1948, in *Shelley v. Kraemer*,¹²⁸ the Court held that state enforcement of racially restrictive covenants is unconstitutional.¹²⁹ Though tempered, the decision was a significant change in housing law and a challenge to official government policy:

We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand. We have noted that freedom from discrimination by the States in the enjoyment of property rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment.¹³⁰

The ruling did not explicitly declare that the covenants were unconstitutional, but it did render the covenants unenforceable. However, the decision was ineffective in addressing the disenfranchising policies of the FHA. Segregation practices under the auspices of the FHA policy continued after *Shelley*.¹³¹ In fact, even though civil rights organizations pressured the administration of President Harry Truman to issue an executive order addressing racial covenants following the *Shelley* decision, the order had little impact on discriminatory practices already in operation.¹³²

125. See *Mays v. Burgess* 147 F.2d 869, 872 (C.A.D.C. 1945); *Herb v. Gerstein* 41 F.Supp 634, 635 (D.C.D.C. 1941);

126. 271 U.S. 323 (1926).

127. *Id.* at 330.

128. 334 U.S. 1 (1948).

129. *Id.* at 20.

130. *Id.*

131. THE CIVIL RIGHTS LEGACY OF HARRY TRUMAN, 39–40 (Raymond H. Geselbracht ed., 2007).

132. *Id.* at 40–41.

C. "Sweet Home Chicago"

The city of Chicago provides an example of exactly what the FHA engaged in during the mid-twentieth century. Due to the government-supported housing policy, Chicago became the most racially segregated city in the U.S. during the twentieth century.¹³³ Despite the best efforts of African-Americans to re-locate from the all-black areas of the city, these efforts were highly unsuccessful.¹³⁴ Chicago's approach provided all other cities with an example of an alternative policy, and the FHA might have borrowed the approach as well though there is no actual proof of this suggestion.¹³⁵

Of course, initially in Chicago, as in other cities, the primary tool for denying African-Americans an opportunity to purchase a home in more valuable neighborhoods was the racially restrictive covenant.¹³⁶ In reaction to increased migration of African-Americans from the South to Chicago, these covenants were imposed specifically to limit living choices for African-Americans.¹³⁷

The FHA also had a strong role in Chicago's segregation. As in most major cities, the FHA would not approve of an African-American-operated mortgage banking company in Chicago despite a very lucrative market.¹³⁸ The FHA intentionally worked to make certain that of the 243 savings and loans institutions in Cook County, Illinois (where Chicago is located), a bare minimum would even consider making loans to blacks.¹³⁹ The biased policies of the FHA in Chicago (giving neighborhoods grades based upon racial composition) also contributed to poor racial attitudes by whites towards blacks when the blacks attempted to move into their neighborhood.¹⁴⁰ It is, thus, no accident that by the 1940's, as the FHA's policy became more pronounced, racial violence increased in Chicago, in direct relation to the attempted integration of neighborhoods.¹⁴¹

Racial attitudes of Chicago's white citizens matched the government policy that was perpetuated by the FHA. While it could be

133. BERYL SATTER, *FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA* 351-54 (2009).

134. *Id.* at 44-45.

135. THOMAS GUGLIELMO, *WHITE ON ARRIVAL: ITALIANS, RACE, COLOR, AND POWER IN CHICAGO, 1890-1945* 166 (2004).

136. SATTER, *supra* note 135, at 40-41.

137. *Id.*

138. *Id.* at 43-44.

139. *Id.*

140. *Id.*

141. *Id.* at 45-46.

argued that the FHA was only implementing a policy that the white majority of the population was seeking, it is not the role of the government to violate the law to appease the cause of racial hatred. Rather, it is the federal government's duty to do just the opposite.¹⁴² In Chicago, as in many other major cities, the model of segregation and racial inequality was perfected: government policy supported racist attitudes amongst majority white populations.¹⁴³

D. Money and the power

Combining the discussion in section II herein on the relationship between homeownership and wealth, and section III that explains how the government prevented African-Americans from owning homes, produces a clear picture of the economic injustice of our recent past. It cannot be stated more clearly: the federal government is directly responsible for the kind of society we have today when one considers race and economics.¹⁴⁴ This is important considering the relationship between economic equality and political equality.¹⁴⁵ "High inequality," *New York Times* columnist and economist, Paul Krugman writes, "has a corrosive effect on social relations and politics."¹⁴⁶ Other observers have written and argued that if there is economic inequality in a society, there is also political inequality.¹⁴⁷

If such assertions are true, then the wealth disparity must be addressed in a significant manner. This does not mean that every African-American must suddenly possess wealth equal to the average American's wealth. The goal is some reasonable level of equality that promotes and sustains democracy. Rousseau and Thomas Jefferson both avoided the call for absolute equality but they did believe that

142. The best support for the federal government's obligation to ignore attitudes and to uphold the law is the Equal Protection Clause of the 14th Amendment which states, in relevant part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend XIV, §1 (1868).

143. SATTER, *supra* note 134, at 352–54.

144. C. MICHAEL HENRY, RACE, POVERTY, AND DOMESTIC POLICY 40–41 (2004).

145. Larry M. Bartels, *Economic Inequality and Political Representation*, PRINCETON UNIV. DEP'T OF POLITICS & WOODROW WILSON SCH. OF PUB. & INT'L AFFAIRS 1 (2002), available at <http://www.princeton.edu/~bartels/economic.pdf>.

