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

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Home is Where the Hatred is: A Proposal for A Federal Housing Administration Truth And Reconciliation Commission

Brian Gilmore¹

“Reconciliation is not about being cosy, it is not about pretending that things were not other than they were. Reconciliation based upon falsehood, on not facing up to reality, is not true reconciliation and will not last.”²

- 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 individual starting points are determined.”³

- Thomas Shapiro

Introduction

In a July 2007 article⁴ in the scholarly publication, Public Affairs Quarterly, Jonathan Kaplan and Thomas Valls asserted that the economic inequality that African-Americans suffer from as a result of decades of government led housing discrimination was justification for reparations for blacks in the United States. 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. Ever since the period of unprecedented housing discrimination perpetuated by the federal government on African-Americans (African-Americans were

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¹ The author is Associate Professor Law and Director of the Rental Housing Clinic at the Michigan State University College of Law, East Lansing, Michigan
² http://www.justice.gov.za/trc/
³ THE HIDDEN COSTS OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY, Thomas Shapiro (Oxford University Press 2005) p. 8
⁴ Jonathan Kaplan and Thomas Valls, “Housing Discrimination as Basis for Black Reparations,” Political Affairs Quarterly Volume 21 No. 3 2007
⁵ Id.
the primary target of the discriminatory acts of the government but Hispanic-Americans, Asian-Americans, and Jewish-Americans also incurred discrimination by the federal government) from 1934-1968 was detailed in several books, the only issue regarding the actions of the government has been what to do about the problem that had 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. However, a plan for execution (how it could be done or attempted) has not been advanced or proposed. Even more importantly, the various recommendations that have 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 slowly progressing quickly towards a more diverse demographic future. Many of the individuals, who are the descendants of those who were 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. This cannot be ignored.

Second, the supporting data regarding the events related to this unprecedented housing discrimination by the FHA and other government agencies is in danger of being lost. Government officials and other participants in the policy are probably passing away as this article is written. Records are also likely being destroyed or displaced as well.

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6 Among the books that contain extensive discussion on this topic include: “CRABGRASS FRONTIER” by Kenneth Jackson (Oxford University Press 1987), “CIVIL RIGHTS AND THE REAGAN ADMINISTRATION” by Norman Amaker (University Press of America 1988) and CLOSED COORS, OPPORTUNITIES LOST: THE CONTINUING COSTS OF HOUSING DISCRIMINATION by John Yinger (Russell Sage Foundation 1997)

7 According to U.S. Census Bureau Protections released in 2008, and reported 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 will together outnumber non-Hispanic whites. Four years ago, officials had projected the shift would come in 2050.”
Considering these two factors, the time is now to act on this issue or live, as a nation, with the historical consequences of our delay.

This article is an attempt to confront this long festering problem. Using “restorative justice”\(^8\) ideals, American civil rights models, and with a mission to move from suggestion to one means of possible execution, this proposal, the Federal Housing Administration Truth and Reconciliation Commission (hereinafter “The FHA-TARC”), seeks to once and for all, address the wealth gap between the races that was perpetuated by the federal government through discriminatory housing policies in the 20\(^{th}\) century, mostly through the Federal Housing Administration or FHA. While the focus of any effort at restitution could focus upon a variety of discriminatory patterns (employment, education), housing is the best choice mainly because of the wealth component.

The focus of FHA-TARC is to determine in a specific manner who, what, when, why, and how the Federal Housing Administration (FHA) manipulated the U.S. housing market during the 20\(^{th}\) century to promote and advance racial segregation and economic inequality amongst the races across the nation. In addition to investigation, the FHA-TARC will also seek to provide those who were discriminated against by government action with compensation as appropriate.

This article will also build upon the work of Professor Carlton Waterhouse and his 2009 article, *Follow the Yellow Brick Road: Perusing the Path To Constitutionally Permissible Reparations For Slavery and Jim Crow Era Governmental Discrimination.*\(^9\) It is in that article that Professor Waterhouse set forth a decent legal argument for reparations for African-Americans for chattel slavery and post-slavery discrimination.

\(^{8}\) http://www.restorativejustice.org/

\(^{9}\) 62 Rutgers Law Review 163 (2009)
However, there are two significant differences with the discussion of this article and Professor Waterhouse’s work.

First, this article does not make constitutional arguments for redress. It is well established by previous efforts by the federal government in similar situations that this is constitutionally permissible. However, the temper of this proposal is any challenge to the legality of the commission is outweighed by the necessity for this effort. Legal resistance, in other words, is a potentially destructive choice for the nation with respect to race relations.

Secondly, this article is not a call for reparations for chattel slavery. In fact, this proposal contends that political effort to achieve reparations for slavery should be shifted into this proposal. This proposal, while less attractive to advocates of reparations for chattel slavery, is more viable and far more acceptable in theory.

As shall be discussed below, the FHA’s policies have burdened the nation, and African-Americans, in particular with something deeply disturbing and long lasting: a debilitating wealth deficiency. The FHA prevented African-Americans from purchasing homes at a moment of great change in the country and the result is a huge wealth gap between the races that is clearly a racial albatross for the entire nation. While the FHA and its policies is not the only reason for the significant wealth disparity between whites and blacks and other minorities in the U.S., it is major reason. It is also a disparity that continues to exponentially increase over time.

This article is arranged as follows:
Part I will state the problem: the wealth disparity in the United States between whites and blacks that is directly attributable to the policies of the federal government through the FHA;

Part II will discuss the history of the FHA with particular focus upon its discriminatory housing policy in the 20th century;

Part III is a discussion of the concept of “restorative justice” as it relates to this proposal identifying specifically previous restorative justice efforts;

Part IV will discuss the specific proposal of a FHA Truth and Reconciliation Commission and how it could operate and what it could seek to achieve; and

Part V is the conclusion section and will discuss the proposal’s possibilities for actual implementation.