146. PAUL KRUGMAN, THE CONSCIENCE OF A LIBERAL 245 (2007).

147. MICHAEL J. THOMPSON, THE POLITICS OF INEQUALITY: A POLITICAL HISTORY OF THE IDEA OF POLITICAL INEQUALITY IN AMERICA, 1–6, 19–23 (2007).

economic equality had to be achieved in order for political equality to exist.¹⁴⁸

In the U.S., there is economic inequality without even considering race.¹⁴⁹ When you also consider that the U.S. is a country with a difficult racial past (race riots, hate crimes, discrimination, mistrust, etc.), an improvement in the wealth gap should be an important goal of society. The FHA-TARC attempts to address that problem and to make the promotion of economic equality a goal for the nation.

III. THE FHA-TARC

A. South Africa

The FHA-TARC, if created, would be a government sponsored commission to address the economic (wealth) disparity the policies of the Federal Housing Administration created beginning in 1934. It receives its name from South Africa's now famous Truth and Reconciliation Commission that was founded after the end of majority white rule in South Africa.¹⁵⁰ The FHA-TARC is not the same as South Africa's Truth and Reconciliation Commission (hereinafter "SA-TARC") but some of SA-TARC's components should be considered when the FHA-TARC is constructed. Most importantly, the spirit of that commission should be the spirit of this commission.

The FHA-TARC would unveil the truth and act upon that truth to change the future of racial equality around the nation. The purpose is not to uncover crimes of violent racial hatred, but to uncover economic inequality in a specific manner and provide restitution for that inequality.

SA-TARC was established following the end of apartheid to provide "as complete a picture as possible of . . . the gross violations of human rights" that occurred in South Africa.¹⁵¹ The FHA-TARC would not attempt to provide a clear picture of gross human rights violations but would provide a clear picture of the actions and policies

148. MARK MATTERN, *PUTTING IDEAS TO WORK: A PRACTICAL INTRODUCTION TO POLITICAL THOUGHT* 137 (2006).

149. Michelle Singletary, Editorial, *What Sherrod Was Telling Us*, WASH. POST, July 25, 2010, at G1.

150. Promotion of National Unity & Reconciliation Act 34 of 1995 §§ 2-11, available at <http://www.justice.gov/za/legislation/acts/1995-034.pdf>.

151. *Id.* at § 3(1)(a).

by the federal government that contributed to a huge wealth gap in the United States between the races.

SA-TARC was also empowered with the ability to grant amnesty to the perpetrators of the violations in order to gather “relevant facts” and in an effort to comply with the act that establishes the commission.¹⁵² Additionally, SA-TARC sought the participation of victims, “granting them an opportunity to relate their own accounts of the violations.”¹⁵³ SA-TARC was also charged with the ability to recommend “reparation measures in respect to [the victims]”.¹⁵⁴ Finally, SA-TARC issued a report that provided recommendations based upon the evidence gathered during the commission’s tenure and especially recommendations designed to “prevent . . . future violations.”¹⁵⁵

SA-TARC is the preferred model for the FHA-TARC because it was designed to rectify past injustices the government committed while offering incentives for the information needed to accomplish its goals.¹⁵⁶ It sought to address an issue of great concern to the nation of South Africa. The commission also had the full support of the government when President Nelson Mandela signed into law.¹⁵⁷ The SA-TARC held hearings where witnesses testified to events that occurred in the past.¹⁵⁸ Many of the witnesses who testified were provided with immunity in order to encourage the delivery of accurate factual data regarding the events.¹⁵⁹ This included individuals who were the direct perpetrators of crimes against others, as opposed to those who simply issued directives for others to act.¹⁶⁰

Most importantly, for purposes of comparison, the SA-TARC had the power to award payment of reparations to victims and their survivors. At the end of the hearings, SA-TARC recommended financial awards to victims.¹⁶¹ SA-TARC focused upon atrocities of violence; in contrast, the FHA-TARC would focus on economic

152. *Id.* at § 3(1)(b).

153. *Id.* at § 3(1)(c).

154. *Id.*

155. *Id.* at § 3(1)(d).

156. *Id.* at §§ 3–5.

157. Promotion of National Unity & Reconciliation Act 34 of 1995.

158. Annelies Verdoolaeg, *Reconciliation Discourse: The Case of the Truth and Reconciliation Commission*, in 27 DISCOURSE APPROACHES TO POLITICS, SOCIETY, AND CULTURE 12 (Ruth Wodak & Greg Myers, eds., 2008).

159. *Id.* at 14–15.

160. *Id.* at 17.

161. TRUTH AND RECONCILIATION COMM’N, TRC FINAL REPORT, VOL. 5 311–12 (1998), available at <http://www.justice.gov.za/trc/report/index.htm>.

wealth denied to African-Americans and others who were victims of government policy.

An accurate criticism of SA-TARC is whether it was effective or will be considered effective in accomplishing its larger goal of racial reconciliation.¹⁶² The commission provided a forum where South Africa's citizens were able to express themselves regarding a past of injustice, violence, and death.¹⁶³ However, the new nation of post-apartheid South Africa still experiences significant inequality.¹⁶⁴ The FHA-TARC could still embrace the SA-TARC model, considering that racial equality in the U.S. is a work in progress. This is especially true with respect to economic equality and the FHA's legacy.

B. Fair Housing

Another source of ideas for the creation of the FHA-TARC is the National Commission of Fair Housing and Equal Opportunity.¹⁶⁵ The National Commission of Fair Housing and Equal Opportunity was independently formed in the United States in 2008.¹⁶⁶ This independent commission, formed by fair housing advocates, met for six months in 2008 in an attempt to address the issue of housing discrimination (fair housing) in the U.S and to offer a future course of action.¹⁶⁷ Public hearings were held in cities across the nation.¹⁶⁸ Among the cities where the commission met and held its hearings were Atlanta, Los Angeles, Houston, Chicago, and Washington D.C.¹⁶⁹ The commissioners who served on the commission were well-known and well-respected.¹⁷⁰

162. LYN S. GRAYBILL, TRUTH AND RECONCILIATION IN SOUTH AFRICA: MODEL OR MIRACLE? 177-79 (2002).

163. *Id.* at 6-8.