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

II. “Black Wealth, White Wealth”

a. Two nations

Racial equality, in the United States, a country where race remains a stable social construct, is increasingly being considered by many to also mean economic equality. This would be equality, in the view of the philosopher-writer, Jean Jacques Rousseau that provides the individual with security and independence but also an equality that leads to political equality. The United States is not yet equal racially despite impressive gains in

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10 “On July 4, Hopes for a Better Nation,” Julianne Malveaux, USA Today, July 4, 2010; (online archives)
11 PARTICIPATION AND DEMOCRATIC THEORY, Carol Pateman, (Cambridge University Press 1976) p. 22-23
the law and in society. This is, to a large degree, due to economic inequality between whites and blacks and other minorities, but especially blacks (African-Americans).

Two recent reports that appeared in the news media in early 2010 document this serious but potentially divisive problem. The problem is the severe wealth gap in the United States between whites and blacks.\textsuperscript{12} This striking wealth disparity, not known to many Americans, and a fact that is rarely discussed outside of academic circles, is a potentially polarizing reality for the nation in the future if it is not addressed.

The first report, produced by the Center for Community Economic Development, is entitled, “Lifting as We Climb: Women of Color, Wealth, and the Future of America.”\textsuperscript{13} The report was not surprising in regards to the results it presented yet it still shocked many around the nation when its contents were released to the news media.

“There is an enormous racial wealth gap in America. For every dollar of wealth owned by the typical white family, the typical family of color owns only 16 cents,” the report states at the beginning.\textsuperscript{14} This statement sets the tone in the report for a comprehensive summary of the wealth disparity problem in the United States. Women of color are the focus of the report and the wealth disparity they suffer from when compared to white women in the United States is described as far more “damaging” than the “pay gap” between the two groups.\textsuperscript{15}

The report explains how “wealth” is different than “income” and the importance of that difference.\textsuperscript{16} Income, as the report explains is the amount of money received by a

\textsuperscript{12} \textit{THE HIDDEN COSTS OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY}, Thomas Shapiro (Oxford University Press 2005) p. 5-9
\textsuperscript{13} \url{http://www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-InsightCenter-Spring2010.pdf}
\textsuperscript{14} \textit{Id.}
\textsuperscript{15} \textit{Id.}
\textsuperscript{16} \textit{Id.}
family during a specific period of time, such as a bi-weekly paycheck, while wealth is a family’s assets minus its liabilities, or net worth.\textsuperscript{17} 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:

"…Equity inequity," which has grown in the decades since the civil rights triumphs of the sixties, cannot be explained by income differences alone. That is, while African-Americans do earn less than whites, asset gaps remain large even when we compare black and white families at the same income levels. For instance, at the lower end of the economic spectrum (incomes less than $15,000 per year), the median African-American family has a net worth of zero, while the equivalent white family's net worth is $10,000. Likewise, among the often-heralded new black middle class, the typical white family earning $40,000 per year enjoys a nest egg of around $80,000; its African-American counterpart has less than half that amount.\textsuperscript{18}

The report, referenced above, by the Center for Community Economic Development, explains the disparity that Conley is describing in much more detail. In fact, “Lifting as We Climb: Women of Color, Wealth, and the Future of America.” highlights the specific reasons that the disparity exists in such a disparate manner. 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.\textsuperscript{19} The disparity is much 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 owned by their male counterparts” the report states, “and a tiny fraction of a penny for

\textsuperscript{17} Id.
\textsuperscript{18} Dalton Conley, “The Black-White Wealth Gap,” The Nation, March 26, 2001 (online archives)
\textsuperscript{19} http://www.insightcced.org/uploads/CRWG/LiftingAsWeClimb-InsightCenter-Spring2010.pdf
every dollar owned by white women.” The report also comments on the reasons for the disparity.

As expected, while many factors caused the wealth gap between women of color and white women, land and home (property) ownership is one of the key factors. This is very significant considering the proposal of this article to form a commission that will seek to resolve 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 simply non-existent. This has contributed to the huge disparity in wealth between women of color and white women and it can be linked to home ownership issues and land.

African-American women were specifically victimized by the lack of homeownership through history. The report describes homeownership as “out of reach” for most women of color including African-American women. Even in a situation where a woman of color does, in fact, own a home, the amount of equity in the home is far lower than the amount of equity a typical white woman owns in her home. In addition, the growth of that equity historically has been much slower for women of color as opposed to white women. This is noteworthy and important because it is the ownership of a home where most middle class families are able to build the majority of their wealth.

Melvin Oliver is a Professor of Sociology at the University of California at Santa Barbara; Thomas Shapiro directs the Institute on Assets and Social Policy at Brandeis University in Waltham, MA.

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20 Id.
21 Id.
22 Id.
23 Id.
24 Melvin Oliver is a Professor of Sociology at the University of California at Santa Barbara; Thomas Shapiro directs the Institute on Assets and Social Policy at Brandeis University in Waltham, MA.
In the 1995 book, *Black Wealth/White Wealth*, co-authored by sociologists, Melvin L. Oliver and Thomas M. Shapiro, these very important trends relating to wealth, race, and the housing market were explained in much greater detail. However, *Black Wealth/White Wealth* examines the phenomenon between blacks and whites and does not make a distinction between women of color compared to white women. It is a book that 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, and likely to be deficient in wealth.

As Oliver and Shapiro explain early on in their now famous book – “wealth reveals a crucial dimension of the seeming paradox of continued racial inequality in American society.” They add that the “continuation of persistent and vast wealth discrepancies among blacks and whites with similar achievements and credentials presents another daunting social dilemma.” The wealth disparity they report, while from 1995, is still substantial and troubling.

According to their findings, for every “$8-$19” in wealth that blacks possessed at that time, whites owned $100. Blacks only owned 3 percent of all wealth in the United States at that time although they received far more of the money earned (over 7 percent) and made up 11 percent of the households in the United States. Shapiro and Oliver also conclude that much of the problem can be linked back to the lack of homeownership.

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25 BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY, Melvin Dixon and Thomas Shapiro (Routledge Press 2006)
26 Professor of Law and Social Policy at Brandeis University, and Director of Institute on Assets and Social Policy
27 BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY, Melvin Dixon and Thomas Shapiro (Routledge Press 2006) p. 20-21
28 Id at 12
29 Id
30 Id at 97-98
amongst African-Americans historically a key component in the accumulation of wealth in the U.S. for middle class families. As this article shall demonstrate later, the homeownership issue can be linked directly to policies of the federal government, specially the Federal Housing Administration (FHA).

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.31 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. Not surprisingly, Thomas Shapiro assisted in this report along with Tatjana Meschede and Laura Sullivan.32 The findings are more evidence that the wealth gap is not only a serious matter with respect to race relations but also that the failure to address the issue will further increase the chances that racial equality will not improve and by default, race relations will suffer.

The evidence, gathered from data in the years 1984-2007, determined that the wealth gap between blacks and whites quadrupled.33 While the wealth gap in 1984 was approximately $20,000; it is not estimated that the wealth gap between whites and blacks is $95,000.34 While this estimate did not include home equity, the findings did take into account problems in the housing market experienced by African-Americans. The report described the issue as follows:

…Evidence from multiple sources demonstrates the powerful role of persistent discrimination in housing, credit, and labor markets. For example, African Americans and Hispanics were at least twice as likely to receive high cost

33 Id.
34 Id.
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.\textsuperscript{35}

This is a disturbing development considering the time period that the report covers is an era when many Americans achieved great success financially.\textsuperscript{36} Yet, as a result of housing policy and housing market practices during this time period, the country did not equalize economically (as it should have). It has become even more unequal economically along racial lines. More importantly, the relationship between housing and wealth accumulation is the key to understanding why the actions of the federal agency decades in regards to housing market policy is affecting the lives of people today. In other words, a house is so much more than just a place where a family lives each day.

Housing (homeownership), as has been often repeated, is the “primary store of wealth for most Americans.”\textsuperscript{37} It constitutes 20 percent of all household wealth across the nation, and is the true “anchor” for household wealth.\textsuperscript{38} Most Americans own a home as opposed to owning stock.\textsuperscript{39} Even low income Americans benefit from owning a home as they possess, on average, 82 times more wealth than a person with a low-income that is a renter.\textsuperscript{40} For all of these reasons, the ownership of a home has been historically essentially to building wealth in the United 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

\textsuperscript{35} Id.
\textsuperscript{36} Id.
\textsuperscript{37} http://www.jchs.harvard.edu/publications/finance/w04-13.pdf p. 3
\textsuperscript{38} Id.
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 1
education.” It is also why what the FHA did in the mid 20th century to African-Americans, and many others from various racial and ethnic groups, was and is so destructive. Essentially, the FHA not only promoted segregation but the agency altered life outcomes for millions of minority children.42

**III. The Federal Housing Administration (FHA)**

  **a. The New Deal**

  As has been suggested previously, the key to understanding this problem is unraveling the actions and policies of the Federal Housing Administration between 1934-1968. It is one of the most successful government programs in the history of the nation, if not the most successful. The agency transformed the nation from a nation of renters to a nation of middle class homeowners.43 However, most of these homeowners were white and that was by design.44 For African-Americans and other minorities, the history of the agency and its policy decisions has been tragic.

  President Franklin Roosevelt and the U.S. Congress created the FHA in 1934. At the time, the nation was experiencing what has now come to be known as “The Great Depression.”45 It was a difficult time economically in the United States, unlike any other time in the history of the country:

  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, while homeless people lived in shacks made of cardboard and scraps of wood.46

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41 *THE HIDDEN COSTS OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY*, Thomas Shapiro (Oxford University Press 2005) p. 3
42 *WEALTH AND POVERTY IN AMERICA: A READER* – Dalton Conley (Wiley 2003) p.87
44 Id.
45 http://www.econlib.org/library/Enc/GreatDepression.html
46 *THE GREAT DEPRESSION*, Michael Burgan, (Compass Point Books 2002) p.4
Yet, the economic depression of that era was even more catastrophic than that description indicates. The above description is a bit kind. Life in the United States, according to most accounts, was disrupted in every manner imaginable. Daily existence, as it had been known at the time, was compromised. Economist, John Kenneth Galbraith described it 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 labor force. In 1938 one person in five was still out of work.\(^{47}\)

Confronted with this dismal economic reality beginning in 1933 when he assumed office as President in March 1933, Mr. Roosevelt took the approach that massive government intervention and investment was necessary to stabilize the economy. The FHA was part of that government intervention.

The overall intervention that Mr. Roosevelt proposed in the 1930’s is now known with great affection and admiration as “The New Deal.”\(^ {48}\) 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.”\(^ {49}\) This is also important to note as the discussion of the FHA is examined further mainly because of the policies advanced by the agency.

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\(^{48}\) *THE NEW DEAL: AMERICA’S RESPONSE TO THE GREAT DEPRESSION*, RONALD EDSFORTH, (Blackwell Publishers Inc. 2000) p. 1  
\(^{49}\) *Id at 1*
With the New Deal, Mr. Roosevelt attempted to address a myriad of problems, including housing issues, by providing the nation with specific government programs. As an example of some of the other activity that the New Deal originated, for the troubled banking industry, the Federal Deposit Insurance Corporation (FDIC) was created.\(^{50}\) For the stock market, one of the major sources of problems that led to the economic collapse, Roosevelt provided the Securities and Exchange Commission (SEC), and for the nation overall, it was the National Industrial Recovery Act (NIRA) and the National Recovery Act (NRA).\(^{51}\) Finally, in the area of housing, another area of economic trouble in the nation, President Roosevelt created the Federal Housing Administration (FHA).\(^{52}\)

The FHA was actually preceded by two very important government housing programs - The Home Owner’s Loan Corporation or HOLC of 1933 and the Federal Home Loan Bank Act (FHLB) of 1932.\(^{53}\) 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.\(^{54}\) The focus of both programs was to rebuild the nation’s housing and lending industries.\(^{55}\)

These agencies are similar in purpose. The chief focus was to energize the housing and lending market at particularly difficult time.\(^{56}\) The FHLB sought to accomplish its goals with “long term amortized mortgages,” ”low interest rates,” “federal

\(^{50}\) _THE NEW DEAL_, Paul F. Conkin (The Crowell American History Series 1967) p. 46
\(^{51}\) _Id_ at 34, 46
\(^{52}\) _Id_ at 62
\(^{54}\) _COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA_, David M. P. Freund (The University of Chicago Press 2007) p. 111
\(^{55}\) _Id_ at 109-112
\(^{56}\) _Id_
subsidies,” and reduced “construction costs.” The HOLC was signed into law by President Roosevelt in June 1933, but only was in existence until 1935. The purpose of the HOLC was to stabilize the housing market during difficult economic times. The HOLC purchased delinquent debt from banks, savings and loan association and other financial institutions that had extended home credit. Thereafter, the HOLC would refinance these loans with long terms loans for the homeowners, fully amortized. The agency was created to “rescue 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.”