164. Malcolm Keswell, *Education and Racial Inequality in Post Apartheid South Africa*, SANTA FE INST. 11 (2005), available at <http://www.santafe.edu/media/workingpapers/04-02-008.pdf>.

165. *The Future of Fair Housing: Report of the National Commission on Fair Housing and Equal Opportunity*, NAT'L COMM'N ON FAIR HOUSING & EQUAL OPPORTUNITY (2008), available at http://www.nationalfairhousing.org/portals/33/reports/Future_of_Fair_Housing.pdf.

166. *Id.* at 31.

167. *See id.* at Appendix A.

168. *Id.* at ii.

169. *Id.*

170. *See id.* Among the commissioners who served on the NFHEO Commission included Okainer Christian Dark, Associate Dean, Howard University School of Law; I. King Jordan,

Individuals were encouraged to testify regarding housing discrimination past and present, and in the end, an eighty-eight page report was produced that provided recommendations for action in the future.¹⁷¹ However, whether the commission was effective is unclear. The fact that the commission was independently formed outside of the government is of great significance. It diminished the impact of the activities of the commission, though it provided independence. But this dilemma is particularly why the FHA-TARC should be a government-created and government-supported entity, through the legislative and/or executive branch in order to provide it with immediate credibility as the process proceeds forward. This is also important because FHA-TARC seeks to address problems that government policy created.

C.U.S. Commission on Civil Rights

The United States Commission on Civil Rights (hereinafter "USCCR") is also worthy of an examination in creating the FHA-TARC. The USCCR was created in 1957 just as the U.S. civil rights period commenced.¹⁷² It was created pursuant to the Civil Rights Act of 1957.¹⁷³ The USCCR possesses many of the qualities that would be useful for the FHA-TARC. It was created within the executive branch and consisted of six members.¹⁷⁴ The commission had (and still has) the power to conduct hearings and to subpoena individuals and records in order to accomplish its goals.¹⁷⁵ The USCCR was created to investigate "deprivations" of rights based upon color, race, national origin, religion, sex, age, and disability.¹⁷⁶ The USCCR was and is interested in any practice of fraud that perpetuates these deprivations,¹⁷⁷ a function very important to a healthy society.

Unfortunately, the agency has no authority or power to enforce complaints of discrimination though it has power to research, report,

President-emeritus, Gallaudet University, and Henry Cisneros, former Secretary of the U.S. Department of Housing and Urban Development.

171. *Id.* at vi-xiii.

172. MARY FRANCES BERRY, AND JUSTICE FOR ALL: THE UNITED STATES CIVIL RIGHTS COMMISSION AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA 21 (2009).

173. 42 U.S.C. § 1975 (1957).

174. H.R. Res. 6127, 85th Cong. § 101(b) (1957), available at http://eisenhower.archives.gov/Research/Digital_Documents/Civil_Rights_Civil_Rights_Act/New%20PDFs/Civil_Rights_Bill.pdf.

175. *Id.* at §105(f).

176. 42 U.S.C. § 1975a(a)(1) (2006).

177. *Id.* at (a)(1)(B).

and make recommendations.¹⁷⁸ It also is politicized. Many argue that conservatives currently control the agency even though conservatives generally are not supportive of civil rights.¹⁷⁹ The FHA-TARC cannot survive with politics; it must be created with independence in mind.

The FHA-TARC, if charged with resolving this issue, should be afforded much more power than USCCR. For example, if the FHA-TARC uncovered clear instances where the FHA used its power to deny individuals or families mortgages, the agency should have the ability to provide some financial restitution to those individuals or families. A family that would have been able to purchase a home and accumulate wealth as a result of the ownership of that home but was denied because of the FHA policy should be provided with the wealth it would have accumulated but for the policies of the FHA. The focus should be upon addressing former polices with monetary compensation.

On April 12–13, 1962, in Washington D.C., the USCCR held hearings on housing discrimination in the nation's capitol.¹⁸⁰ Transcripts of the hearings were generated and a report of the hearing reveals evidence of extensive government involvement in housing discrimination and specific instances of discrimination.¹⁸¹ “Forty witnesses”¹⁸² testified during the two day hearing and while some of the testimony is in conflict, the majority of the recorded testimony demonstrates government culpability in housing discrimination in Washington D.C.¹⁸³ The key, however, is that the hearings generated a transcript that contains specific instances of discrimination and alludes to the involvement of the FHA.¹⁸⁴ This is precisely the kind of work the FHA-TARC would be authorized to conduct but with one caveat: the FHA-TARC would also fashion remedies from the available data that will address the wealth disparity dilemma. By identifying specific instances of discrimination, the FHA-TARC can justify its overall mission.

178. BERRY, *supra* note 173, at 21.

179. MEDIA MATTERS FOR AMERICA, *Meet the Conservative U.S. Commission on Civil Rights* (2010), <http://mediamatters.org/research/201007090045>.

180. *Id.*

181. *Id.* at 5–6.

182. *Id.* at viii.