But the real 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. 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. The decision and the policy of the HOLC is the first and very significant decision by the government that has 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, racial homogenous, all-White

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58 COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA, David M. P. Freund (The University of Chicago Press 2007) p. 156
59 Id at 111
60 Id at 111-113
61 Id
63 Id.
neighborhoods, a second grade going to outlying Jewish and White working class neighborhoods, and a third grade to racially mixed neighborhoods.  

“All-Black” neighborhoods were assigned the lowest credit grade under the government’s rating system regardless “of the age of the dwelling” or the “income” of the residents. This was, indeed, the creation of redlining in the United States. These ratings were posted in the local offices of the HOLC and in ‘City Survey Files.’ This meant that the racially driven information was distributed widely and openly and perpetuated racially biased treatment towards African-American neighborhoods. Under this system, more than one million mortgages were re-financed. 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. These two agencies, and their policies, came together in the Housing Act of 1934. This act created the Federal Housing Administration. The agency was described upon its creation as the “most widely discussed” of the New Deal agencies created by Roosevelt. President Roosevelt had high hopes for the program during the

64 Id.
65 Id.
66 http://repository.upenn.edu/cgi/viewcontent.cgi?article=1002&context=cplan_papers
68 Id.
69 Id.
70 Id.
71 THE LIMITLESS CITY: A PRIMER ON THE URBAN SPRAWL DEBATE, Oliver Gillham and Alex S. MacLean (Island Press 2002) p.37
economic troubles of the early 1930’s because it would immediately release $3 million in private capital into the housing market.\textsuperscript{73}

The FHA’s work was not to lend money to banks, housing developers, or consumers to invigorate the housing market; the FHA took a different more effective approach. The FHA sought out its goals by insuring the private loans for the construction of homes and to purchase homes.\textsuperscript{74} 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. 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.\textsuperscript{75}

This decision began the wholesale perpetuation of governmental housing policy based upon race that would perpetuate economic inequality amongst the races for decades.\textsuperscript{76} While there had 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 something much more widespread.\textsuperscript{77} It probably can be easily stated that the creation of the FHA was the creation of a very 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

\textsuperscript{73} Id.
\textsuperscript{74} THE LIMITLESS CITY: A PRIMER ON THE URBAN SPRAWL DEBATE, Oliver Gillham and Alex S. MacLean (Island Press 2002) p. 37
\textsuperscript{75} Id.
\textsuperscript{76} Id.
\textsuperscript{77} COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA, David M. P. Freund (The University of Chicago Press 2007) p. 156
spoke directly about the housing of special ‘racial groups.’ Instead it substituted 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.\textsuperscript{78}

This is the key to understanding the reach of the FHA’s policy into the lives of ordinary citizens, in particular African-Americans. If a different policy had been implemented that was not heavily influenced by racial stereotypes, it is possible that the economic inequality promoted by the policy would have never occurred.

The FHA’s efforts to influence the direction of the housing market beginning with the period of the Great Depression were highly successful. Within one year of its creation, most of “mortgages and modernization loans” were loans insured by the FHA.\textsuperscript{79} The FHA’s efforts were successful in increased residential construction of new properties as well as the manufacturing of building materials.\textsuperscript{80} The FHA was overwhelming endorsed by Congress and in 1937, as the law that created the agency was to expire, the FHA was, in fact, made permanent.\textsuperscript{81} Within three years, the agency had $15 million available to provide insurance on housing market transactions.\textsuperscript{82}

However, with respect to African-Americans and other minorities, and considering the underlying policies of the FHA, the agency’s policies and goals were very successful. As has been explained many times over the years, the adoption of the FHA of the HOLC’s rating system meant that the U.S. government had decided to

\textsuperscript{78} Id.
\textsuperscript{79} “Banks Leading in Loans Insured by FHA on Mortgages and for Modernization,” The New York Times, September 15, 1935 (online archives)
\textsuperscript{80} Id.
\textsuperscript{81} “FHA IS PERMANENT,” The New York Times, February 21, 1937, (online archives)
\textsuperscript{82} Id.
“racialize” the U.S. housing market. The government simply began promoting this racial policy. In fact, the government had created a housing market that was a “Jim Crow” housing market, legal, and accepted and supported by all the necessary parties. It has been 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.

The role of racially restrictive covenants in the FHA’s policy efforts is indicative of this approach by the FHA. 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.” These agreements were written directly into the deeds of the property ensuring that the covenant would be attached to the property. With respect to government policy that developed prior to the creation of the FHA racial covenants was a key component. In fact, the FHA expected and encouraged the use of these covenants in order for mortgage insurance to be issued.

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83 COLORED PROPERTY: STATE POLICY & WHITE RACIAL POLITICS IN SUBURBAN AMERICA, David M. P. Freund (The University of Chicago Press 2007) p. 156
84 Id at 113
85 Id at 132
87 RACIAL JUSTICE IN AMERICA: A REFERENCE HANDBOOK, David B. Mustard, (ABL-CIO 2003) p. 56
88 FROM TENEMENTS TO THE TAYLOR HOMES, John F. Bauman, Roger Biles, Kristin M. Szylvian, (Pennsylvania State University Press 2000); See “The Other Subsidized Housing.” Thomas Hanchett, p. 164-168
The judicial history of these covenants is now well known. For decades, racially restrictive covenants in housing were legal in the United States. The case that established this legal precedent, *Corrigan v. Buckley*, dismissed all legal and public policy arguments attacking private racial covenants in housing. Arguments attacking the covenants as violating the Fifth, Thirteenth, and Fourteenth Amendments were described by the Court as “lacking in substance or color of merit.”

It took more than 20 years to overturn the *Buckley* decision. In 1948, in *Shelly v. Kraemer*, the United States Supreme Court held that state enforcement of racially restrictive covenants is unconstitutional. The decision, though tempered, 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.

The ruling did not explicitly declare that the covenants are unconstitutional, but it did render the covenants unenforceable. However, the decision, though necessary, was ineffective in addressing the disenfranchising policies of the FHA. Segregation practices, under the auspices of the FHA policy, continued after *Shelly*. In fact, even though the administration of President Harry Truman was pressured by civil rights organizations to

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89 271 U.S. 323 (1926)  
90 Id. at 330  
91 334 U.S. 1 (1948)  
92 Id at  
93 THE CIVIL RIGHTS LEGACY OF HARRY TRUMAN, Raymond S. Geselbracht (Truman State University Press 2007) p. 39-41
issue an executive order addressing the problem of racial covenants following the *Shelly* decision, the order had little impact on discriminatory practices already in operation.\textsuperscript{94}

\textbf{c. “Sweet Home Chicago”}

In order to understand exactly what the FHA engaged in during the mid-20\textsuperscript{th} century in regards to the housing markets and minorities (specifically African-Americans), the city of Chicago is a city that is an example of the practice. Chicago became the most racially segregated city in the U.S. during the 20\textsuperscript{th} century and this development was directly related to housing policy supported by the government.\textsuperscript{95} Despite the best efforts of African-Americans to re-locate from the all black areas of the city, these efforts were highly unsuccessful.\textsuperscript{96} Chicago, among other things, provided all other cities with a policy choice and the FHA might have borrowed the approach as well though there is no actual proof of this suggestion.

Of course, initially in Chicago, as in other cities the primary tool for denying African-Americans an opportunity to purchase a home in more neighborhoods where property was more valuable than their overcrowded all black neighborhoods was the racially restrictive covenant.\textsuperscript{97} In reaction to increased migration of African-Americans to the city from the South, these covenants were imposed specifically to limit living choices for African-Americans in the city.

The FHA had strong role in Chicago’s segregation as well. 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 in the city. The FHA intentionally

\textsuperscript{94} Id.
\textsuperscript{95} FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA, Beryl Satter (Metropolitan Books 2009) p. 355
\textsuperscript{96} Id at 44
\textsuperscript{97} Id at 40
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.\textsuperscript{98} 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.\textsuperscript{99} It is, thus, no accident that by the 1940’s as the FHA’s policy became more pronounced that racial violence increased in Chicago directly relating to the attempted integration of neighborhoods.\textsuperscript{100}

Racial attitudes of the whites of the city (and in other cities across the country) matched the government policy that was perpetuated by the FHA. While it could be argued that the FHA was only implementing policy that the majority population (the whites) was seeking, it is not the role of government to violate the law to appease the cause of racial hatred. In fact, it is he federal government’s duty historically to do just the opposite. 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.

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

\textsuperscript{98} Id
\textsuperscript{99} Id. at 44-45
\textsuperscript{100} Id. at 45
directly responsible for the kind of society we have today when one considers race and economics. This is important considering the opening statements with respect to the relationship between racial equality, economic equality, and political equality. “High inequality,” the New York Times columnist and economist, Paul Krugman writes, “…has a corrosive effect on social relations and politics.” Other observers have written and argued that if there is economic inequality in a society, there is also political inequality.

If Mr. Krugman’s assertion and the assertions of others are true, then the wealth disparity must be addressed in a significant manner. This does not mean that every African-American must suddenly possess in wealth what the average American (or that whites and blacks must have the exact same amount of wealth) possesses in wealth. However, it does mean that some reasonable level of equality that promotes and sustains the democracy is the goal. Rousseau and Thomas Jefferson both avoided the call for absolute equality but they did believe that economic equality had to be achieved in order for political equality to exist.

In the U.S., there is already economic inequality without even considering race. However, once race is considered into the equation, the gap in wealth and economic equality is even more pronounced. When you also consider the fact that the U.S. is a country with a difficult racial past prone to difficult moments in the modern era and the past (i.e. race riots, hate crimes, discrimination, mistrust, etc.), some improvement in the wealth gap should be an important goal of society. The FHA-TARC is an attempt to

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103 *PUTTING IDEAS TO WORK: A PRACTICAL GUIDE TO POLITICAL THOUGHT* – Mark Mattem (Rowman and Littlefield 2006) p. 237
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 proposed here 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. The FHA-TARC is not the same as South Africa’s Truth and Reconciliation Commission (hereinafter “SA-TARC”) but some of its components should be considered when the commission is constructed. Most importantly, the spirit of that commission should be the spirit of this commission. The FHA-TARC should be a chance to unveil the truth and to 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 how the nation, on one level, has become economically unequal.

SA-TARC was established following the end of apartheid to provide a “clear picture” of “gross human rights violations” that occurred in South Africa.\textsuperscript{104} The FHA-TARC is not attempting to provide a clear picture of gross human rights violations but providing a clear picture of the events and acts that have contributed to a huge wealth gap in the United States between the races is a goal.

SA-TARC’s objectives were to not only provide a clear picture of the human rights violations that occurred under racial apartheid but the commission was 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.\textsuperscript{105} SA-TARC also sought the participation of victims, “granting them right to relate their own accounts of the violations.” SA-TARC was also charged with the ability to recommend “reparation measures in respect of them” (the victims). Finally, SA-TARC was to issue a report (which it did) that provided recommendations based upon the evidence gathered during the commission’s tenure and especially recommendations designed to “prevent future violations.”\textsuperscript{106}

SA-TARC is a preferred model. It sought to address an issue of great concern to the nation of South Africa. The commission had full support of the government. The commission also had power to accomplish its goals and had time to pursue those goals. It also had the power to “reward the payment of cash reparations to victims and their survivors.”\textsuperscript{107} The SA-TARC was focused upon atrocities of violence. The FHA-TARC by contrast is focused upon economic wealth denied to African-Americans and others.