183. *Id.*

184. *Id.*

IV. THE FHA-TARC AS “RESTORATIVE JUSTICE”

A. Restorative justice and reparations for slavery

The FHA-TARC is an attempt at the human rights concept known as “restorative justice.” Restorative justice, in this context, is the processes ‘to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.’¹⁸⁵ There are three (3) principles that guide the restorative justice approach. These principles are described as follows:

1. Restorative justice focuses on the victims’ harms and needs, not rules and laws.
2. Restorative justice emphasizes the responsibility of the offender to make things right, and sees punishment as secondary to restoration of those affected.
3. Restorative justice seeks to engage all “stakeholders” in a process of creative problem-solving that addresses the needs of victims and the responsibility of offenders, and seeks to reconcile everyone’s best interests.¹⁸⁶

While countless books have been written about the policies of the FHA and what those policies have wrought, there has never been any real effort to actually reverse the effects of the actions of the government during the intense period of discrimination. There have even been hearings¹⁸⁷ over the years where the actions of the FHA were discussed and debated; however, no actions have ever been implemented to address the effects. The restorative justice approach can result in some movement in this direction.

The purpose of the commission would be to discover the facts from those who perpetuated the policy (surely many are still alive) and

185. HOWARD ZEHR, *THE LITTLE BOOK OF RESTORATIVE JUSTICE* 37 (Good Books 2002).

186. Michael F. Blevins, *Restorative Justice, Slavery, and the American Soul: A Policy-Oriented Intercultural Human Rights Approach to the Question of Reparations*, 31 T. MARSHALL L. REV. 253, 291–92 (2005–2006).

187. See *supra* note 121; in addition, hearings on civil rights issues and housing were held in various cities in the early years of the United States Civil Rights Commission. See STEPHEN GRANT MEYER, *AS LONG AS THEY DON’T MOVE NEXT DOOR* 296 (ROWMAN & LITTLEFIELD 2000); SATTER, *supra* note 134 at 392.

from those the policy disenfranchised. While the facts as they are known today suggest that most of the worst cases of economic disenfranchisement were perpetuated against African-Americans, there is no reason that inquiries into these facts should be limited to those instances.

Surely, there is precedent for the FHA-TARC under previously executed restorative justice models.¹⁸⁸ The United States has admitted errors in the past and sought to correct these mistakes even when these mistakes required economic reconciliation.¹⁸⁹ Two efforts that embrace this model come to mind.

The most famous occurred on August 10, 1988 when President Ronald Reagan signed the Civil Liberties Act of 1988.¹⁹⁰ The Act, in pertinent part, authorized the United States to pay \$20,000 to Japanese-American citizens and/or descendants of Japanese-American citizens, whom the United States had detained in internment camps during World War II as the nation went to war with Japan.¹⁹¹ The act also required the United States government to issue an official apology those who had been detained under the program.¹⁹²

The legislative catalyst for the act was the Commission on Wartime Relocation and Internment of Civilians (CWRIC).¹⁹³ CWRIC was a congressionally-created body that concluded in December 1982 that the internment of Japanese-American citizens was the result of “racial prejudice, wartime hysteria, and a failure of the nation’s leadership.”¹⁹⁴ Based upon these conclusions, CWRIC recommended that the nation offer the victims (and descendants of those who were detained) an apology as well as the monetary payments of \$20,000 each.¹⁹⁵ CWRIC, without argument, is an example of successful “restorative justice” that is monetary in nature. The key feature of this effort is the fact that Congress created an entity to investigate the claims, the investigation and research proceeded forward, and those who were entitled to monetary redress actually received monetary payment. Eligibility requirements were established as well,¹⁹⁶ which contributed to the legitimacy of the effort.

188. See generally ZEHR, *supra* note 186.

189. See *infra* notes 195–208 and accompanying text.

190. 50 U.S.C. app. § 1989b (2006).

191. *Id.* at § 1989b–4(a)(1).

192. *Id.* at § 1989(2).

193. *Id.* at § 1989a(a).

194. *Id.*

195. 28 C.F.R. §§ 74.7(a), 74.10(a) (2009).

196. *Id.* at §§ 74.3–74.6.

While the process was not perfect, it did bring the matter to a conclusion. The economic injustice the government perpetuated through the FHA is similar in nature because it continues to impact the lives of those affected. Components of this effort can be used for the legislation to establish the FHA-TARC.

The other example of restorative justice useful for this discussion involves Native Americans. Native Americans, on an individual level, have been eligible for some form of restitution from the United States since 1863 for violations of treaties formed between the United States and their particular tribes.¹⁹⁷ In 1946, Congress passed the Indian Claims Commission Act, a law designed to “consolidate and adjudicate Natives’ claims against the federal government.”¹⁹⁸ While the commission experienced numerous problems during its operations,¹⁹⁹ the commission’s over-arching goals are important.²⁰⁰ The commission was formed to settle various nations’ land disputes against the United States government.²⁰¹ Progress was slow, though the commission awarded \$37 million by 1961 when the agency was reauthorized to settle the remaining claims.²⁰² The commission maintained operations until 1978.²⁰³

V. THE FHA-TARC: THE FUTURE

There have been numerous proposals to address the wealth gap created by the FHA. Many of these proposals are referenced above or at least alluded to, in part to explain this proposal.²⁰⁴ It should be noted that there have also been government efforts to address the

197. ALFRED L. BROPHY, *REPARATIONS: PRO & CON* 41 (OXFORD UNIV. PRESS 2006).

198. *Id.*; Indian Claims Commission Act, 25 U.S.C. § 70 et. seq. (1976).

199. See 92 CONG. REC. 5280, 5316 (1946) (“[The] process is enormously costly and unsatisfactory to everyone. It means that Government clerks and attorneys in the Interior Department, the Department of Justice and the General Accounting Office spend years and years examining and reexamining Indian claims in an effort to determine whether the Indians should have a day in court.”).

200. See *id.* at 5312 (“Let us pay our debts to the Indian tribes that sold us the land that we live on . . . [L]et us make sure that when the Indians have their day in court they have an opportunity to present all their claims of every kind, shape and variety, so that this problem can truly be solved once and for all.”).

201. Nancy Oestreich Lurie, *The Indian Claims Commission Act*, in *CONSTITUTIONALISM AND NATIVE AMERICANS, 1903–1968* 154 (John R. Wunder, ed., 1996).

202. *468 Cases Remain in Indian Claims; Commission has Until 1967 to Dispose of Tribal Suits*, N.Y. TIMES, Nov. 6, 1961.

203. Indian Claims Commission Act, 25 U.S.C. § 70v (2006); *Id.* at § 70 to 70n-2 (2006).

204. See *supra* notes 195–208 and accompanying text.

problem in various ways (not in a comprehensive manner but there have been efforts).

For example, in September 1954, President Dwight Eisenhower announced the formation of an “Advisory Committee on Minority Housing.”²⁰⁵ The committee, formed under the Federal Home and Housing Finance Agency, was designed to assist “the Negro and other minorities.”²⁰⁶ While civil rights advocates welcomed the committee, it was formed at a time when the FHA was continuing with discriminatory policies. The committee also was only addressing future mortgage lending in the housing market; there is no mention in historical accounts that the committee had any power to investigate the wrongs of the past or provide redress for those wrongs.²⁰⁷ If the government had acted aggressively and comprehensively in 1954, perhaps today’s wealth gap would not be as substantial.

In 1995, President Bill Clinton also sought to address minority housing issues. The National Homeownership Strategy was unveiled in 1994 and was an attempt to not only “increase homeownership” amongst all Americans, but also to focus on underrepresented groups, individuals, and families that historically were denied access to the housing market.²⁰⁸ African-American families and Hispanic families were specifically noted as a target of the effort.²⁰⁹ However, the problem with these government efforts is that the government only attempts to address the future. It is not acknowledging the policies of the past and the current impact of those policies.

Many individuals, outside the government, have suggested how to fix the problem as well. Some of these suggestions encompass some of the ideals of this proposal. Jonathan Kaplan and Thomas Valls, in their July 2007 article in *Political Affairs Quarterly*, as previously discussed, proposed greater opportunities for the creation of wealth by African-Americans.²¹⁰ These proposals would include access to good education and more favorable mortgage financing.²¹¹ Kaplan and Valls are not opposed to direct compensation to all African-Americans, but

205. William G. Weart, *U.S. Housing Agency to form Housing Committee to Assist Minorities*, N.Y. TIMES, Sept. 9 1954.

206. *Id.*

207. *Id.*

208. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, URBAN POLICY BRIEF No. 2 (1995), available at <http://www.huduser.org/Publications/txt/hdbrf2.txt>.

209. *Id.*

210. Kaplan & Valls, *supra* note 4, at 255–56.

211. *Id.* at 269.

take no position on how it shall occur and how much is the appropriate amount.²¹²

Thomas Shapiro and Melvin Dixon make recommendations for addressing the problem as well in *Black Wealth, White Wealth*.²¹³ Shapiro and Dixon stress that the amount of wealth “that can make a difference” is not “large” and is not in the “million-dollar” or “six-figure range.”²¹⁴ They do admit that a “significant amount of assets will be needed.”²¹⁵ While they do not state specifically that a formal organized government supported entity is needed to implement their ideas, it is clear from their discussion that their call is for economic restitution, in some manner.²¹⁶ It is hard to decipher if they are calling for a deep inquiry for specific factual support followed by a program of economic restitution.

This is admittedly a difficult demand to express on many levels. However, the call for this commission and economic restitution should be the will of the nation. The “general will”²¹⁷ must demand it, or simply accept an unequal society well into the future with all the difficulties such an unequal society imposes upon us all.

Once a restorative justice commission is organized, the ideas that Dixon and Shapiro assert must be considered. The specific recommendations of Dixon and Shapiro include “education and youth asset accounts,” “housing asset accounts,” and “self employment and business accounts.”²¹⁸ Dixon and Shapiro’s other ideas include adjustments to housing deductions, tax policy, and more effective enforcement of anti-discrimination laws.²¹⁹

Shapiro and Dixon also mention U.S. Congressmen John Conyers and his dormant legislation that proposes forming a commission to study the effects of chattel slavery upon African-Americans.²²⁰ The legislation has never even had a hearing. However, Congressmen Conyers’ legislation, while well-intentioned, is not the answer to the wealth disparity issue. The federal government should

212. *Id.* at 270.

213. OLIVER & SHAPIRO, *supra* note 19, at 182–92.

214. *Id.* at 180.

215. *Id.*

216. *Id.* at 180–182.

217. KENNEDY F. ROCHE, ROUSSEAU: STOIC AND ROMANTIC 69 (METHUEN & CO LTD 1974).

218. OLIVER & SHAPIRO, *supra* note 19, at 184–87.

219. *Id.* at 187–91.

220. JohnConyers.com, *Reparations*, <http://www.johnconyers.com/issues/reparations> (last visited October 20, 2010).

collectively admit its actions before a government sponsored commission and propose a strategy to repair the economic damage.

To begin this process, a more specific legislative proposal than Conyers' should be pursued. Perhaps some data can be collected prior to the introduction of the legislation that would create a real commission to study and address this problem with effort and economic restitution.