An accurate criticism of SA-TARC is whether it was effective or will be considered effective in accomplishing its larger goals with respect to racial reconciliation. The commission did provide a forum where South Africa’s citizens were able to express themselves regarding a past of injustice, violence, and death. However, the new nation of South Africa post-apartheid still experiences significant inequality that has survived the apartheid era. Books and articles have been written about the reconciliation process and many have heavily criticized the commission as not being focused enough on the

\begin{flushright}
\textsuperscript{105} \textit{Id.} \\
\textsuperscript{106} \textit{Id.} \\
\textsuperscript{107} “\textit{Healing South Africa},” The New York Times, September 10, 1995
\end{flushright}
necessary goals.\textsuperscript{108} SA-TARC has been accused of being too closely aligned with the
government, and for the granting of amnesty for the perpetration of the atrocities.\textsuperscript{109}

The FHA-TARC could still embrace this model considering the fact that racial
equality in the U.S. is, indeed, a work in progress. This is especially true with respect to
economic equality and the legacy wrought by the FHA.

b. Fair Housing

Another source for ideas for the FHA-TARC is the National Commission of Fair
Housing and Equal Opportunity. The National Commission of Fair Housing and Equal
Opportunity was independently formed in the United States in 2008.\textsuperscript{110} 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 on housing discrimination.\textsuperscript{111} Hearings open to the public were
held in cities across the nation. Among the cities where the commission met and held its
hearings: Atlanta, Los Angeles, Houston, Chicago, and Washington D.C.\textsuperscript{112} The
commissioners who served on the commission were well known and well respected.
Former U.S. Department of Housing and Urban Development Secretaries were involved
in the commission as well.

Individuals were encouraged to testify regarding housing discrimination past and
present, and in the end, an 88 page report was produced that provided recommendations
for action in the future. However, whether the commission was effective is unclear. The

\textsuperscript{109} Id.
\textsuperscript{110} http://www.prrac.org/projects/fair_housing_commission/final_report.php
\textsuperscript{111} Id.
\textsuperscript{112} http://www.nationalfairhousing.org/NationalCommission/tabid/2963/Default.aspx
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 did provide independence. But this dilemma is particularly why the FHA-TARC should be a government created and supported entity, through the legislative and/or executive branch in order to provide it with immediately credibility with the public as the process proceeds forward. This is also important because FHA-TARC seeks to address problems created by government policy.

c. U.S. Commission on Civil Rights

Other commissions formed in the United States in response to issues of importance should be examined as well in developing the FHA-TARC. The United States Commission on Civil Rights (hereinafter “USCCR”) is worthy of an examination in creating the FHA-TARC. The USCCR was created in 1957 just as the civil rights period in the U.S. began.\footnote{AND JUSTICE FOR ALL: THE UNITED STATES CIVIL RIGHTS COMMISSION AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA, Mary Frances Berry (Knopf 2009) p. 21} It was created pursuant to the Civil Rights Act of 1957.\footnote{Id}

The commission possesses many of the qualities that would useful for this commission. The commission was created within the executive branch and consisted of six (6) members.\footnote{http://eisenhower.archives.gov/Research/Digital_Documents/Civil_Rights_Civil_Rights_Act/New%20PDFs/Civil_Rights_Bill.pdf} The commission had (has) the power to conduct hearings and to subpoena individuals and records in order to accomplish its goals.\footnote{Id.} These goals are important.
The agency was created to investigate “deprivations” of rights based upon color, race, national origin, religion, sex, age, and disability.117 The agency is interested in any practice or fraud that perpetuates these deprivations.118

Unfortunately, the agency has no power to enforce complaints of discrimination though it has power to research, report and make recommendations.119 It also is politicized. Many argue that conservatives currently control the agency even though conservatives generally are not supportive of civil rights.120 The FHA-TARC cannot survive with politics; it must be created with independence in mind.

Nevertheless, the structure of the FHA-TARC (it is not an agency that is subject to be disbanded) is appealing. The lack of any real power is unappealing. 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. This is just one example how the FHA-TARC should be different from previous efforts to seek remedy for past injustices. The focus should be upon actually addressing the wealth disparity created by the policies.

Another important aspect of the USCCR is its previous activities. This provides support for this proposal. It involves the early years of the USCCR when the agency conducted hearings across the country on a variety of important civil rights issues. The

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117 42 U.S.C. 1975a (1)(A)
118 Id
119 AND JUSTICE FOR ALL: THE UNITED STATES CIVIL RIGHTS COMMISSION AND THE CONTINUING STRUGGLE FOR FREEDOM IN AMERICA, Mary Frances Berry (Knopf 2009) p. 21
120 http://mediamatters.org/research/201007090045
activities of the agency prove that a focus upon the activities of the FHA is critical right now and that there is likely an abundance of specific evidence of wrongdoing by the government. As an example of this, USCCR hearings held in Washington D.C. on housing in 1962.

On April 11-12, 1962, in Washington D.C., the USCCR held hearings in Washington D.C. specifically on housing discrimination in the nation’s capitol.\textsuperscript{121} 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.\textsuperscript{122} “Forty witnesses”\textsuperscript{123} 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. The key, however, is the hearings generated a transcript that contains specific instances of discrimination and alludes to the involvement of the FHA. This is precisely the kind of work the FHA-TARC would be authorized to conduct but with one caveat: the FHA-TARC should seek to 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.

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

\begin{footnotesize}
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  \item \textsuperscript{121} http://www.law.umaryland.edu/marshall/usccr/documents/cr12h81.pdf
  \item \textsuperscript{122} \textit{Id} at 5
  \item \textsuperscript{123} \textit{Id} at vii
\end{itemize}
\end{footnotesize}
possible, those who have a stake in a specific offense to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.'

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.

While countless books have written about the policies of the FHA and what those policies 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 hearings 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. Restorative justice is a concept with a long history in the world and one that alters the discussion over the legacy of FHA and those who were treated unfairly by the policies of the FHA.

The purpose of the commission would be to discover the facts from those who perpetuated the policy (surely many are still live) and from those who were disenfranchised by the policy. While the facts as they are known today suggest that most

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126 See footnote 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 AS LONG AS THEY DON’T MOVE NEXT DOOR, Stephen Grant Meyer (Rowman and Littlefield 2001) p. 296 or FAMILY PROPERTIES: RACE, REAL ESTATE, AND THE EXPLOITATION OF BLACK URBAN AMERICA, Beryl Satter (Metropolitan Books 2009) p. 392 n.33
of the worse 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. The United States has admitted errors in the past and sought to correct these mistakes even when these mistakes required economic reconciliation. Two efforts that embrace this model come to mind.