The FHA-TARC, as proposed herein, should resemble many other commissions formed in the United States though the overall model is South Africa's Truth and Reconciliation Commission from the 1990's that attempted to address the atrocities of the racial apartheid era in that country. Despite the shortcomings of that commission, the amnesty component did motivate participants to discuss their actions.

The FHA-TARC commission must be given broad powers to act and collect information in order to be effective. One of the shortcomings of the U.S. Commission on Civil Rights is that the commission lacks the power to act.²²¹ THE FHA-TARC should be given adequate, time, space, funding and the very best public and professional officials. If the process becomes political, or if there is an effort to minimize the ultimate goal, the commission should be abandoned.

In closing, several points regarding this proposal are offered that seek to distinguish the proposal from previous efforts of this nature.

A. The FHA-TARC should be created by congressional legislation.

Presidents have issued executive orders focusing upon housing issues over the years.²²² However, an executive order to create a commission to remedy past wrongs will not suffice in this instance because it is Congress that possesses the power to spend, and Executive Orders can be rescinded with the election of a new President, unlike the permanency of Congressional acts.²²³ Legislation must create the FHA-TARC as a commission that affords an existing government entity, such as the United States Commission on Civil

221. See *supra* note 180.

222. See Exec. Order No. 11,063, 3 C.F.R. 652 (1959-1963); Exec. Order No. 12,892, 3 C.F.R. 849 (1995). Both provided significant policy guidance in the housing area but did not involve any significant outlay of financial resources.

223. U.S. CONST. art. I, § 7-8.

Rights, the power to investigate, report, make recommendations, and act independently.

The power of the commission, the duties, responsibilities, and the manner in which the FHA-TARC would accomplish its goals is somewhat flexible. South Africa's Truth and Reconciliation Commission possesses some of the aspects of how the FHA-TARC would function. In addition, the United States Civil Rights Commission also possesses some of the components of the FHA-TARC. Also, the Civil Liberties Act of 1988, discussed above, is a source for the FHA-TARC's structure and direction. If it is discovered that a specific party sought mortgage financing and government policy denied that party the loan or caused that party to seek financing under unfavorable terms, there should be compensation for those acts.

This might not be the only manner in which a party receives compensation but it is one approach. It also avoids the charge that individuals are receiving reparations just for being African-American or Hispanic, as opposed to receiving compensation for an actual act of injustice.

B. The FHA-TARC must be focused on the past as well as the future.

This second point is connected to the previous point as discussed in Section VI (a). Adam Gordon, in a 2005 Yale Law Journal article, presented a sound rationale for the FHA-TARC:

For three decades, the combination of safety-and-soundness regulations and discrimination by the FHA created opportunities to build wealth for whites and not for African-Americans, and made a historically questionable view of racial segregation and neighborhood change the national norm.²²⁴

Gordon's view throughout his article is that one cannot address the problem of the FHA's policies by simply adjusting future policy.²²⁵ Jonathan Kaplan and Thomas Valls take this approach as do many others.²²⁶ But this approach ignores history and does not resolve the overall problem.

224. Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L.J. 186, 222 (2005).

225. *Id.* at 193-94.

226. Kaplan & Valls, *supra* note 4, at 265-69.

There must be some remedy for what occurred in the past as well, to “undo the ongoing harms,” in Gordon’s opinion.²²⁷ Whites, according to Gordon, had a “generation’s head start on accumulating wealth through homeownership.”²²⁸ These harms, in his view, and in the view of many others, are “devastating,”²²⁹ particularly for African-Americans. However, nothing serious has ever been proposed to specifically address the problem as it exists now because the wealth gap has grown over time.

C. The FHA-TARC is not affirmative action

While affirmative action housing programs have been proposed as a solution to this problem, the FHA-TARC is not an affirmative action program. It is the goal of the FHA-TARC, at least initially, to actually discover instances where the FHA’s policies resulted in a wrong against an individual or a family, or at least reach the point where it is likely that a wrong occurred. In other words, African-Americans should not be awarded assets or some monetary assistance simply because they are African-American.

While this would seem to be a policy that would address the problem, this is not necessarily the case. However, if and how monetary remedies are to be provided, is open to some discussion and development. This is why it is important to form the commission now, provide the commission with resources and authority, and allow it to evolve as information is gathered and possible remedies are considered.

In addition, the previous efforts to address economic problems that have occurred because of housing discrimination are more akin to affirmative action programs. Even the typical proposal for redress as a result of FHA policy—favorable loans, low interest loans, savings accounts for African-American children at birth—are affirmative action programs and are not really the goal of this commission, though these ideas might be utilized. The FHA-TARC is seeking a new approach that focuses on the facts and documentation of the FHA’s program before paying any monetary damages.

227. Gordon, *supra* note 229, at 223.

228. *Id.* at 189.

229. *Id.*

D. The FHA-TARC is not reparations for slavery

Finally, regardless of all the obstacles and potential problems, the actions of the federal government in the housing market created, at least in part, the society we currently have in the U.S. Perhaps millions of African-Americans were denied mortgage loans on the basis of their race due to the direct actions of the Federal Housing Administration from approximately 1934–1968.²³⁰ This one government program transformed the lives of millions of white Americans, but African-Americans were denied participation in this program. Is this economic inequality simply to be allowed to fester for even more generations, making it likely that African-Americans, once they learn the facts, will become even more embittered about the past?

Randall Robinson, lawyer and former director of the lobbying organization Trans Africa, analyzed the issue through the prism of chattel slavery, random racial violence, and Jim Crow segregation.²³¹ In responding to statements by civil rights lawyer and Professor Derrick Bell that reparations for slavery and compensation for “exploitation” as “quasi-citizens” was unlikely, Robinson stated the obvious: “If Bell is right,” Robinson writes in his book *The Debt*,²³² “there is no chance that America can solve its racial problems.”²³³ The ultimate resolution of the nation’s racial problems is directly traceable to the economic gap, Robinson adds, referring to race relations now as “ossified” and “structural.”²³⁴ Robinson’s point is one of the underlying points of this article: the nation can ignore this problem and refuse to address it, but it will not disappear.²³⁵

Poet, writer, and political activist Amiri Baraka contends that the focus should be upon reparations for chattel slavery.²³⁶ Monetary compensation (reparations) for chattel slavery, in Baraka’s view, is a “democratic demand” as well as “social reform.”²³⁷ Baraka is correct. His passion for racial reconciliation is admirable. However, the FHA-TARC is more viable and credible.

230. FREUND, *supra* note 88, at 156.

231. RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS 202-03* (PLUME 2000).

232. *Id.* at 203–04.

233. *Id.* at 204.

234. IMAMU AMIRI BARAKA, *THE ESSENCE OF REPARATION: AFRO-AMERICAN SELF-DETERMINATION & REVOLUTIONARY DEMOCRATIC STRUGGLE IN THE UNITED STATES OF AMERICA 21* (House of Nehesi 2003).

235. *Id.*

236. *Id.* at 14.

237. *Id.* at 21.

Lawmakers and litigants have demanded reparations for chattel slavery in particular.²³⁸ To date, the U.S. Congress has not awarded, nor seriously considered, making any reparations. Harvard Law School Professor Charles J. Ogletree Jr., a distinguished scholar, and formidable voice in the reparations debate, has written extensively of the movement for reparations for slavery.²³⁹ Professor Ogletree contends that the movement has “had historical currency for over 150 years.”²⁴⁰ He also states that “reparations litigation alone is extensive” and several states have passed legislation that have addressed the issue.²⁴¹ The first reparations lawsuit, according to Professor Ogletree, was filed in 1915 and the first demand for reparations dates back into the 19th century.²⁴²

However, while Professor Ogletree’s discussion of reparations is impressive, his efforts, and the efforts of many distinguished scholars, advocates, and activists have resulted in little, if any, lasting discussions amongst lawmakers, let alone any monetary restitution.²⁴³ In addition, the passage of time has now rendered reparations for chattel slavery even more difficult. African-Americans who were enslaved are all deceased. The individuals who owned slaves, and thus possessed direct knowledge of their lives, are also deceased.

The FHA-TARC, by contrast, would be created to address one critical problem that is the result of government policy in the housing market: economic inequality. The goal of the FHA-TARC is different and independent of reparations specifically because of the availability of the stakeholders. The case of Dempsey Travis is a case in point.

Dempsey Travis, an African-American, was born in 1920.²⁴⁴ He died in 2009.²⁴⁵ During the most intense period of discrimination by the FHA towards African-Americans, Travis was a real estate agent in Chicago and formed a real estate company there. He obtained his real estate license in 1949.²⁴⁶ Travis had direct interaction with the

238. Charles J. Ogletree, Jr., *Addressing the Racial Divide: Reparations*, 20 HARV. BLACKLETTER L.J. 115, 117–18 (2004).

239. See generally Ogletree, *supra* note 242.

240. *Id.* at 115.

241. *Id.* at 117.

242. *Id.* at 118, 120.

243. STANLEY L. ENGERMAN, *SLAVERY, EMANCIPATION & FREEDOM: COMPARATIVE PERSPECTIVES* 90–91 (LOUISIANA STATE UNIV. PRESS 2007).

244. RICHARD R. GUZMAN, *BLACK WRITING FROM CHICAGO: IN THE WORLD, NOT OF IT?* 133 (S. ILLINOIS UNIV. PRESS 2006).

245. Associated Press, *Dempsey Travis: Pioneering African-American Businessman and Civil Rights Activist Dies at 89*, HUFFINGTON POST, July 3, 2009, available at http://www.huffingtonpost.com/2009/07/03/dempsey-travis-pioneering_n_225443.html.

246. SATTER, *supra* note 134, at 43.

FHA and attempted to have the FHA mortgage insurance system work for African-Americans.²⁴⁷ However, the FHA's system of racial control of the U.S. housing market impeded his efforts to accomplish this goal.²⁴⁸

Travis attempted to work directly with the FHA and he also attempted to form his own black mortgage company to provide services to African-Americans. All of his efforts were unsuccessful.²⁴⁹ While Travis eventually personally succeeded in real estate, he "made no perceivable dent in the wall that blocked black Chicagoans' access to credit and to fairly priced housing."²⁵⁰

However, Travis testified extensively on these matters until his death in 2009.²⁵¹ Considering that Travis was an eyewitness to these events and could provide specific details of the actions of the FHA, his death in 2009 marked a lost opportunity for the FHA-TARC. This is all the more reason why the U.S should form the FHA-TARC now.

Are there other individuals like Dempsey Travis in other cities who can provide factual details of the specific actions of the FHA and how it directly impacted certain families, and certain communities?

Whether reparations for chattel slavery should be rewarded or if some entity should be created to address that issue is not the point of the FHA-TARC. The FHA-TARC is not offered in lieu of reparations. It is being offered because it is credible, timely, relevant, and because time is of the essence with respect to implementation. Some of the players are still alive, available to testify, able to recall events, and able to corroborate decisions.