The most famous occurred on August 10, 1988 when President Ronald Reagan signed in the law, The Civil Liberties Act of 1988. The act, in pertinent part, authorized the United States to pay $20,000 to Japanese-American citizens and or descendants of Japanese-American citizens, who had been detained in internment camps by the United States during World War II. It also required the United States government to issue an official apology those who had been detained under the program. The law was the result of decades of advocacy and protest to correct a grave historical wrong that had occurred in the United States.

The legislative catalyst for the act is the Commission on Wartime Relocation and Internment of Citizens (CWRIC). CWRIC was a congressionally created body that concluded in December 1982 that the internment of Japanese-American citizens was the result of “racism, war hysteria, and a failure of the nation’s leadership.” 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

127 50 App. USCA Section 1989a
128 Id
129 Id
130 Id
$20,000 each. 131 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. There were eligibility requirements established as well. This contributed to the legitimacy of the effort.

While the process was not perfect, it did once and for all bring the matter to a conclusion, for the sake of history and the nation. The economic injustice perpetuated by the government 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 ethnic group. In 1946, Congress passed into law the Indian Claims Commission Act, a law designed to “consolidate and adjudicate Natives’ claims against the federal government.” 132 While the commission experienced numerous problems during its operations, the commission over-arching goals are important. The commission was formed to settle land disputes brought by various nations by allowing the groups to sue the United States government. 133 Progress was slow though the

131 28 C.F.R. Section 74.10
132 REPARATIONS: PRO AND CON, Alfred L. Brophy, (OXFORD UNIVERSITY PRESS) p. 41
133 CONSTITUTIONALISM AND NATIVE AMERICANS 1903-1968, John R. Wunder (Taylor and Francis 1996); “The Indian Commission Claims Act,” Nancy Oesterich Lurie, p.154
commission awarded $37 million by 1961 when the agency was reauthorized to settle the remaining claims.\textsuperscript{134} The commission maintained operations until 1978.

V. **The FHA-TARC: the Future**

At the very beginning, it was stated that there have been numerous proposals over the years for addressing the wealth gap created by the actions of the FHA. Many of these proposals have been referenced above or at least alluded to, in part. There have also been efforts by the government to address the problem that the government perpetuated.

For example, in September 1954, President Dwight Eisenhower announced the formation of an “Advisory Committee on Minority Housing.”\textsuperscript{135} The committee, formed under the Federal Home and Housing Finance Agency, was designed to assist “the Negro and other minorities.”\textsuperscript{136} While civil rights advocates welcomed the committee, it was formed at a time when the FHA was continuing with discriminatory policies. The committee also only was attempting to address 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. Perhaps, if the government had acted in 1954 aggressively and comprehensively, the wealth gap of today would not be as substantial.

In addition, in 1995, President Bill Clinton sought to address housing as well as it pertains to minorities. “The National Homeownership Strategy” was unveiled in 1994 and was an attempt to not only “increase homeownership” amongst all Americans but it was also focused upon underrepresented groups, and individuals and families that

\textsuperscript{134} “468 Claims Remain in Indian Claims,” The New York Times, November 7, 1961 (online archives)

\textsuperscript{135} William G. Weart, “U.S. Housing Agency to Form Housing Committee to Assist Minorities,” The New York Times, September 9, 1954 (online archives)

\textsuperscript{136} \textit{id.}
historically have been denied access to the housing market.\textsuperscript{137} African-American families and Hispanic families were specifically noted as a target of the effort.\textsuperscript{138}

However, the problem with government efforts with these characteristics is the government is only attempting to address the future. It is not acknowledging the policies of the past and the impact today of those policies.

There have been suggestions by many individuals outside of the government 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 discussed above that proposed greater opportunities for the creation of wealth by African-Americans. These proposals would include access to good education and more favorable mortgage financing. Kaplan and Valls are also not opposed to direct compensation to all African-Americans but take no position on how it shall occur and how much is the appropriate amount.\textsuperscript{139}

Thomas Shapiro and Melvin Dixon make recommendations for addressing the problem as well in \textit{Black Wealth, White Wealth}.\textsuperscript{140} 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.”\textsuperscript{141} They do admit that a “significant amount of assets will be needed.”\textsuperscript{142} 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. It is hard to decipher if they are

\textsuperscript{137} http://www.huduser.org/publications/txt/hdbrf2.txt
\textsuperscript{138} Id.
\textsuperscript{139} http://people.oregonstate.edu/~kaplanj/Reparations.pdf
\textsuperscript{140} \textit{BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY}, Melvin Dixon and Thomas Shapiro (Routledge Press 2006)
\textsuperscript{141} Id at 176
\textsuperscript{142} Id
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 time is now for some effort or the moment will be lost. However, the call for this commission and economic restitution should be the will of the nation. The “general will”\textsuperscript{143} demands or must demand it or simply accept an unequal society well into the future with all the difficulties that might bring and impose upon us all.

But once a restorative justice commission is organized, the ideas that Dixon and Shapiro assert will have to be considered. They present very good suggestions. The specific recommendations of Dixon and Shapiro include “education and youth asset accounts,” “housing asset accounts,” and “self employment and business accounts.”\textsuperscript{144} Other ideas set forth by Dixon and Shapiro include adjustments to housing deductions, tax policy, and more effective enforcement of anti-discrimination laws.\textsuperscript{145}

Shapiro and Dixon also briefly 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.\textsuperscript{146} The legislation, as has been stated many times over the years, has never even had hearing. This is not surprising.

However, Congressmen Conyers’ legislation, while well intentioned, is not the answer to the wealth disparity issue. The answer is the federal government should collectively admit its actions before a government sponsored commission and propose a

\textsuperscript{143} ROUSSEAU: STOIC AND ROMANTIC, Kennedy F. Rouche (Taylor and Francis 1974) p. 69
\textsuperscript{144} BLACK WEALTH, WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY, Melvin Dixon and Thomas Shapiro (Routledge Press 2006) 178-182
\textsuperscript{145} Id at 182-186
\textsuperscript{146} http://www.johnconyers.com/issues/reparations
strategy to repair the damage. With the FHA, there is no reason to even consider the effects of the federal government’s action; the facts have been stated many times.