Recently, when Harvard University Professor, Henry Louis Gates, published an op-ed in the *New York Times*, the issue of reparations was again before the public and emotions and opinions remained emotional and contentious.²⁵² This serves as proof of the divisiveness caused by that issue. In calling for President Barack Obama to resist any monetary award of reparations to African-Americans for slavery, Gates asserted that reparations for slavery to African-Americans should be denied as a remedy for the past injustice African-Americans incurred:

247. *Id.* at 43–44.

248. *Id.* at 42.

249. *Id.* at 45.

250. *Id.*

251. Associated Press, *supra* note 246.

252. Henry Louis Gates, Jr., Op-Ed., *Ending the Slavery Blame-Game*, N.Y. TIMES, Apr. 22, 2010, available at <http://www.nytimes.com/2010/04/23/opinion/23gates.html>.

Fortunately, in President Obama, the child of an African and an American, we finally have a leader who is uniquely positioned to bridge the great reparations divide. He is uniquely placed to publicly attribute responsibility and culpability where they truly belong, to white people and black people, on both sides of the Atlantic, complicit alike in one of the greatest evils in the history of civilization. And reaching that understanding is a vital precursor to any just and lasting agreement on the divisive issue of slavery reparations.²⁵³

As expected, disagreement with Gates' opinion on reparations was widespread and oftentimes reactionary and highly emotional. Your writer submitted a response to the Gates' commentary and it appeared in the *New York Times* online letters. The response is re-published here, and as is obvious, it is really a suggestion for a commission like the FHA-TARC:

To the Editor:

Whether Prof. Henry Louis Gates Jr. is wrong or right, perhaps his Op-Ed article will produce a true debate in the country over slavery, leading to healing. For years now, Representative John Conyers of Michigan has introduced legislation to form a commission to study reparations. But the legislation has gotten nowhere. There hasn't even been a hearing or a public debate on the issue.

Doesn't this divisive and vexing issue deserve a public discussion similar to the Truth and Reconciliation Commission that was formed after apartheid in South Africa? So I commend Professor Gates for starting a discussion that should have been had in 1910 rather than 2010.

Reparations for slavery will become a nonissue only when we have the courage to acknowledge that it is worthy of a real public debate and decision.

Brian Gilmore - Washington, April 26, 2010

*The writer is a professor at Howard University School of Law.*²⁵⁴

The above response sought to propose a solution to the reparations debate by suggesting that the idea was, at least, worthy of discussion by the nation. However, reparations for chattel slavery are not likely to be rewarded. The goals of the FHA-TARC, on the other hand, similar in idea, but much different in scope, cannot be dismissed as Gates attempts to do with reparations.

First, the aftereffects of the FHA and the discriminatory policies are well known today and ongoing. The FHA-TARC would be an entity designed, at least to a certain extent, to also educate the wider public on this issue. Though creating this entity might cause division initially, dissent should be welcomed; it will do nothing but motivate individuals to come forward who experienced the events and participated in the policy and transactions. As demonstrated by the 1962 hearings held by the U.S. Commission on Civil Rights, there is already testimony on the record of specific acts of the FHA.²⁵⁵

In fact, the FHA-TARC would not be valid or purposeful unless those citizens opposed to addressing a clear act of wrong by the government against citizens were allowed an opportunity to testify to the facts relating to the FHA and the housing market. If they are opposed to monetary remedies for what occurred, it is important for that opposition to be recorded.

In addition, due to the reach of the FHA in manipulating the housing market, it must be noted that Jewish-Americans (and other whites) were also subject to racially restrictive covenants as were Hispanics and Asian-Americans.²⁵⁶ This should be part of the inquiry of the commission also because the original mortgage grading system perpetuated by the federal government impacted various racial and ethnic groups to varying degrees.²⁵⁷ Thus, this proposal is not merely a

254. Brian Gilmore, Letter to the Editor, *Slavery Reparations? Healing the Wounds of the Past*, N.Y. TIMES, Apr. 29, 2010, available at <http://www.nytimes.com/2010/04/30/opinion/lweb30slavery.html>.

255. U.S. COMM'N ON CIVIL RIGHTS, CIVIL RIGHTS U.S.A.: HOUSING IN WASHINGTON, D.C. v-VII (1962), available at <http://www.law.umaryland.edu/marshall/usccr/documents/cr12h81.pdf>.

256. Thomas J. Sugrue, *The Unfinished History of Racial Segregation* (July 15, 2008) (unpublished manuscript, on file with Poverty & Race Research Action Council, available at http://www.prrac.org/projects/fair_housing_commission/chicago/sugrue.pdf).

257. FREUND, *supra* note 88, at 155–62.

black-white matter. By uncovering all of the unjust acts of the FHA, the larger truth can be discovered.

Ultimately, racial integration is only partially complete. While African-Americans have been rendered legally equal as a result of the legislative victories of the Civil Rights era and legal victories in judicial forums, they have not been rendered economically equal. Integration and equality are not synonymous either.

Sociologist Orlando Patterson has described integration in the United States as an ordeal.²⁵⁸ Economic reconciliation, an important yet unrealized component of integration in the U.S., and the underlying theme of this work, is an ordeal as well but one that is worth the effort. The will to address the by-products of the wrongs of the past has to be embraced for racial progress to be advanced. The FHA-TARC is an effort to address the wrongs of the past in a reasonable manner. The alternative is an unequal society with underlying racial tensions.

258. ORLANDO PATTERSON, *THE ORDEAL OF INTEGRATION: PROCESS AND RESENTMENT IN AMERICA'S "RACIAL" CRISIS I* (CIVITAS/COUNTERPOINT 1997).