To begin this process, a much more specific proposal (legislation) than the Conyers’ reparations for slavery idea 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. This is mainly because despite the shortcomings of that commission, the amnesty component did motivate participants to discuss their actions.

The commission must be given broad powers to act and collect information in order to be effective. The shortcomings of the U.S. Commission on Civil Rights are evidence that the commission must have the power to act. It should be given adequate, time, space, funding and the very best public and professional officials should be appointed to the commission. 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. However, an executive order to create a commission to remedy past wrongs will
not suffice in this instance. The FHA-TARC must be created by legislation. It must be a
law that creates such a commission or a law that affords an existing government entity,
such as the United States Commission on Civil Rights, the power to investigate, report,
make recommendations, and act independently. Anything short of such power would be
just publicity and will be no different from previous efforts.

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). It has also been mentioned previously.

Adam Gordon, in a 2005 Yale Law Journal article, presented a sound rationale for
the FHA-TARC. Gordon’s view appropriately does not ignore the past:
For three decades, the combination of safety and soundness regulations and
discrimination by the FHA created opportunities to build wealth for whites but not
for African-Americans, and made a historically questionable view of racial
segregation and neighborhood change the national norm.\footnote{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,” Yale Law Journal (2005), Volume 115; 186, 222}

Gordon’s view throughout his article is that you cannot address the problem
created by the policies of the FHA by simply adjusting policy in the future. That is and
has been the approach for decades and has not been the answer to the growing wealth
gap. Jonathan Kaplan and Thomas Valls take this approach as do many others. But this
approach ignores history and does not resolve the overall problem.

There has to be some remedy for what occurred in the past as well, to “undo the
ongoing harms,” in Gordon’s opinion.\footnote{Id. at 223} Whites, according to Gordon, had a
“generation’s head start on accumulating wealth through homeownership,”\footnote{Id. at 189} and that
should not be simply ignored or hoped into non-existence. These harms, in his view, and
in the view of many others, are “devastating”\footnote{Id.} in particular to African-Americans (and
others as well). 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 again 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. These programs should not necessarily be the focus of the FHA-TARC. 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; one that focuses upon the facts and documentation of this program and one that will pay monetary damages.

**d. The FHA-TARC is not reparations for slavery**

Finally, regardless of all the obstacles and potential problems, the society we currently have in the U.S. was created, at least in part, by the actions of the federal government in the housing market. We know that 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. This one government program transformed the lives of millions of Americans (mostly white) 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 (and they will) will become even more embittered
about the past?

Randall Robinson, the lawyer, and former director of the lobbying organization,
Trans Africa, discussed the problem over the years. He analyzed the issue through the
prism of chattel slavery, random racial violence, and Jim Crow segregation. 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,151 “…there is no chance
America can solve its racial problems.” 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.”152 Robinson’s point is one of the underlying
points of this article: the nation can ignore this problem and not address it but that will
not mean it will disappear.

Poet, writer, and political activist, Amiri Baraka contends, as many others over
the years have argued very forcefully, that the focus should be upon reparations for
chattel slavery. Monetary compensation (reparations) for chattel slavery, in Baraka’s
view, is a “democratic demand” as well as “social reform.”153 Baraka is correct. His
passion for racial reconciliation is admirable. However, the FHA-TARC is more viable
and is more credible.

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151 THE DEBT: WHAT AMERICA OWES TO BLACKS, Randall Robinson (A Plume Book 2003) p. 203-204
152 Id.
153 THE ESSENCE OF REPARATIONS, Amiri Baraka, (House of Nehisi 2003) p.21
Reparations specifically for chattel slavery have been attempted over the years. These efforts have been completely unsuccessful. 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. Professor Ogletree contends that the movement has “held currency for over 150 years.” He also states that “reparations’ litigation alone is extensive” and several states have passed legislation that have addressed the issue. The first reparations lawsuit, according to Professor Ogletree, was filed in 1915 and the first demand for reparations dates back into the 19th century.

However, while Professor Ogletree’s discussion of reparations is very impressive, his efforts, and the efforts of many distinguished scholars, advocates, and activists have resulted in little, if any, lasting discussions regarding reparations amongst lawmakers, let alone any monetary restitution. The chance that African-Americans will be compensated for chattel slavery is about the same as it was the day slavery ended in 1865.

In addition, the passage of time has now rendered reparations for chattel slavery even more difficult. African-Americans who were enslaved are all deceased. All individuals who owned slaves who possessed direct knowledge 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

155 Id
156 Id at 119
157 Id at 117
158 Id at 119
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. He died in 2009. 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. Travis had direct interaction with the FHA and attempted to have the FHA mortgage insurance system to work for African-Americans. However, his efforts to accomplish this goal were impeded by the FHA’s intense system of racial control of the U.S. housing market.

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

However, the most important facts about Travis are that he did not die until 2009 and that he testified on these matters extensively over the years. Considering that Travis was an eyewitness to these events and could provide specific details of the actions of the FHA, his death in 2009 is a lost opportunity for the FHA-TARC. This is all the more reason why the U.S should form the FHA-TARC now.

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161 Id.
162 Id
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 anyway. This 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 players are still alive and available to testify, recall events and corroborate decisions. The FHA-TARC is not simply trying to make minorities the victims and whites the perpetrators either.

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. 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 incurred by African-Americans:

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.\textsuperscript{164}

\textsuperscript{164} Henry Louis Gates, “Ending the Slave Blame Game,” The New York Times, April 22, 2010 (online version)
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.165”

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

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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.

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 (if these are proposed), 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. 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. Thus, this proposal is not merely a black-white matter if it is to be framed in such a manner. By uncovering all of the unjust acts of the FHA, the larger truth can be discovered.

Ultimately, the point is racial integration is only partially complete and thus, incomplete. While African-Americans have been rendered legally equally as a result of the legislative victories of the Civil Rights era and legal victories in judicial forums, they

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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. 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 benefit. 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.

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167 *THE ORDEAL OF INTEGRATION*, Orlando Patterson, (Perseus Counterpoint 1998)